



# APPENDIX C STORMWATER MANAGEMENT COMMISSION

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# I. STORMWATER MANAGEMENT COMMISSION INTERNAL OPERATING RULES AND REGULATIONS

## F1.1 Stormwater Management Commission Internal Operating Rules and Regulations

The Metropolitan Stormwater Management Commission, pursuant to the authority vested in it by the Metropolitan Code of Laws (hereinafter M.C.L.) §15.64.080, does hereby establish these rules and regulations to govern the procedures by which it conducts business.

### *F.1.1.1. Filing of Appeals and Variance Requests*

An applicant may appeal an adverse decision of the Director of the Metropolitan Department of Water and Sewerage Services (MWS) or the Director of Codes Administration to the Stormwater Management Commission. An applicant may also request a variance from the stormwater regulations.

All appeals and variance requests must be filed on a form provided by MWS, which shall provide:

1. The name of the property owner or his authorized agent;
2. The name of the appellant's/applicant's representative, if any;
3. The case number, the map number, and the parcel number, if any;
4. The location of the property;
5. The specific action requested of the Commission; and
6. The reasons justifying such action.

All appeals must be filed within 30 days after an adverse decision by either the Director of MWS or the Director of Codes Administration. A filing fee shall be charged to each applicant payable to MWS.

All appeals and variance requests will be filed with the secretary to the Commission. It shall be the duty of the secretary to the Commission to:

1. Accept all appeals and variance requests on behalf of the Commission.
2. Assign each appeal or variance request a case number.



3. Number each appeal or variance request consecutively in order of receipt (beginning on January 1 of each year).
4. Ensure that appeals or variance requests are heard in the order that they appear on the calendar, unless they are advanced for hearing for good cause shown.
5. Prepare an agenda and distribute it to each member of the Commission at least one week before each meeting.
6. Send a copy of the agenda to the Executive Director of the Metropolitan Planning Commission and the Director of the Department of Codes Administration.
7. Include on the agenda an identification of each appeal or variance request to be heard and the information required above.
8. In the event that there are no appeals or variance requests pending and no other business for the Commission to consider, notify the chairman of that fact ten days prior to the time scheduled for the meeting, so the chairman may cancel said meeting pursuant to M.C.L. §15.64.080.
9. Ensure that adequate notice of all meetings and agenda is given to the public.

*F.1.1.2. Public Notice Signs for Variance Requests*

All applications requesting a variance, in lieu of placing a legal advertisement in the local newspaper, shall post public notice signs in accordance with the following provisions on any property subject to the consideration of a variance by the Stormwater Management Commission:

1. **General Requirements.** Public notice signs shall be posted on any property subject to the Stormwater Management Commission variance provisions. Public notice signs shall be installed by the applicant requesting the variance. By the filing of an application requiring a variance, the property owner grants authorization for installation of public notice signs on the subject property.
2. **Display Period.** Public notice signs shall be installed on affected properties no less than 10 days prior to an established appeal meeting date, and shall be removed promptly by the landowner following closure of the appeal.
3. **Number and Placement of Public Notice Signs.** Public notice signs shall be posted according to the following standards:
  - a. **Number.** One sign shall be posted along each three hundred feet of public street frontage.
  - b. **Location.** Whenever practical, signs shall be located within ten feet of a public street right-of-way and positioned in a manner to best inform the motoring public without



creating a safety hazard.

- c. **Size and Content.** All public notice signs shall be of adequate size and design to be clearly visible and legible to the motoring public. At a minimum, a public notice sign shall specify the time, date and location of the scheduled appeal meeting, the general nature of the variance request, and a phone number for additional information.
4. **General Procedure.** The staff of Metro Water Services may hand write the appeal information on the public notice signs. The applicant is required to pick up the public notice sign from Metro Water Services staff no later than the Friday following the appeal application deadline or the application shall be removed from the agenda.

*F.1.1.3. Variance Considerations*

1. In approving variances for applications, the Stormwater Management Commission shall consider all technical evaluations, all relevant factors, all standards specified in other sections of these regulations, and:
  - a. The danger that materials may be swept by floodwaters or streams onto other lands to the injury of others.
  - b. The danger to life and property due to flooding or erosion damage.
  - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  - d. The importance of the services provided by the proposed facility to the community.
  - e. The necessity of the facility to a waterfront location, in the case of a functionally dependent facility.
  - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
  - g. The compatibility of the proposed use with existing and anticipated development.
  - h. The relationship of the proposed use to the comprehensive plan and master drainage plans for that area.
  - i. The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.



- k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- l. The following evaluation criteria will apply to appeals involving modification of the buffer.
  - i. Modifications to the buffer area shall be the minimum necessary to achieve a reasonable buildable area, as decided by the Commission. Other requirements for building in the floodway shall still apply.
  - ii. Where possible, an area equal to the encroached area or equivalent stormwater management practices shall be established elsewhere on the lot or parcel in a way to maximize, or provide equivalent, storm water quality enhancement and protection.
  - iii. Variances for reducing the no-disturbance buffer require a written recommendation, positive or negative, from the Greenways Commission.
  - iv. Redevelopment, as defined in Appendix B of this volume, within intensely developed areas may be exempt from all or a portion of the requirements of this subsection, provided feasible alternatives or BMPs to benefit storm water quality are applied.
2. Upon consideration of the factors listed above, and the objectives of these regulations, the Stormwater Management Commission may attach such conditions to the granting of variances as it deems necessary to further the objectives of these regulations.
3. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
4. Conditions for variances:
  - a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of a historical building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.
  - b. Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense; create nuisance; cause fraud on or victimization of the public; or conflict with existing local laws or ordinances.
  - c. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built, and stating that the cost of flood insurance will be



commensurate with the increased risk resulting from the reduced lowest floor elevation.

- d. The Stormwater Management Commission shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.
5. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the procedures set forth in this section, except for Items 4a and 4d above, and provided the proposed reconstruction, rehabilitation, or restoration will not result in the structure losing its historical designation.

#### *F.1.1.4. Open Meetings*

All meetings of the Commission shall be open to the public as required by T.C.A. §8-44-101, *et seq* and M.C.L. §2.68.020. The Commission shall meet at regular monthly intervals with the day and time to be determined by the chairman.

Notice of such regular meetings shall be provided to the public as provided by law.

#### *F.1.1.5. Hearing Procedure*

The protocol for an appeal or variance hearing shall be as follows:

1. Commissioners shall have a silent, individual review of the application prior to introduction of each case.
2. Prior to the testimony in each case, the secretary shall read a brief introductory statement setting forth the elements specified in Sec. F1.1.1. The Metropolitan Planning Commission or the Director of Codes Administration shall be permitted to submit an advisory opinion on any matter before the Commission and such opinion should be read into the record before the introduction of any other evidence in each case.
3. The order of the proof shall be as follows at the conclusion of the secretary's introductory remarks:
  - a. The Director of MWS or his designee shall furnish reasons for the rejection of the permit and/or development plans by way of written statement setting forth the reasons for the rejection and/or an oral presentation if so desired by MWS.
  - b. The applicant shall go forward with his case at the conclusion of the presentation by the Director of MWS or his designee, offering by way of written documentation or oral testimony any evidence which he may have in support of his appeal.

The applicant is allowed ten minutes to present their case to the Commission. The



applicant may request to reserve two minutes of that time as a rebuttal. Extensions of these time periods may be granted at the discretion of the Chairman in the case of unusually large cases, with unusually complex information, requiring a longer period of time for review.

- c. Members of the public, who support the requested variance, may have two minutes each to comment on the case.
  - d. Members of the public, who oppose the requested variance, may have two minutes each to comment on the case.
  - e. Metro Council members may speak on each proposal – at the start of the hearing or at the end of the hearing.
4. The applicant, Metro Water staff, or others present will then respond to questions from the Commission. The Commissioners may at any time ask questions of the Director of MWS or his designee or the applicant. Any document submitted before the Commission shall be received into the record and identified as an exhibit thereto, and be numbered by the secretary. The secretary shall record the proceedings and the minutes of the meetings of the Commission and shall be the custodian of the minutes and the records of the proceedings before the Commission.
  5. Once a motion and a second to the motion are made to close the public hearing, and an affirmative vote is taken thereon, further discussion is limited to members of the Commission unless they have additional questions for the applicant and / or others.
  6. Chairman has the discretion to extend time or modify the requirements of this Section as the Chair deems appropriate.

Every person before the rostrum shall abide by the order and direction of the chairman. Discourtesy or disorderly or contemptuous conduct shall be regarded as a breach of the Commission's rules and shall be dealt with as the chairman deems proper.

#### *F.1.1.6. Decision of the Commission*

At the conclusion of all of the evidence in all cases heard at that hearing session, the Commission shall discuss the cases and render decisions in executive session on that date or defer decisions for no longer than 30 days thereafter.

Any action taken by the Commission shall be by motion which shall state the reasons therefor with particularity. All the decisions of the Commission shall be by resolution, which can be in the form of a decision letter, must be in writing, and the minutes must indicate the vote of each member of the Commission upon the decision, and the minutes and decision letter shall specify in what manner such variation or modifications shall be made, the conditions upon which they are to be made, and the reasons therefore. Unless otherwise stated, every decision of the Commission shall be final and valid for one (1) year from the date of the decision unless a grading permit or building



permit is issued within that period, in which case, the variance expiration date will run concurrent with that permit expiration date.

An order containing the resolution of the Commission on each case shall be promptly entered on the minutes of the meeting of the Commission by the secretary and filed in MWS.

#### *F.1.1.7. Rehearings*

No rehearing of the decision by the Commission shall be had except:

1. On motion to reconsider that vote by a member of the majority of the Commission on the preceding vote, or
2. On a written request by the appellant for a rehearing.

If the motion or written request to reconsider receives three affirmative votes, the Commission shall hold a rehearing, subject to such conditions as the Commission may by resolution in each case stipulate.

No request other than by a Commission member to grant a rehearing will be entertained unless new evidence is submitted which could not reasonably be presented at the previous hearing. If the request for a rehearing is granted, the case shall be put on the calendar for a rehearing. In all cases, the request for a rehearing shall be in writing, reciting the reasons for the request, and shall be duly verified and accompanied by the necessary data and diagrams. The person requesting the rehearing shall be notified to appear before the Commission on a date to be set by the Commission. Such notification shall be by the secretary.

### **F1.2 Conflict of Interest**

No member of the Commission shall act in any case in which he/she has a personal interest, whether it be a direct or indirect financial interest in the property itself, or by virtue of family relationship with the appellant.

### **F1.3 Terminology**

All parties before the Commission must phrase their presentations employing the terminology and definitions set out in the Metropolitan Code of Laws §15.64.010 where applicable.

### **F1.4 Special Meetings**

The chairman may in emergency situations call special meetings at a time and place of his choosing. Whenever such a special meeting is called, the public shall be notified in the same manner as provided for by Section F1.1.3.



### **F1.5 Amendment of Internal Operating Rules and Regulations**

These rules may be amended at any time by a majority of the members of the Commission and shall be in writing and filed in the office of the Metropolitan Clerk.

### **F1.6 Time of Effect of Internal Operating Rules and Regulations**

These rules shall take effect immediately upon their approval and adoption by the Commission and the filing of same in the office of the Metropolitan Clerk.

### **F1.7 Appeals From Decisions of the Commission**

A decision of the Commission is reviewable by writ of certiorari in a court of competent jurisdiction as provided by state statute.

### **F1.8 Election of Officers**

The Commission shall elect one of its members as chairman and another as vice-chairman, who shall serve for a period of two (2) years or until their respective successors shall have been chosen.



## **II. APPLICATION FOR STORMWATER VARIANCE OR APPEAL**



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METROPOLITAN STORM WATER MANAGEMENT COMMISSION  
STORMWATER DIVISION  
800 2<sup>ND</sup> AVE SOUTH  
NASHVILLE, TENNESSEE 37210

APPLICATION TO APPEAR BEFORE STORM WATER MANAGEMENT COMMISSION

APPLICANT INFORMATION  
APPLICANT/OWNER OR AGENT OF OWNER:

VARIANCE OR  
APPEAL NO. \_\_\_\_\_

\_\_\_\_\_

MAP NO. \_\_\_\_\_

REPRESENTED BY: \_\_\_\_\_

PARCEL NO. \_\_\_\_\_

DEVELOPMENT INFORMATION

COUNCIL DISTRICT \_\_\_\_\_

ENGINEER \_\_\_\_\_

PROPERTY ADDRESS:

DEVELOPER \_\_\_\_\_

\_\_\_\_\_

PROPERTY OWNER \_\_\_\_\_

\_\_\_\_\_

PLEASE SELECT ONE OF THE FOLLOWING:

- 1. VARIANCE REQUEST - The applicant requests a variance from the requirements of the Stormwater Regulations. Please state the regulation and the requested variance from:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Applicant would show that the variance request is justified for the following reasons (check all that apply):

The variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of a historical building, the variance is the minimum necessary so as not to destroy the historic character and design of the building.

Provide Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



The variance request meets the following conditions: (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense; create nuisance; cause fraud on or victimization of the public; or conflict with existing local laws or ordinances.

Provide Explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Variance Request – Please return this completed application along with the additional materials in the Variance Checklist on MWS’ Stormwater website

2. APPEAL - The applicant hereby appeals an adverse decision of the Director of the Metropolitan Department of Water and Sewerage Services (MWS) and/or Director of Codes Administration. Please describe the adverse decision and justification for the appeal:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For Appeal Only – Please return this completed application along with the filing fee made payable to Metro Water Services..

All specifications, plans and other supporting documents heretofore filed with the Director of MWS and/or the Director of Codes Administration are incorporated herein by reference and made a part of this application.

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Phone No. Email Address

THIS WILL ALSO SERVE AS RECEIPT OF THE FILING FEE TO PARTLY COMPENSATE FOR EXPENSES UNDER THIS APPEAL.