



North Carolina Department of Environment and Natural Resources

Division of Water Quality

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Director

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**Request for a Major Variance from the
Neuse River Riparian Area Protection Rules**

**LBJ/Cary Associates, LLC
Daycare facility at SW Cary Parkway/Old Apex Road
Cary, NC**

March 13, 2013

LBJ / Cary Associates, LLC has requested the Water Quality Committee (WQC) to grant a Major Variance from the Neuse Riparian Area Protection Rules (15A NCAC 02B .0233) for a daycare facility at the intersection of SW Cary Parkway and Old Apex Road in Cary, NC. The proposed daycare facility will impact 8,047 square feet of Zone 1 and 7,140 square feet of Zone 2.

Findings [15A NCAC 02B .0233 (9)(a)(i)]:

- A. *“If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or delegated local authority shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.”***

The applicant cannot make reasonable use of the property without impacting the protected riparian buffer. The ownership group has attempted multiple designs for this project; however prospective buyers have rejected those alternative designs. A recent real estate market analysis was conducted and these findings, along with new interest from potential buyers, have resulted in the current proposed site plan.

- B. *“The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.”***

The hardship results from the application of this rule rather than from other factors. The stream runs through the middle of the property with riparian buffers on both sides

of the stream and around the origin, which greatly limits the ability to develop this parcel.

C. *“The hardship is due to the physical nature of the applicant’s property, such as its size, shape, or topography, which is different from that of neighboring property.”*

The hardship is due to the physical nature of the applicant’s property. The property has a stream running through the middle of the property with riparian buffers on both sides of the stream and around the origin, there is an access road and easement on the eastern side of the property and there are existing sanitary and drainage easements on the property.

D. *“The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.”*

The applicant did not cause the hardship by knowingly or unknowingly violating this Rule.

E. *“The applicant did not purchase the property after the effective date of this Rule, and then requesting an appeal.”*

The applicant purchased the property on June 1, 2004, which is after the effective date of this Rule.

F. *“The hardship is unique to the applicant’s property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;”*

The hardship is unique to the applicant’s property. The property has a stream running through the middle of the property with riparian buffers on both sides of the stream and around the origin, there is an access road and easement on the eastern side of the property and there are existing sanitary and drainage easements on the property.

Recommendation:

The Division recommends that the Water Quality Committee approve this request for a Major Variance from the Neuse Riparian Area Protection Rules (15A NCAC 02B .0233) with the following conditions:

- The applicant shall provide mitigation for the proposed impacts by purchasing 34,851 buffer credits from EBX-EM, LLC as indicated in their application.
- Stormwater will be treated. A final stormwater plan will be approved by DWQ.