



ROY COOPER

Governor

MICHAEL S. REGAN

Secretary

S. JAY ZIMMERMAN

Director

**Request for a Major Variance from the
Tar-Pamlico River Riparian Area Protection Rules**

**Mr. Peter Warlick
74 Northpoint Road
Ocracoke, NC**

May 10, 2017

Mr. Peter Warlick has requested the Water Quality Committee (WQC) to grant a Major Variance from the Tar-Pamlico Riparian Area Protection Rules (15A NCAC 02B .0259) for construction of a proposed roofed enclosure to an existing home within Zone 1 and Zone 2 of the buffer at 74 Northpoint Road in Ocracoke, NC. The enclosure will impact 368 square feet of Zone 1 and 104 square feet of Zone 2.

Accordingly, pursuant to 15A NCAC 02B .0259 (9)(c), the Division of Water Resources makes the preliminary finding that the major variance request demonstrates the following:

- Practical difficulties or unnecessary hardships are present;
- The harmony and spirit of buffer protection requirements are met; and
- The protection of water quality and substantial justice has been achieved as required in 15A NCAC 02B .0259 (9)(a).

15A NCAC 02B .0259 (9)(a)(i) states the following:

“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:

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

- 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.*
- D. *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 request an appeal.*
- 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 Division finds the following:

There are practical difficulties that prevent compliance with the strict letter of the riparian buffer protection requirements:

- A. Mr. Warlick has been diagnosed with ALS and proposes to construct a roofed enclosure with handicap accessibility to allow continued use of the home that he has owned since 1979. Because the home was constructed entirely within the protected buffer prior to implementation of the Rule, Mr. Warlick cannot construct a roofed enclosure without impacting the protected buffer.
- B. The hardship results from application of this Rule.
- C. The hardship is due to the physical nature of the applicants' property. The home was built immediately adjacent to Pamlico Sound which is different from that of neighboring properties.
- D. The applicant has not violated this Rule.
- E. The applicant purchased the property on September 18, 1979, which is before the effective date of this Rule.
- F. The home's location entirely within the buffer and the applicant's need for a handicap accessible outdoor area is unique to the applicant's property. Any expansion to the home would require impacts to Zone 1 and/or Zone 2 of the buffer. This constraint is different from that of most of the other properties in the neighborhood.

15A NCAC 02B .0259 (9)(a)(ii)

“The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and preserves its spirit;”

The Divisions finds the following:

The purpose of the riparian buffer rule is to protect existing riparian buffer areas. However, the applicant cannot construct a roofed enclosure with handicap access without impacting the protected riparian buffer. The applicant proposes to purchase 1,260 buffer mitigation credits to offset the buffer impacts, if required by the Water Quality Committee.

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.”

The Divisions finds the following:

In granting the variance, water quality has been protected and substantial justice has been done. Roof runoff from the proposed new roofline will be directed away from surface waters to allow infiltration.

Division of Water Resources’ Recommendation:

Based on the information submitted, the Division of Water Resources supports this request for a Major Variance from the Tar-Pamlico Riparian Area Protection Rule because the harmony and spirit of buffer protection requirements are met and the protection of water quality and substantial justice has been achieved as required in 15A NCAC 02B .0259 (9)(a) provided the below mentioned conditions or stipulations are required. If the Water Quality Committee approves this request for a Major Variance from the Tar-Pamlico Riparian Area Protection Rules, the Division recommends approval with the following conditions or stipulations [pursuant to 15A NCAC 02B .0259 (9)(c)(ii) & (iii)]:

- **Diffuse Flow**

All stormwater from the new roofed enclosure must be directed and maintained as diffuse flow at non-erosive velocities through the protected stream buffers such that it will not re-concentrate before discharging into the sound. [15A NCAC 02B .0259(8)]