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**COMPLIANCE EVIDENCE FOR SECTION 88-415, STREAM
BUFFER REQUIREMENTS**
5005 SWOPE PARKWAY, KANSAS CITY, MISSOURI
In Support of Application for Change of Zoning, Special Use Permit(s)
CD-CPC-2019 -00141/CD-CPC-2020-00023
14 August, 2020

Summary:

The City Staff requirement, stated in an email 5 August, 2020, referring to Cases “CD-CPC-2019-00141 and CD-SUP-2020-0007”, calls for an Application for Stream Buffer approval of the proposed development.

While this requirement lacks enough standing to be a requirement for Rezoning, or a Special Use Permit, in keeping with the Applicant’s pledge, this submittal is made voluntarily, as if it were a requirement or if it is ruled as a requirement.

The Applicant submits evidence that the Stream Buffer Ordinance requirement is exempt from this project, as the required Pre-Development meeting was not held; the threshold limit of improvements triggering the Ordinance is not met; the requirement is not found as a posted submittal on the City’s COMPASS website; and there may be insufficient current verifiable evidence to allow a submittal to be completed fully.

Facts:

1. THE CITY HAS FAILED TO FOLLOW ITS RULES FOR STIPULATIONS OR REQUIREMENTS FOR AN APPLICATION FOR REZONING OR SPECIAL USE PERMIT:

1.1 The requirement for Stream Ordinance application was not discussed in any required Pre-Development meeting because none were held; or if there was one, it was on the subject of enforcement which was not an agenda item.

- a. No required Pre-Development meetings were held.
- b. Had there been a Pre-Development meeting, City staff would have been able to

understand the project, possibly removing this Requirement as not having a foundation.

1.2 The proposed requirement was made through an email, where City staff have stated emails are not acceptable means for submittals.

1.3 The proposed requirement was not nor has been posted as a requirement as demonstrated on COMPASS. COMPASS is the City's stated only means for filings related to an application.

2. THE CITY'S PARCEL VIEWER MAPPING SHOWS THE PROPERTY AS WITHIN THE STATUTORILY DEFINED FLOOD ZONE:

a. The City claims the "Parcel Viewer Map" is the instrument by which Flood Zone or Stream Ordinance impacts are assessed.

b. The City's Disclaimer warns users of Parcel Viewer "In no event shall the City of Kansas City, Missouri be liable in any way to the users of this data" (See Exhibit 1, following).

c. The City Parcel Map may deviate from the Statutory FEMA FIRMette. City Ordinance states in the event of a conflict between the Parcel Map of the City and FEMA, the FEMA data governs (Sec. 88-5415-02-B).

d. The property itself, as shown by Parcel Viewer, is impacted by the Flood Zone covering only an existing driveway and parking area.

e. The most to be done after the Zoning change is restorative maintenance to the asphalt surfaces.

f. The FEMA FIRM map shows a part of the building is in the edge of the Flood Plane.

g. Improvements to that portion of the building, should they be implemented, are maintenance and repair only (repair roof, interior painting, update the heating and air conditioning, etc. which are not of a cost to reach the City or FEMA required levels.

h. By Ordinance definition, (88-415-03-A, "Streamside Zone") does extend 25 feet landward from the edge of the stream". The nearest stream by FEMA Map ("Town Fork Creek") is more than 700 feet from the flooding corner edge of 5005 Swope Parkway. The Streamside zone extends only 25 feet.

i. The FEMA map, developed by or to Corp of Engineer standards, may have been established prior to the implementation of the Brush Creek/Blue Parkway flood improvements.

j. The Map may not have had an update since the City Ordinance adopted the FEMA data.

k. There may not be Flood Zone that applies to this location as the watershed for a ½ mile area west, north, and east has been altered.

3. FLEXIBILITY SECTION 88-415-04-B. Applies to "residential developments".

a. City staff rejected the Applicant's effort to offer to change the proposed Commercial development to Residential, which is permitted in this Zone.

4. MIDDLE ZONE DEVELOPMENT: Section 88-415-05-B does not allow existing surface parking to be maintained, nor does it allow maintenance to replace hard surface with pervious pavers.

a. The City staff has not transferred its historic records of zoning actions on this site to an affordable, accessible location (Linda hall Library) where the library has an older microfiche reader and printer.

b. As the City developed this property as its prior owner, whether or not it filed a Development Plan with itself, presumably it was approved and built in conformance with the adopted Zoning Ordinance at that time.

c. No activities increasing the developed footprint of the structure are planned.

5. ALL STREAM BUFFER ZONES: Section 88-415-05-D

a. "4. Reconstruction, remodeling , or maintenance of existing structures as long as these activities do not expand into or adversely impact the buffers".

b. Granting the Rezoning will not cause interference with the Stream Buffer Ordinance requirements of the City.

6. STREAM BUFFER PLAN: Section 88-415-07-D Buffer Plan.

a. See the Site Plan exhibit made a part of this Submittal by reference.

7. SUBSTANTIAL IMPROVEMENT TEST: Chapter 28, CPD-DS Floodplain Development Permit, information Bulletin 120 Revised August 10, 2017

a. "Substantial Improvement": "...improvements...over fifty percent of the building market value". That limit will not be approached with this approval.

b. The lowest level of the building is an unexcavated crawl space surrounded by a windowless, doorless poured concrete foundation. The grade level elevation of the only occupied floor is about elevation 798.

Conclusion:

While the Requirement for Stream Ordinance Application did not follow City procedures, (it is not a part of COMPASS listed requirements); despite the Land Development Division's statement via email that the Planning Commission hearing would not be held until this Requirement was met, it was held; the FEMA map may reflect prior storm water conditions, and not post-Brush Creek Flood Improvements; Turkey Creek stream and Flood Zone does not impact this site; and the parcel and its existing building are not getting sufficient maintenance and repair under this Rezoning Application to meet the Stream Ordinance or Floor Plane Ordinance requirements; the Applicant has nonetheless responded voluntarily to the requirement for a Stream Ordinance application ("88-415"). The Conclusion that this requirement may be waived by the City Planning Commission.

_____/s/_____
Lawrence Goldblatt, M.C.P., M.Arch.A.S
Applicant

Exhibits:

1. City of Kansas City Missouri Disclaimer; (1 page pdf)
2. FEMA Flood Map Service Center and Map (3 pages, pdf)
3. Kansas City Floodplain (sp) Map (9/13/16, 1 page, pdf).
4. Storm Water Drainage Map, KC Mo (8/6/2020, 1 page, pdf)