

# Water Quality Buffer/Stormwater: Tennessee Appellate Court Reviews Denial of Variance Request



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The Tennessee Court of Appeals (“Court”) addressed in a April 4th Opinion a question involving stormwater issue regulations that utilize water quality buffers. See *Precision Homes, INC. v. The Metropolitan Government of Nashville and Davidson County*, No. 17-467-1.

The question arose because application of the regulations restricted the ability of a Davidson County property owner to construct a residence.

Precision Homes, Inc. (“Precision”) submitted a request for a variance to build on three lots located in a water quality buffer zone along the Cumberland River. Building was not permitted in the buffer zone unless by approval.

Precision asked for permission to construct a small house on each lot. The Metropolitan Stormwater Management Committee (“SWMC”) denied the request.

The SWMC rejected the request in a vote (four to two). It subsequently reheard the case and the motion to approve the variance once again failed with a tied vote (three to three).

Precision filed a petition in the lower chancery court. The lower court upheld SWMC’s decision in denying the variance, explaining “the decision was based on substantial and material evidence and was not arbitrary and capricious.” On appeal, Precision challenged the reasoning applied by various board members in casting their votes denying the variance.

On appeal the petition was deemed by the Court to raise the issue of “whether the Board (SWMC) exceeded its jurisdiction or acted illegally, arbitrarily, or fraudulently.” The Court initially considered the legal standard for SWMC’s decision on the variance request. It noted that the applicable regulations required the SWMC to consider:

1. all technical evaluations,
2. all relevant factors,
3. all standards specified in other sections of the regulation, and
4. an extensive list of other considerations.

The threshold standard for the variance to be issued required:

1. good and sufficient cause,

2. a determination that failure to grant the variance would result in exceptional hardship, and
3. a determination that the granting of a variance would not result in various unfavorable outcomes.

Precision argued its request involved one “where reasonable use of the land could not be made with strict adherence to zoning regulations” and the variance was necessary. The Court rejected this argument. It stated “the granting of a variance must be based upon hardship related primarily to the circumstance of the land rather than to the personal circumstances of the property owner (emphasis added).”

Federal Emergency Management Agency (“FEMA”) guidance was deemed instructive. The Court stated that “according to FEMA, a variance request based on ‘good and sufficient’ cause deals solely with the unique site-specific physical characteristics of the property, subdivision lot, or land parcel in question.” FEMA explained “that a determination of “good and sufficient” cause should never be based upon “the personal difficulties of the owner or inhabitants” that “the financial hardship of the property owner is never a ‘good and sufficient’ cause for granting a variance.”

FEMA’s reasoning was noted to track Tennessee case law. Both emphasize the peculiar circumstances of the property itself and not the personal circumstances of the property owner. Therefore the Court rejects Precision’s argument.

The Court next considered whether there was any material evidence that supported the action of the administrative agency. It held there was nothing unusual or exceptional about Precision’s property. Furthermore Precision was deemed to have failed to submit evidence sufficient to overcome the “extreme hardship” threshold necessary to justify a variance from the restrictions of building.

Finally, Precision objected to individual committee members votes to deny. The Court dismisses these arguments finding that none of the votes cast denying the variance were done arbitrarily or illegally. It found the SWMC’s decision was supported by material evidence and the votes cast in favor of that denial were legitimate and legal.

A copy of the decision can be downloaded [here](#).