



Richland Creek Watershed Alliance

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May 11, 2015

Tom Palko, Assistant Director  
Metro Water Services  
Stormwater Review  
800 2nd Avenue South  
Nashville, Tennessee 37210

Dear Mr. Palko,

We are writing because we challenge Metro's interpretations of the floodway buffer exemption for the Saint Thomas Health Specific Plan that was recently filed and approved by Metro Planning Commission (March 26), and Metro Council (BL2014-1094) during second reading. Metro stated in the March 26, 2015 Planning Commission Meeting notes that because the site has been disturbed, "the Zoning Code exempts it, "Saint Thomas from the stormwater buffer requirements along Richland Creek."

Metro is using a portion of Chapter 5.4; Preserved Floodplain (bolded below) to assert Saint Thomas Health is exempt from the floodway buffer requirement.

The Code states in pertinent part:

15.64.120 Construction that may increase degree of flooding prohibited.

All construction, whether by private or public action, shall be performed in such a manner as to:

- A. have no material increase in the degree of flooding in its vicinity or in other areas whether by flow restrictions, increased runoff or by diminishing retention capacity;
- B. have no adverse impact for site design including, but not limited to, no rise in the 100-year base flood elevations on any project or development located in a documented floodplain as a result of development;
- C. meet such other requirements as may be determined by the department of water and sewerage services.

15.64.170 Development within floodways--Restrictions.

A. No new structure shall be constructed within the floodway. Notwithstanding the foregoing, a structure located in the floodway as of the effective date of this ordinance may be maintained and may be repaired in the event of a casualty loss not exceeding fifty percent of appraised value of improvements on the property, provided that no such existing structure located in the floodway shall be enlarged or expanded beyond its existing height or building footprint.

The Regulations provide:

## **5.4 Preserved Floodplain**

In accordance with Section 17.28.040 of the Metropolitan Code of Laws, all development proposed on property that is not developed as defined herein, encumbered by natural floodplain or floodway as of April 5, 2003, shall leave a minimum of fifty percent of the natural floodplain area, including all of the floodway area, or all of the floodway area plus fifty feet on each side of the waterway, whichever is greater, in its original, natural state. The preserved floodplain shall be adjacent to the floodway, or as otherwise approved by the Zoning Administrator or by the Metropolitan Planning Commission if the property is the subject of a subdivision or rezoning application.

**For purposes of this subsection, a portion of a lot shall be deemed to be developed if a grading or building permit has been issued or, if a portion of the lot has been disturbed by (approved) grading or if a portion of the lot is improved with any material that substantially reduces or prevents the infiltration of stormwater by the total horizontal area of the lot including, but not limited to, roofs, streets, sidewalks and parking lots paved with asphalt, concrete, compacted sand, compacted gravel or clay. Evidence that a portion of the property is developed shall include grading or building permits and/or aerial photographs. Absent grading or building permits, a lot shall not be deemed developed under this section if the use of the property was for agricultural activities. The undisturbed portion of water quality stream buffers, as defined in Section 6.9 of this manual, can count towards the preserved floodplain requirement.**

#### 5.8 Nonconforming Uses

The existing lawful use of a structure or premise that is not in conformity with the floodplain requirements of this manual may be continued subject to the following conditions:

1. No such use shall be expanded or enlarged except in conformity with the provisions of this manual.
2. No structural alterations, additions to, or repairs to any nonconforming structure over the life of the structure shall exceed 50 percent of its assessed value at the time of its becoming a nonconforming use unless permanently changed.
3. If such use is discontinued for 12 consecutive months, any future use of the building and premises shall conform to the provisions of this manual.
4. Uses or adjuncts thereof which are nuisances shall not be permitted to continue as nonconforming uses.
5. Any alteration, addition to, or repair to any nonconforming structure permitted shall be protected by floodproofing measures pursuant to Section 5.5.7.

Metro asserts the exemptions in the regulations allow Saint Thomas to redevelop a majority of the property regardless of the regulations on stormwater. Metro does not cite any exemptions in the meeting notes. There are two exemptions that give developers leeway on the mandatory flood buffers, they are:

- 1) a structure already in a floodway may be maintained and/or repaired so long as the repairs do not exceed 50% of the appraised value of the structure on the property;
- 2) development proposed on a property that has been developed (where a grading or building permit has been issued by Metro).

Rule 5.4 states, that for purposes of 5.4 subsection, a portion of a lot is deemed developed if a grading or building permit has been issued or if a portion has been disturbed by grading etc.

Rule 5.8 clearly states that a nonconforming use cannot be expanded or enlarged except in conformity

with the stormwater manual, nor can a use be extended if the use was discontinued for 12 consecutive months.

The rules of statutory construction require that the regulations and the ordinance be read together so as not to create a conflict. Thus, reading 5.4 and 5.8 together, the entire Saint Thomas project containing new construction and/or expanding or enlarging the nonconforming use is not exempt merely because Metro issued a building or grading permit on a portion of the lot.

To the extent the Saint Thomas project is expanding or enlarging the previously developed nonconforming use on previously developed property, that portion of the project would be exempt so long as it meets the remaining criteria explained in the manual. Any and all improvements, more than 50% of the value of the structure that existed at the time it became a nonconforming use, must be brought into compliance with the requirements defined by the Stormwater Management Manual, Chapter 5 – Floodplain Requirements. Further, 5.8 mandates that no use on a developed lot, may be expanded or enlarged except in conformity with the provision of the Metro Stormwater Manual. To the extent St. Thomas is building a new structure or expanding or enlarging a nonconforming use on the premises, Metro must require Saint Thomas to comply with the requirements contained in the Metro Stormwater Manual.

By allowing unfettered development on the property, Metro is ignoring the mandatory language in the statute regarding new development in the floodplain or floodway. Metro cannot parcel out language from Rule 5.4 and ignore the Ordinance and Rule 5.8, the regulations and ordinance must be read together as a whole.

Respectively,



Monette Rebecca  
President & Executive Director

Cc Mayor Karl Dean  
Scott Potter, Director