

CSRWG 16 May 2008
Letter from Wilmington City Manager to G. Givens

Mr. George Givens
NC Legislative
Research Division
General Assembly of North Carolina
via E-mail: to georgeg@ncleg.net

It has been brought to my attention that a likely unintended consequence of the proposed Coastal Stormwater Rules as adopted by the Environmental Management Commission and approved by the Rules Review Commission may significantly hinder the pattern of development along the City's downtown river front and undo years of effort by the City and other communities in the past. The new Coastal rules require that all built-upon area be 50 foot landward of normal water level of perennial and intermittent streams. The State CAMA rules previously required a 30-foot buffer for built-upon area, but had a provision for "urban waterfronts" as defined by 15A NCAC 07H .0209(g) effective April 1, 2001 that allowed a waiver of the buffer. This waiver was the result of years of work by the City of Wilmington and other coastal communities with similar urban waterfront areas. The new coastal stormwater rules appear to have no such waiver provision and our informal communication with staff at the Division of Coastal Management indicates that these new rules may supersede the waiver allowed in the Coastal Management rules. This will have a potential significant impact to future projects along the river. To continue the development patterns of the City's Central Business District and beneficial redevelopment of adjacent industrial parcels, it would be necessary to place a similar waiver in the stormwater rules.

Therefore, I am requesting on behalf of the City of Wilmington that specific provisions be made in line with the Urban Waterfront provisions of 15A NCAC 07H .0209(g). The City's Future Land Use Plan, our Vision 2020 Plan and current and several very high profile potential future development concepts with significant economic development implications for the City are all predicated on the assurances the City has had over the past several years. If we have interpreted this incorrectly, or if you can provide a legal interpretation that assures the City that the existing waiver in the Urban Waterfront rules will apply to the Coastal Stormwater rules, it would be appreciated.

Please let me know what we can do to facilitate addressing this important situation. You may feel free to contact me directly, or Mr. Phil Prete, our Senior Environmental Planner if you have any questions regarding the background and intent of the waiver in the Coastal Management Rules.

We look forward to working with you to remedy this situation. I am attaching the relevant portion of the Coastal Management rules for your reference.

Sincerely,

Sterling Cheatham
Wilmington City Manager

15A NCAC 07H .0209 (g) Urban Waterfronts.

- (1) Description. Urban Waterfronts are waterfront areas, not adjacent to Outstanding Resource Waters, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met as of the effective date of this Rule:
 - (A) The area lies wholly within the corporate limits of a municipality; and
 - (B) the area is in a central business district where there is minimal undeveloped land, mixed land uses, and urban level services such as water, sewer, streets, solid waste management, roads, police and fire protection, or an industrial zoned area adjacent to a central business district.
- (2) Significance. Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.
- (3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.
- (4) Use Standards:
 - (A) The buffer requirement pursuant to Subparagraph (d)(10) of this Rule is not required for development within designated Urban Waterfronts that meets the following standards:
 - (i) The development must be consistent with the locally adopted land use plan;
 - (ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can effectively demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible; and
 - (iii) The development shall meet all state stormwater management requirements as required by the NC Environmental Management Commission;
 - (B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands may be allowed only within designated Urban Waterfronts as set out below.
 - (i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for non-water dependent purposes.
 - (ii) Existing enclosed structures may be expanded vertically provided that vertical expansion does not exceed the original footprint of the structure.

- (iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and must meet the following criteria:
 - (I) The proposed development must be consistent with a locally adopted waterfront access plan that provides for enhanced public access to the shoreline;
 - (II) Structures may be roofed but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind and shall be limited to a single story;
 - (III) Structures must be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas;
 - (IV) Structures shall not extend more than 20 feet waterward of the normal high water level or normal water level;
 - (V) Structures must be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;
 - (VI) Structures shall have no more than six feet of any dimension extending over coastal wetlands;
 - (VII) Structures shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;
 - (VIII) Structures must be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;
 - (IX) Structures shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there must be no reasonable alternative that would avoid wetlands. Significant adverse impacts shall include but not be limited to the development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds;
 - (X) Structures shall not degrade waters classified as SA or High Quality Waters or Outstanding Resource Waters as defined by the NC Environmental Management Commission;
 - (XI) Structures shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and
 - (XII) Structures shall not pose a threat to navigation.

History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 1, 1977;

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Amended Eff. April 1, 2001; August 1, 2000; August 3, 1992; December 1, 1991; May 1, 1990; October 1, 1989;

Temporary Amendment Eff. October 15, 2001 (exempt from 270 day requirement-S.L. 2000-142);

Temporary Amendment Eff. February 15, 2002 (exempt from 270 day requirement-S.L. 2001-494);

Amended Eff. August 1, 2002