March 3, 2021

TO: DEQ-DWR-Wetlands-Public Listserv
FROM: Paul Wojoski, 401 & Buffer Permitting Branch
RE: Notice of Complete Application and Finding of Fact for Authorization Certificate with Major Exception pursuant to Neuse River Riparian Area Protection Rules - 15A NCAC 02B .0714 and 15A NCAC 02B .0611

PUBLIC NOTICE is hereby given that on November 25, 2020, a request was received by the Division of Water Resources to grant a Major Exception from the Neuse Riparian Area Protection Rules (15A NCAC 02B .0714 and 15A NCAC 02B .0611) to Mr. Harshavardhan Tummalpally (336 Euphoria Circle, Cary, NC) for the construction of a Commercial Mixed-Use office/retail development at 5201 Trinity Road, Raleigh, NC. The proposed project would permanently impact 27,382 square feet of Zone 1 of the buffer and 16,591 square feet of Zone 2 of the buffer. To mitigate the buffer impact in accordance with 15A NCAC 02B .0611 (b)(1)(I), the applicant proposes to purchase riparian buffer credits from a private mitigation bank.

Based on the information submitted, the Division of Water Resources provides the below preliminary findings pursuant to 15A NCAC 02B .0611 (c)(3)(C) DWR proposes to take final action on the application April 3, 2021.

**Preliminary findings pursuant to 15A NCAC 02B .0611 (b)(2) and (c)(1)**

The applicant has demonstrated to the Division’s satisfaction that the project meets all the criteria specified in 15A NCAC 02B .0611 (b)(2).

The Division finds the following pursuant to 15A NCAC 02B .0611 (c)(1).

(A) There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements.

*The Division believes that the property is undevelopable for commercial purposes without impacting the riparian buffer. A stream bisects the middle of the property creating buffered and steep topographic slopes on both sides which would necessitate grading and fill for site development.*

(B) If the applicant complies with the provisions of this Rule, he or she can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the
Authorization Certificate with Exception would allow a greater profit from the property shall not be considered adequate justification for an Authorization Certificate with Exception.

The subject property was subdivided from a larger tract of land in 1999 and recombined in 2005, however, was reduced from 2.03 acres to 1.94 acres. The property is further constrained by City of Raleigh setbacks and existing utility easements. The property is zoned Industrial Mixed Use and other adjacent properties are developed. The stream is isolated between two culverts and it is believed that most of the stream flow can be attributed to runoff from nearby properties. The Division believes that the property owners can secure no reasonable return from, or make reasonable use of, the property without impacting the buffer.

Moreover, the Authority shall consider whether the Authorization Certificate with Exception is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;

The Division believes proposal is a minimal deviation from the rule.

(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape or topography;

The hardship is due to physical nature of property, specifically the sloping topography, nearby properties are developed and not subject to the same restrictions.

(D) The applicant did not cause the hardship;

The applicant did not.

(E) The requested Authorization Certificate with Exception is in harmony with the general spirit purpose and intent of the State's riparian buffer protection requirements, will protect water quality, will secure public safety and welfare, and will preserve substantial justice.

Mitigation for buffer impacts will be satisfied through the purchase of credit from private mitigation bank in compliance with 15A NCAC 02B .0714(12) and .0295. Stormwater management will be addressed in compliance with the City of Raleigh’s delegated program. Stream impacts are subject to Section 401 Water Quality Certification which will ensure standard compliance. Due to these factors the Division believes that the proposal is in harmony with the general spirit and intent of the State’s riparian buffer protection requirements, will protect water quality, will secure public safety and welfare, and will preserve substantial justice.

The application is online at:
Contact Beverly Strickland (919-707-8789) for assistance with the website. The application is also on file at the DWR Central Office and may be inspected with an appointment between 8 a.m. & 5 p.m. at 512 N. Salisbury St., Raleigh, NC, 27604. For questions or to schedule an appointment, contact Rick Trone at Rick.Trone@ncdenr.gov.

This notice is available electronically at: https://deq.nc.gov/about/divisions/water-resources/water-quality-permitting/401-buffer-permitting-branch/public-notices