

**15A NCAC 02B .0606 SITE SPECIFIC WATER QUALITY MANAGEMENT PLAN FOR THE GOOSE CREEK WATERSHED (YADKIN PEE-DEE RIVER BASIN): VARIANCE FOR ACTIVITIES WITHIN RIPARIAN BUFFERS**

Persons who wish to undertake uses designated as prohibited within the protected riparian buffer area may pursue a variance. Persons who wish to undertake forest harvesting beyond the requirements set forth in 15A NCAC 02B .0608 may pursue a variance. The variance request procedure shall be as follows:

- (1) For any variance request, the Division of Water Quality shall make a finding of fact as to whether the following requirements have been met:
  - (a) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:
    - (i) If the applicant complies with the provisions of the buffer requirements, 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 is not adequate justification for a variance. Moreover, the Division of Water Quality shall consider whether the variance is the minimum possible deviation from the terms of the buffer requirements that will make reasonable use of the property possible.
    - (ii) The hardship results from application of the buffer requirements to the property rather than from other factors such as deed restrictions or other hardship.
    - (iii) The hardship is due to the physical nature of the applicant's property and is unique to the applicant's property, such as its size, shape, or topography, such that compliance with provision of this Rule would not allow reasonable use of the property.
    - (iv) The applicant did not cause the hardship by knowingly or unknowingly violating the buffer requirements.
    - (v) The applicant did not purchase the property after the effective date of this Rule, and then request a variance.
  - (b) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit; and
  - (c) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (2) A variance request pertains to any activity that is proposed to impact any portion of the riparian buffer. If the Division of Water Quality has determined that a major variance request meets the requirements in Item (1) of this Rule, then it shall prepare a preliminary finding and submit it to the Environmental Management Commission. Preliminary findings on variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. Requests for appeals of determinations that the requirements of Item (1) of this Rule have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division of Water Quality or the appropriate Board of Adjustments under G.S. 160A-388 or G.S. 153A-345 for determinations made by the delegated local authority. The purpose of the Commission's review is to determine if it agrees that the requirements in Item (1) of this Rule have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:
  - (a) Upon the Commission's approval, the Division of Water Quality shall issue a final decision granting the variance.
  - (b) Upon the Commission's approval with conditions or stipulations, the Division of Water Quality shall issue a final decision, which includes these conditions or stipulations.
  - (c) Upon the Commission's denial, the Division of Water Quality shall issue a final decision denying the variance.

*History Note:* Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.8A; Eff. February 1, 2009.