



Agenda Abstract

Department: Planning

Authorizing Signature: _____

Submitting Official: Jason Sullivan, Planning Director

Meeting Date:	October 15, 2012
Subject:	Request by Bill Mumford, Sr. Project Manager on behalf of NNP Briar Chapel, LLC for preliminary plat approval of Briar Chapel, Phase 6, North (Sections 1 & 2) , consisting of 115 lots on 30 acres located off Andrews Store Road/Parker Herndon Road, S.R.-1528/S.R.1526, Baldwin Township.
Action Requested:	See Recommendations.
Attachments: (List Individually)	<ol style="list-style-type: none"> 1. Major Subdivision Application 2. Phase 5 N. information 3. E-mail response from Nick Robinson, Attorney, dated August 29, 2012 4. E-mail from Dan LaMontagne, Environmental Quality Director, dated August 31, 2012 5. Preliminary plat titled "Briar Chapel, Phase 6 North", prepared by The John R. McAdams Company, Inc., dated 8/17/2012 6. Handout #'s 1, 2, and 3 from Nick Robinson, Attorney-at-Law <p>All of the above may be viewed on the Planning Department website at www.chathamnc.org/planning, Rezoning and Subdivision Cases, 2012.</p>

Introduction & Background:	Zoning:	Conditional Use District / Compact Community
	Water System:	Chatham County
	Sewer System:	Private Wastewater Treatment Plant
	Subject to 100 year flood:	No floodable area in Phase 6 North



Agenda Abstract

	<p>This request is a portion of the Briar Chapel Compact Community, consisting of 2,389 dwelling units on 1,589 acres, located off Hwy 15-501 N and Mann's Chapel Road (SR-1532), approved by the Chatham County Board of Commissioners on February 15, 2005. A copy of <i>"An Ordinance Amending the Zoning Ordinance of Chatham County"</i> and <i>"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"</i> may be viewed on the Planning Department website at www.chathamnc.org/planning, then click on Rezoning & Subdivision Cases, Miscellaneous Prior to 2005, Briar Chapel. The conditional use permit was revised in June 2012 and a copy of <i>"A Resolution Approving a Revision to a Conditional Use Permit Request by NNP-Briar Chapel, LLC"</i> may be viewed online under the 2012 cases. A copy of the Compact Community Ordinance can also be found on the Planning Department web page. Briar Chapel is reviewed and regulated under the Subdivision Regulations prior to 2008 and the Compact Community Ordinance.</p>
Discussion & Analysis:	<p>The developer is requesting preliminary plat approval of Briar Chapel, Phase 6 North (Sections 1 & 2) consisting of 115 single family residential lots on 30 acres. The roadways, except for one (1) private alleyway are designed as public, state maintained roads. All lots will have frontage on a state maintained road.</p> <p>Phase 6 has an archaeological site, labeled 31CH824/824, as identified in the 'Intensive Cultural Resource Investigation', completed in 2006. Per the report, "the site consists of the remains of two domestic structure, two wells and two possible outbuildings.....There is a large collapsed house in the center of the site on the north side of a dirt road.....Recommendation: Investigations revealed that the main house burned at this mid-nineteenth to mid-twentieth century site, thus depositing the domestic contents of the structure in situ. The presence of in situ domestic remains within the footprint of the main house, confirmed by the excavation of two test units, shows that the site has the potential to yield significant data pertaining to history. As such this site is recommended eligible for the National Register.....It is recommended that a 5-meter buffer surrounding the main house be</p>



Agenda Abstract

preserved in place and avoided by proposed construction.....If avoidance of the significant portion of the site is not an option, this area should be subjected to data recovery activities.” Per a note on the preliminary map, “A 5-meter buffer has been designated around this site as indicated on this site plan.”

Agency reviews as required for a preliminary plat submittal have been received as follows:

NCDOT	Road plan approval	August 10, 2012
CHATHAM COUNTY	Erosion and Sedimentation Control Permit	August 01, 2012
CORPS OF ENGINEERS	404 Stream Permit	August 21, 2009
NCDENR	401 Water Quality Certification Modification	August 31, 2009
NCDENR	Wastewater Collection System Extension	June 26, 2012
NCDENR	Wastewater Treatment Irrigation and Non-Conjunctive Reclaimed Water Utilization System- Modification	May 18, 2009
NCDENR	Water Main Extension	August 13, 2012
NCDENR	Authorization to Construct Water System	August 14, 2012
NCDENR	Stormwater Management Plan Modification	July 30, 2012

A copy of the above permits can be viewed on the Planning Department website at www.chathamnc.org/planning, Rezoning and Subdivision Cases, 2012.

The Chatham County Emergency Operation Office has approved the following road names for submittal to the Board of Commissioners for approval: Cliffdale Road, Tarwick Avenue, Buttress Way Dr., Greenleaf Drive, and Weathersby Drive. The road names Buttress Way and Weathersby Way shown on the preliminary map will have



Agenda Abstract

to be changed to read the exact way EOC approved them. Serenity Hill Circle also is to be changed to N. Serenity Hill Circle. These changes will be made on the final plat.

There is a perimeter buffer shown on the Phase 6 North map adjacent to the Marvin Meacham property, the Wade Rook Meacham, ETAL property, and the TC&I Timber Company, LLC property. A perimeter buffer as defined in the Compact Community Ordinance is *“Land that either obscures or significantly softens the external view of the compact community from adjacent properties”*. Perimeter buffers are required to be 100 feet wide. As stated in the CCO Section 9.2 *“To the extent practicable, existing native forest vegetation shall be utilized for the perimeter buffer.....Vegetative plantings in the buffer shall produce the effect of a natural forested area, using native species. The planting does not have to be opaque, but should function to significantly soften the visual impact of buildings, both initially and in the longer term. The visual buffering provided by vegetative plantings shall be effective in all seasons.”* In the 2004 original application materials submitted by Briar Chapel regarding Design Guidelines/Buffers, Briar Chapel stated *“Stream buffers, perimeter buffers, and viewshed buffers are to consist of preserved existing vegetation. Buffers may be selectively cleared and thinned of dead, leaning, and diseased trees, as well as undesirable brush and vines. Where perimeter and viewshed buffers do not contain adequate plant materials, buffers are to be re-vegetated, primarily with native species.”* The recent 2012 CUP revisions did not change this language.

The perimeter buffer areas shown on the preliminary plat are currently forested. The stormwater pond adjacent to the Marvin Meacham property is shown to be located outside of the perimeter buffer, however, the pond dam and associated easements are located within the buffer. The construction plan submitted as part of the preliminary plat application shows the grading that will be required in order for the dam and the embankments to be constructed. The stormwater wet pond construction specifications

states that "no trees/shrubs of any type may be planted on the proposed dam embankment (fill areas)." Since the perimeter buffer will be required to be graded in order to construct the dam, the existing native vegetation removed, and no re-vegetating (except with grass) is allowed, it is staff's interpretation of the CCO that the intent of the perimeter buffer is not being met. Staff has brought this to the attention of the developer and has received a response from Nick Robinson, Attorney-at-Law. See attachment #3, item #7. Mr. Robinson's opinion is that easements, grading or maintenance access areas could be allowed in the 100' perimeter buffer and that those components are not considered part of a stormwater device and should be allowed within a perimeter buffer. Staff asked Dan LaMontagne, Environmental Quality Director, to define a stormwater device/feature. In an e-mail dated 8/31/12, Mr. LaMontagne stated "I interpret a 'stormwater feature' to include the engineered structural components of the stormwater BMP and inspection and maintenance easements or access areas...." In an e-mail to Kevin Hamak, RLA, The John R. McAdams Co, Inc, dated November 8, 2007, Jason Sullivan (then Assistant Planning Director) stated that "the perimeter buffers are to remain undisturbed. All of the grading and components associated with the stormwater devices should be located outside of the perimeter buffer....." See attachment # 2.

Mr. Robinson stated in his e-mail that "grading and stormwater pond easements were allowed in the 100' perimeter buffer in Phase 5 N." During the final plat review for Phase 5 N., staff noted that the 100' perimeter buffer along the Meacham line was not shown on the plat. Review comments were given back to the developer. Item # 11 of those comments stated "Show 100' perimeter buffer along Marvin Meacham property line. All stormwater devices are to be located outside of perimeter buffers". The response from Grant Livengood, P. E., McKim & Creed was "100' perimeter buffer has been shown along the Meacham property. The use of existing vegetation and the planting of native species, if necessary, will preserve the intent of the buffer." The final plat was revised to

show the stormwater pond location and the majority of the associated easement outside the perimeter buffer. A small portion of the easement area did show as extending into the 100' foot buffer, however, the grading and other features, i.e., a dam & embankment were shown to be located outside the perimeter buffer. See attachment #2.

In the e-mail from Dan LaMontagne, attachment 4, he confirms that the "CCO specifically prohibits stormwater features in riparian buffers, except in limited circumstances, in ephemeral buffers only. The CCO only allows this if low impact techniques or other controls are used to meet or exceed the pollutant removal performance of a fully functioning riparian buffer. I believe that this provision was intended to allow, on a limited basis, discharges from stormwater BMP's into ephemeral buffers." Mr. Robinson indicated in his e-mail that perimeter buffers should be treated the same as riparian buffers in regard to stormwater features. Per Dan's e-mail, only limited discharges from a stormwater BMP are allowed in an ephemeral riparian buffer not stormwater features and not in all riparian buffers. Riparian buffers serve to protect water quality and perimeter buffers serve to minimize the impact of the compact community on adjacent properties.

There is also a storm drainage easement shown at the back of Lots 667 – 677 that encroaches into a perimeter buffer and the construction plan shows grading within that area. Staff recommends that the developer provide a re-vegetation plan with the final plat submittal for all areas that are graded within that portion of the perimeter buffer adjacent to the TM&I Timber Company.

It is staff's interpretation of the regulations/ordinances that all stormwater features (including easements, grading and maintenance access areas) should be located out of the perimeter buffer areas. Staff recommends that the final plat be revised to show no storm drainage easements or stormwater features located within a perimeter buffer, except for limited grading that can be re-

vegetated.

The following items will be changed on the final plat:

- A. Label the Storm Drainage Easements 'private', except those maintained by NCDOT.
- B. Number open spaces
- C. Show vicinity map
- D. Word floodplain note to state that Phase 6 North does not contain any floodable area.

Lee Bowman was at the Planning Board meeting representing the applicant along with Nick Robinson, attorney for the applicant. Mr. Robinson gave a brief summary of the Briar Chapel development and explained his interpretation of the regulations / ordinances regarding riparian and perimeter buffers. Mr. Robinson distributed three hand-outs to the Planning Board and staff, see attachment #6. Mr. Robinson stated that the CCO does not include a requirement that a stormwater easement be outside of the perimeter buffer. Mr. Robinson stated that the applicant proposes an alternate condition to help alleviate staff's concern regarding re-vegetation of the perimeter buffer. He submitted a plan, attachment 6, hand-out 2, showing plantings outside the 'toe' of the dam since trees/shrubs are not allowed to be planted on the dam or the embankment. Mr. Robinson also handed out revised conditions that the applicant requested be approved, see hand-out # 3. The applicant requested conditions 1 & 2 be revised as shown on hand-out #3, condition 3 be deleted, and staff conditions 4, 5, & 6 to remain as stated.

The Planning Board discussed the reasoning behind the six (6) conditions proposed by staff and the language submitted in the 2004 Briar Chapel original application materials regarding perimeter buffers. The Planning Board requested that the applicant meet with staff between then and the Commissioner's meeting to try to work on a compromise to reduce the amount of buffer that is being disturbed.

On September 20, staff (Jason Sullivan and Lynn Richardson) met with the applicant (Lee Bowman and Nick Robinson) to discuss the issue. It was discussed that the applicant would request a waiver from the Board of County Commissioners regarding disturbance



Agenda Abstract

	<p>within a perimeter buffer. If the Commissioner's approve the waiver request, therefore eliminating conditions 1, 2, & 3, staff recommends that conditions 4, 5, and 6 remain.</p>
<p>Recommendation:</p>	<p>The Planning Department recommends approval of the road names Cliffdale Road, Tarwick Avenue, Buttress Way Dr., Greenleaf Drive, and Weathersby Drive and approval of the request for preliminary plat approval of Briar Chapel, Phase 6, North (Sections 1 & 2) with the following conditions:</p> <ol style="list-style-type: none"> 1. The final plat be revised to show no storm drainage easements or stormwater features located within a perimeter buffer, except for limited grading that can be re-vegetated. 2. Prior to final plat submittal a re-vegetation plan be submitted to staff for review and approval for those areas that require limited grading within the perimeter buffer. 3. A revised construction plan for the stormwater pond adjacent to the Marvin Meacham property be submitted for review by staff prior to any land disturbing activities associated with construction of the stormwater pond. 4. A deed restriction, satisfactory to the County Attorney, for the perimeter buffers that permanently protects the land as a buffer and identifies the maintenance responsibility that rests with the homeowners association, shall be recorded with the Chatham County Register of Deeds prior to recordation of the final plat. 5. The road names Buttress Way and Weathersby Way shown on the preliminary map shall be changed on the final plat to read Buttress Way Dr. and Weathersby Drive. Serenity Hill Circle also is to be changed to N. Serenity Hill Circle. 6. The following items shall be revised on the final plat: <ol style="list-style-type: none"> A. Label the Storm Drainage Easements 'private', except those maintained by NCDOT. B. Number open spaces C. Show vicinity map D. Word floodplain note to state that Phase 6 North does not contain any floodable area. E. Number stormwater pond



Agenda Abstract

The Planning Board (by unanimous vote [9] members) recommends approval of the road names Cliffdale Road, Tarwick Avenue, Buttress Way Dr., Greenleaf Drive, and Weathersby Drive and approval of the request for preliminary plat approval of **Briar Chapel, Phase 6, North (Sections 1 & 2)** with conditions 4 – 6 as stated above (with the exception of conditions 1, 2, and 3 stated above); and that the applicant and Planning Department staff meet to discuss a compromise to minimize the disturbance within the perimeter buffer before the October 15, 2012 Board of Commissioner's meeting.