

JOHN COOPER
MAYOR



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

DEPARTMENT OF WATER AND SEWERAGE SERVICES
Development Services
800 Second Avenue South
P.O. Box 196300
Nashville, Tennessee 37219-6300

**Minutes
of the
Stormwater Management Committee (SWMC)
October 1, 2020

8:15 AM**

Meeting took place via Teleconference and aired live on Comcast Channel 3. A livestream of the meeting was simulcast on Nashville.gov with a remote station set up at the Sonny West Conference Center (700 2nd Avenue South) for anyone who was unable to submit their comments electronically and wished to make comments in that manner. Social distance recommendations were implemented at the remote station.

**STORMWATER MANAGEMENT COMMITTEE
(Quorum Required: Four Members)**

Committee Members Present:

Mr. Dodd Galbreath –Chair
Ms. Anna Maddox, P. E. – Vice Chair
Mr. Roy Dale, P. E.
Ms. Ronette Adams-Taylor
Ms. Carrie Stokes, P. E.

Committee Members Absent:

I. CALL TO ORDER

Mr. Dodd Galbreath, (Chair) called meeting to order at 8:15 a.m. with roll call of committee members. Mr. Galbreath and Ms. Theresa Costonis (Metro Legal) stated that the first order of business would be a motion to determine that due to Governor Lee’s Executive Order No. 60 that the meeting agenda constitutes essential business of this Board and meeting electronically is necessary to protect the health, safety, and welfare of Tennesseans in light of the COVID-19 outbreak.

New guidelines were discussed for participating in a virtual meeting as they relate to Executive Order 60. Any participant that is joining the meeting must turn on their video when participating actively in the meeting. If a participant is joining the meeting by audio only – that participant must



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identify themselves each time that they speak. If someone else is in the meeting area with a participant during the meeting, the participant must identify the person or persons in the room with them.

Ms. Ronette Adams-Taylor moved for approval of the meeting being held as an electronic meeting due to the health and welfare of Tennesseans in light of the COVID-19 outbreak. Ms. Carrie Stokes seconded and the Board approved without objection.

II. APPROVAL OF SEPTEMBER 3, 2020 MEETING MINUTES & DECISION LETTERS

A motion was made by Ms. Carrie Stokes and seconded by Ms. Ronette Adams-Taylor on approval of September 3, 2020 minutes & decision letters. Mr. Roy Dale, Mr. Dodd Galbreath, Ms. Anna Maddox, Ms. Stokes and Ms. Adams-Taylor voted in favor of the motion. The motion carried.

IV. STORMWATER MANAGEMENT COMMITTEE AGENDA

Comments were solicited from the Planning and Codes Departments for the following Agenda items.

- 1. 202000014 The Mansion at Fontanel** APN: 04000009300, 04000016300, 0490001400
4225 Whites Creek Pike 04900020001, & 04900031900
Inspector: (Boots O'Hara) CD-03 (Jennifer Gamble)

Approval of Preliminary Plans was granted under variance number 202000007 on July 2, 2020 to allow the following: 1) Stream and stream buffer disturbance 2) Floodway and floodway buffer disturbance 3) Uncompensated Fill and 4) Continuous mowing and maintenance of the buffer.

APPLICANT'S REQUEST: Is to allow the following:

1. Disturbance of the floodway, zone 1, and zone 2 buffers
2. Disturbance of the stream, zone 1 and zone 2 buffers
3. Multiple crossings within 1000'
4. Continuous mowing and maintenance of the buffer

APPELLANT: BlueRoad Fontanel, LLC

REPRESENTATIVE: Clay Wallace (Energy Land & Infrastructure)

COMMENTS:

SW STAFF:

1) Staff recommends that proposed buffer areas for “parking” be consolidated/lessened as possible to the minimum area needed with remaining buffer areas left to function as undisturbed riparian buffers. 2) Staff recommends against approvals for new “special event” activities within the site’s stream buffer as they could lead to pollutant loading, buffer area compaction and additional turf grass areas within the buffer.

CODES: No comment provided.

PLANNING: Approved

GREENWAYS: No comment provided.

Mr. John Haas (EDGE) spoke on behalf of the request at the location of 4225 Whites Creek Pike with Tim Ferrell (owner) and Clay Wallace (Energy Land & Infrastructure) on the line to help with any questions. Mr. Haas stated that there were several items that the committee members had requested to be addressed before returning for their final variance request which included:

- 1) The variance request should be simplified as one unified request. **Status:** The applicant has reworked the proposed variance to reflect one unified request.
- 2) The Appellant shall hold a public meeting with the Whites Creek community explaining the changes taking place at The Mansion of Fontanel. The Appellant shall discuss greenway, stormwater, and water quality along with flooding concerns. **Status:** The applicant held a community meeting as facilitated by Councilwoman Jennifer Gamble on the evening of Thursday, August 6th. Approximately 50 community members were in attendance.
- 3) The Appellant must clearly state hardship and any flooding potentials. **Status:** The applicant has clearly stated the hardship and any flooding potentials in the variance application.
- 4) The Appellant shall discuss and address concerns previously stated by Cindy Harrison with Metro Greenways. **Status:** The applicant has had multiple meetings/discussions with Cindy Harrison and Metro Parks legal representation to address Ms. Harrison’s previously stated concerns.
- 5) The Appellant must provide images of area where Bungalow’s will be placed. **Status:** The plans and graphics included in the variance submittal reflect the locations of the bungalows that would impact the stream buffer.

Mr. Haas went further to discuss the applicant requests that unchanged previously approved variance #201300020 be combined with amended previously approved variances #201000001, #201000014 and #201300022 in order to create one new variance for ease of administration and record keeping. Items were highlighted in yellow to indicate portions of the current variances that are being amended as part of the application. Non-highlighted items are not changing and are

added to the request for record keeping purposes (all highlighted information was showed during the meeting) which were:

- 1) Amend variance #201000001 to allow disturbance of the floodway and floodway buffers (50' Zone 1 and 25' Zone 2) of Whites Creek to mow and maintain the grass areas for event parking. The proposed disturbed area will be smaller than currently permitted to allow portions of the floodway and floodway buffers to return to their natural vegetated state through mitigation and natural revegetation.
- 2) Allow disturbance of the 30' Zone 1 and 20' Zone 2 stream buffer of an unnamed tributary to Whites Creek to repair and replace the existing retaining walls, replace the existing VIP cabanas with permanent Bungalow units, relocate existing bridge upstream of the existing crossing, construct a drive access for emergency vehicles and cart access (Parcel 140).
- 3) Allow the spacing of two road crossings less than 1,000' apart on an unnamed tributary to Whites Creek (Parcel 140) and amend to add pedestrian path and utility crossings of the stream buffer.

Councilmember Jennifer Gamble (District 3) was present by audio and spoke that she had worked with the owner Tim Ferrell and John Haas with EDGE in making sure that the community stayed aware of the changes taking place at The Mansion of Fontanel. Councilmember Gamble stated that a virtual meeting took place on August 6, 2020 with members of the Whites Creek Community in attendance. At the meeting the variance request was discussed by John Haas and several questions were addressed.

Councilmember Gamble went further to state that after the meeting, the community was supportive of regular mowing, events, and event parking in field areas within the floodway and floodway buffer east and west of Whites Creek. The disturbance of stream buffer for widening of private drive, pedestrian path and utility crossings, and two road crossings less than 1000' apart. After the meeting a newsletter was sent out by Councilmember Gamble and a video was posted on her Facebook page of the August 6th meeting. Councilmember Gamble also restated the same information in September and advised members of the community to be a part of the Stormwater Management Meeting to state their concerns.

Councilmember Gamble did state that she had received two emails from members of the community that had concerns of the variance and she believed they would be calling in with their oppositions of the variance. Councilmember Gamble stated at the end of her discussion that she was in favor of the variance at the location of 4225 Whites Creek Pike.

Emails sent from residences of the Whites Creek community were read into record by Logan Bowman (Metro Water). Several members of the community were concerned about, "the possibility of adding or negatively changing floodwater along the already unstable Whites Creek waterways. Their concerns are strictly about preventing harm to people, visitors, and homes/structures near the Fontanel Property and along Whites Creek (both up and downstream).

The community member went further in stating that this is about protecting people and homes that are already threatened by the growing waters of Whites Creek during heavy rains and long lasting storms. Small changes could mean major catastrophes for those along Whites Creek.”

Concerns from community were also those of:

- 1) The SWMC committee granting variances in the floodway and flood plain in an area where Metro aggressively pursued the buyout of homes.
- 2) Increase run-off from additional structures and disturbances of the tree canopy on the steep slopes of Hood Hollow. (An area where there have been multiple landslides in the past 10 years).
- 3) The new owners of Fontanel complying with metro policies.

Members of the Whites Creek Community called into the Stormwater Management Meeting stating their concerns against the variance. Community members feel that, “despite having new owners – Fontanel has a history of not following the law or their previous variances when it comes to how/where they build. The community wants assurance via technical evaluations/studies showing that the proper research was done to ensure there is no negative impact from the proposed changes at Fontanel.”

The community believes that, allowing year round non-ticketed for profit events will bring more traffic, congestion and noisy nights to a once quiet rural neighborhood. The congested traffic and noisy events will be a nuisance to many rural homeowners who live nearby Fontanel with Whites Creek Pike being their only ingress and egress to and from their residences. With all the additional non-ticketed events, some neighbors are also concerned whether even the “at-will” arrangement with Metro Parks for residents use of the Greenway of Fontanel will be closed more often now with Fontanel’s new year round non-ticketed for profit events.

The Community Members also wanted to know, “How would the community be notified of construction timelines and impacts as these variances are implemented (assuming they pass)? How will the community be informed of the variances and impacts that were not discussed at the 8/6/20 Community Meeting with Fontanel and Councilwoman Jennifer Gamble.”

Ms. Cindy Harrison (Metro Parks) spoke on a letter and discussion between Metro Parks and Fontanel. The letter spoke on an agreement that includes the design and construction of an additional pedestrian bridge on the Fontanel property and an easement that will extend the greenway from its existing location to the North at Knight Road.

Fontanel proposes the following items be added to the current agreements with Metro Parks conditioned upon the approval of their variance amendment request with Metro Stormwater.

- 1) Metro Parks will be notified in writing at least 7 days in advance of any greenway or greenway segment closure. Notices of closure will also be posted on Fontanel's website at least 7 days in advance.
- 2) Temporary closure of the greenway either in its entirety, or for specific segments, shall not exceed 5 days in a row maximum.
- 3) Unlimited closures of the greenway segments throughout the Fontanel property shall be permitted in an unlimited fashion (Scenario A and Scenario B) as long as a route is provided allowing greenway users the ability to traverse the property from point A to point C. (Knight Road to Whites Creek Pike).
- 4) Complete closure of the Greenway east of Whites Creek ("Scenario C") shall be limited to 95 days per year maximum.
- 5) Blue Road Ventures will be responsible for the design, to be mutually agreed upon, and construction of a pedestrian bridge across the unnamed tributary of Whites Creek between the +/- 47-acre parcel to the south and the meadow west of the current stage. The design and construction of the bridge will comply with Metro's Greenways and ADA standards. The bridge will be completed not later than the date of issuance of a certificate of occupancy (including a temporary certificate) for the lagoon building.
- 6) Blue Road Ventures will offer an easement that is to be negotiated and mutually agreed upon with Metro Parks for the extension of the existing greenway to the north up to Knight Road. The easement will be at least as wide as Metro's standard greenway easements. Blue Road Ventures will cooperate in good faith with Metro in obtaining the necessary space for a trailhead at point A, recognizing that permission from Piedmont Gas may also be necessary and that the trailhead will not be located in an area currently dedicated to parking for Blue Road's patrons. (Assumes that the closure of these greenway segments is permitted in an unlimited fashion as long as a route is provided allowing the ability to traverse the property from point A to point C.)
- 7) Metro Parks will notify the Storm Water Management Committee that it has no objection to the Committee's approval of Blue Road's current variance request.

After discussion and review of the information presented, Ms. Ronette Adams-Taylor made a motion to approve the variance as presented with the following standard Conditions # 1-2 and Condition #3 adding additional 202 trees for more mitigation. Mr. Roy Dale seconded the motion. There was additional committee discussion on items that were brought up by staff with Mr. Roy Dale making a motion adding Conditions # 3-9 with Ms. Ronette Adams seconding the motion, amending the original vote. Ms. Carrie Stokes, Ms. Adams-Taylor, Mr. Dale, and Mr. Dodd Galbreath voted in favor of the motion. The motion carried.

1. The Appellant shall have the landscaper who installs the required mitigation plantings to certify to the MWS Stormwater – NPDES Office, in writing (referencing Variance #202000014), once plantings are installed per approved variance plans, and again once plantings have been found to meet a two full growing season requirement. The owner shall maintain a minimum of 75 percent survivability of plantings through two full growing seasons.

2. This variance will expire on October 1, 2021. However, if a Grading Permit, Stormwater Single Family Permit, or Building Permit is issued within that period, the variance expiration date will run concurrent with that permit expiration date. The variance is valid only so long as the plan presented to the Stormwater Management Committee does not change.
3. Upon the approval of future grading applications there shall be no increase in peak discharges into White's Creek.
4. Any new stream crossing of White's Creek must include a No Rise insuring that there is no increase in flood elevation outside of the contiguous limits of the property.
5. The applicant may routinely remove debris that is the result of flooding, where said debris obstructs the flow of White's Creek.
6. Bungalows as designated on the plan may be placed in the Zone 2 Buffer of White's Creek; however, no building footprint can be placed within the 100-year flood plain.
7. Additional mitigation to the 368 proposed trees in the form of an additional 202 trees shall be planted with placement and timing coordinated with Stormwater Staff.
8. The letter of agreement between the applicant and the Metro Parks Board shall be included as a condition of this approval.
9. The applicant shall coordinate with Stormwater Staff on the frequency, duration, and size of events that would be allowed to utilize parking within the floodplain and floodway stream buffers of White's Creek.

NOW THEREFORE, it is the decision of the Committee that the request in Variance Request No. 202000014 as set out above and further described in the case record, be and is hereby **GRANTED.**”

V. ITEMS OF BUSINESS

Steve Mishu (Metro Water) spoke on Ordinance No. BL2020-424. Mr. Mishu stated that there is pending legislation that will change the way we handle our day-to-day activity within the Stormwater Management Committee as we prepare the packages for the Stormwater Variance Meetings. We are being moved more in the order of Zoning and other boards. We will be required to send letters to those within 1000ft of the variance property. At this point a sample letter has been created and we have made alterations to the check list.

Mr. Mishu also discussed some updates to items that had previously been discussed with the committee such as:

1. The applicant purchasing and posting of signs.
2. The applicant preparation and mailing of written notices of variance taking place.

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VI. ADJOURNMENT

The meeting adjourned at 11:20 p.m.

Metropolitan Stormwater Management Committee
Approved:

By: Peninsula Gilbert
Secretary

Date: 12/9/2020