



**Agenda Abstract**

Department: Planning

Meeting Date: July 19, 2010

Submitting Official: Jason Sullivan

Authorizing Signature: \_\_\_\_\_

<p><b>Subject:</b></p>	<p>Request by Karen M. Kemerait, Attorney-at-Law, Styers &amp; Kemerait, on behalf of Newland Communities and The John R. McAdams, Co. for a waiver from Section 9 of the Compact Communities Ordinance, pursuant to Section 15 of the Compact Communities Ordinance.</p>
<p><b>Action Requested:</b></p>	
<p><b>Attachments (List Individually):</b></p>	<ol style="list-style-type: none"> <li>1. Waiver Request Pursuant to Section 15 of the Chatham County Compact Communities Ordinance including a copy of "A Resolution Approving An Application For A Conditional Use Permit For A Request By Mitch Barron On Behalf Of Newland Communities For Briar Chapel Planned Residential Development," the Subdivision approval letter dated January 19, 2010 for Briar Chapel, Phase 5, Section 1, and Maps of encroachment area.</li> <li>2. Pictures of Wall # 1 and Wall # 2.</li> <li>3. Copy of portion of the preliminary plat showing 10-foot "no build" area and proposed retaining wall location.</li> <li>4. Copy of final plat for Briar Chapel, Phase 5 South, Section 1.</li> <li>5. Portion of Compact Communities Ordinance Compliance Response</li> </ol>

## **Introduction & Background**

The Chatham County Compact Communities Ordinance states the following:

**Section 9: Buffers, 9.1 Riparian Buffers,** “Buildings and other features that require grading and construction shall be set back at least ten (10) feet from the edge of the buffer.”

**Section 15. Waiver,** “With the approval of the Board of Commissioners, the requirements of this ordinance may be adjusted, modified, reduced or waived based upon the absence of any reasonable relationship or nexus between the impact of the compact community development and the inclusionary or other requirements set forth herein.”

Briar Chapel, Phase 5, Section 1 preliminary plat was approved by the Board of County Commissioners on June 15, 2009. The preliminary plat showed the 10 foot “no-build” line and the proposed retaining walls to be located along the edge of, but out of, the 10 foot “no-build” area. The final plat was approved by the Board of County Commissioners on January 19, 2010. A building permit for the construction of the retaining wall(s) was obtained April 12, 2010.

During the application process in 2005, the applicant stated in their Compact Communities Compliance Response - “Stream buffers are to remain vegetated in a natural undisturbed state. Where limited development activity occurs (activities outlined in above section), the facilities will be designed to minimize impact, and the buffers are to be re-vegetated with native species. Buildings and other similar features shall be set back a minimum of 10 feet from stream buffers.” (See attachment # 5)

## **Discussion & Analysis**

This waiver request is being submitted directly to the Board of Commissioners without review and recommendation by the Planning Board. The waiver request is from a specific standard in the CCO, specifically, Section 9, Buffers. Staff does not think that Section 15, Waiver, is clear regarding the types of requests or issues that are allowed to be “adjusted, modified, reduced or waived” by using Section 15. The section does not lay out the standards or process for review. However, Section 15 has been used once as part of the approval process of the Conditional Use Permit to allow a waiver from Section 12.3, Housing, Moderately Priced Dwellings of the CCO, to modify Option A.

There are several issues the board will need to address regarding this waiver request prior to making a decision as follows:

1. Under Section 15 should the ‘waiver’ be processed directly by the Board of Commissioners, as has been submitted, or as a modification to the Conditional Use Permit, which is a formal process that allows for public comment and conditions to be

added as part of the approval? To process the request as has been submitted to be reviewed directly by the board, may set a precedent to allow other modifications to be submitted in the future. There are no guidelines specified as to what can be processed as a waiver under Section 15. This is a policy decision to be made by the Board.

2. The waiver request submitted by the applicant's attorney is unclear to staff as to whether the request is for the two specific areas of encroachment in Phase 5 South, Section 1 or as stated on page 2 "In accordance with Section 15, we are requesting that the Commissioners allow a waiver to the ordinance's requirement that buildings that require grading and construction shall be outside the "no build" area".
3. The waiver request states "we believe that there is a better and more environmentally sensitive solution to the mistake that would not require the destruction of the large walls.....intend to work with the County to find a way to mitigate or negate the effect of the encroachment". Staff thinks the applicant should submit information, prepared by a design professional, detailing how the current retaining wall location has not and will not cause any environmental harm or submit a mitigation plan detailing how Newland Communities proposes to off-set the encroachment.

Staff has provided pictures of the retaining walls in question as attachment #2.

### **Recommendation**

It is staff's recommendation that the Board discusses this request and determines the process to review it at a future date.