



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 Tar-Pamlico River
Riparian Area Protection Rule**

216 Forte Shores Drive, Chocowinity, NC
November 16, 2011

A request has been received for the Water Quality Committee to grant a major variance from the Tar-Pamlico River Riparian Area Protection Requirements (15A NCAC 2B.0259) for an above-ground swimming pool located at 216 Forte Shores Drive, Chocowinity, NC, Beaufort County, North Carolina.

The applicant, Mr. William Bell, is proposing to build an above-ground pool at his existing home that he purchased on June 16, 1999. The pool will impact 501 square feet (ft²) of Zone 1 and 0 square feet (ft²) of Zone 2 of the protected riparian buffers. The applicant has already planted some small trees and shrubs and proposes to plant additional native hardwoods in the protected riparian buffers to mitigate for the loss of riparian buffers.

Recommendations and Preliminary Findings:

1. The applicant purchased the property in 1999.
2. The pool is necessary for the applicant's hydrotherapy for his arthritis. A doctor's note is attached to the variance application.
3. The applicant did not meet the following hardships:
 - 15A NCAC .02B.0259(9)(a)(i)(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. Neighboring properties adjacent to your lot are of similar size shape and topography.
 - 15A NCAC .02B.0259(9)(a)(i)(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.
 - 15A NCAC 02B.0259(9)(a)(iii)-In granting the variance the public safety and welfare have been assured water quality has been protected and substantial justice has been done.
4. 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 216 Forte Shores Drive in Chocowinity:
 - The Division staff believes that a deed restriction should be placed on the restored and remaining protected riparian buffers on this property;
 - The applicant must supply a report showing that all trees have been planted within a year of this variance approval;



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- 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;
- The Division staff believes once the applicant decides to sell his property, he must remove the above-ground pool, restore the protected riparian buffer and notify the Division staff of the removal prior to the completion of the sale. The applicant has agreed to provide the notification and to remove the pool prior to the sale of the subject property; and
- A stormwater plan will be submitted to the Division for approval and the variance should be conditioned upon the applicant obtaining said approval from the Division.

Recommendation: The Division of Water Quality staff recommends approval of this major variance request due to the applicant's medical need, despite the fact that the applicant does not meet the strict letter of the hardships outlined in 15A NCAC 02B .0259(9)(a).