

North Carolina Department of Environment and Natural Resources

Division of Water Quality Coleen H. Sullins Director

Beverly Eaves Perdue Governor Dee Freeman Secretary

Consideration of a Request for a Major Variance from the Neuse River Riparian Area Protection Rule

312 S. Tunstall Ave, Apex, NC September 7, 2011

A request has been received for the Water Quality Committee to grant a major variance from the Neuse River Riparian Area Protection Requirements (15A NCAC 2B.0233) for a single family home located at 312 S. Tunstall Avenue in Apex, NC, Wake County, North Carolina. The parcel is approximately 0.34 acres in size.

The applicant, Mr. Bob Lantry, is proposing to build an addition to an existing home on this property to expand his business that will fill approximately 234 square feet (ft²) of Zone 1 and 286 square feet (ft²) of Zone 2 of the protected riparian buffers. The applicant has proposed to plant native hardwoods in Zone 1 of the protected riparian buffers to mitigate for the loss of riparian buffers.

Recommendations and Preliminary Findings:

- 1. The original home was built in 1962. The applicant purchased the property in 2006.
- 2. The Division Staff believe that the applicant's request has met all of the requirements [(identified within 15A NCAC 2B .0233(9)(a)] for granting a variance except for item (E), in that the applicant purchased the property after the effective date of the Neuse Buffer Rules.
- 3. The applicant received a written approval to build the addition from the Town of Apex. Acting in good faith, the applicant began the process for building the addition and then was told by the Town he had protected riparian buffers on his property.
- 4. The 50-foot riparian buffers comprise almost all of the applicant's lot.
- 5. Additional Conditions The Division staff believe that the following conditions should be added to the variance if approved to ensure protection of retained buffers located at 312 S. Tunstall Ave in Apex:
 - a) The Division staff believes that a deed restriction shall be placed on the restored and remaining protected riparian buffers on this property;
 - b) The applicant must supply a report showing that all trees have been planted within a year of this variance approval;
 - c) The applicant will be required to submit annual reports for a period of five years for all trees planted in Zone 1 of the riparian buffers showing the trees planted have survived; and
 - d) A stormwater plan will be submitted to the Division for approval.

Recommendation: The Division of Water Quality staff does not object to the overall concept of this major variance request.

