



## **Chatham County Planning Board Agenda Notes**

**Date:** May 1, 2012

**Agenda Item:** VII. 2.

**Attachment:** #2

☐ **Subdivision**

☒ **Conditional Use Permit**

☐ **Rezoning Request**

☐ **Other:** \_\_\_\_\_

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<b>Subject:</b>	Request by NNP Briar Chapel, LLC for a revision to the existing conditional use permit for the Briar Chapel compact community to clarify certain language, acknowledge certain completed commitments, and revise the master site plan to provide additional flexibility with the remaining undeveloped lands.
<b>Action Requested:</b>	See Recommendations.
<b>Attachments:</b>	1. Planning Department Evidence Submitted at Public Hearing 2. Revised Master Plan <i>Application packet distributed at March 6, 2012 Planning Board meeting.</i>

### **Introduction & Background**

Briar Chapel was approved in 2005 as a Conditional Use – Compact Community Zoning District (CU-CC) with an associated Conditional Use Permit (CUP). Under the CUP, Briar Chapel is permitted for 2,389 dwelling units on 1,589 acres, equivalent to a gross density of approximately 1.5 dwelling units per acre. The development will include a mix of housing types as well as commercial and office uses. To date, 627 residential lots have been approved; a clubhouse for the residents of the community, as well as Margaret Pollard Middle School and Woods Charter School have all been constructed. The County and the developer are currently working on a proposed 66 acre County Park as well.

According to the application, this Conditional Use Permit amendment is requested for the following reasons: acknowledge requirements of the CUP that have already been completely fulfilled, clarify certain ambiguities that exist in the language in accordance with the practice and procedure of working under the terms of the conditional use permit over the course of the last seven years, modify the terms of the library site contribution and amend the site plan to afford the applicant more flexibility. Prior to the public hearing, staff requested comments from other County departments and outside agencies, and submitted those comments at the public hearing as part of the Planning Department evidence (Attachment 1). Based on the evidence and comments from other departments and agencies, staff has worked with the applicant to revise the proposed

conditions to address some of the concerns. The applicant submitted a revised Master Plan at the public hearing to address staff concerns about the level of detail and amount of commercial space. With the revised Master Plan (Attachment 2) and Conditions 5 and 18, the staff concerns have been addressed. The 2005 Conditional Use Permit required the applicant to dedicate sites or buildings for several public facilities, including a water tank site for the County water system, two school sites, a park site, a library facility and a building site for a Fire/EMS station. The applicant has completed the school and water tank dedications, and is working with the county to complete the park site dedication. Planning staff has worked with the North Chatham Fire Department, the applicant and other county staff to revise the Fire/EMS building site dedication. In the 2005 application, the applicant stated that the development would also include space for a Sheriff's Office substation, and that has been added to Condition 14. The one outstanding concern with the public facilities condition (Condition 14) is the library dedication. The 2005 CUP stated "the library facility, including parking and site work, shall be constructed by the developer, with input from the County, subject to satisfactory leaseback arrangements with the County or its assignee." The applicant has proposed a payment of \$80,000 in lieu of this requirement in this amendment. The County Manager's office submitted comments to staff regarding other options for the library condition to staff for inclusion in the Planning Department Evidence at the public hearing (Attachment 1).

At the quasi-judicial public hearing held on March 19, 2012, seven members of the development team and 13 members of the public entered testimony about the development. At the public hearing, two residents spoke of concerns about the effect of the development on the Half Dollar Road area and the Dollar property in particular, and one resident from Taylor Road asked about the impact of the development on properties in that area and asked the developer(s) to meet with residents from Taylor Road to discuss their concerns. The other members of the public spoke in favor of the development.

### **Discussion & Analysis**

A conditional use permit must meet the required five findings as required by the Chatham County Zoning Ordinance. Those findings are addressed as follows:

#### **FINDING #1 – The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located.**

Briar Chapel was approved as a Conditional Use-Compact Community Zoning District with a corresponding Conditional Use Permit in 2005. The applicant is not requesting a change in the proposed uses or density allowed in the district. With the revised Master Plan and Conditions 5 and 18, there will be more certainty in the types and amount of square footage of non-residential uses that will be allowed in the district. It is Planning staff opinion this finding may be met.

#### **FINDING #2 – The requested conditional use permit is either essential or desirable for the public convenience or welfare.**

Briar Chapel has been developing consistently over the past 7 years, and now has approximately 300 residents and over 600 lots. At full-build-out, the development will have 2,389 dwelling units and up to 510,000 square feet of non-residential uses. NCDOT is requiring Briar Chapel to make various off-site road and intersection improvements to accommodate the increased traffic from the

development. Per Condition 14 of the Conditional Use Permit, Briar Chapel is also required to donate a site for a fire station, space for a satellite Sheriff's Office, land for a County park, a County water tank site, two schools and funding for a county library in the area. Condition 20 of the CUP also requires Briar Chapel to contribute 60 lots in the development for the County to develop as moderate-income housing and make a financial donation of \$1,100,000 to the County for the purpose of ameliorating the housing needs of County citizens. As required in Condition 25 of the CUP, Briar Chapel is paying an additional \$2,000 fee per lot or dwelling unit to the County as well. It is Planning staff opinion this finding may be met with the Conditions in the Conditional Use Permit.

**FINDING #3 – The requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety, or welfare of the community.**

The Compact Community Ordinance requires both a 100-foot perimeter buffer and a 100-foot viewshed buffer for Briar Chapel to minimize the impact of the development on adjoining properties and roadways. Briar Chapel is also required to make on-site and off-site roadway improvements by NCDOT to accommodate increased traffic from the development. Condition 15 required the applicant to construct a fence along an adjoining property line and a bridge across Pokeberry Creek to connect Briar Chapel to an adjacent development. Per Condition 14, Briar Chapel has completed or is in the process of providing funding or land for public facilities to minimize the impact of the development on the surrounding community. It is Planning staff opinion that this finding may be met with the Conditions in the Conditional Use Permit.

**FINDING #4 – The requested permit will be consistent with the objectives of the Land Use Plan.**

One of the policies of the Chatham County Land Conservation and Development Plan is to "encourage compact communities with a mix of activities as development occurs." The Plan also includes a designation for Compact Community Corridors. This designation states "land designed to accommodate a well-planned and integrated mix of homes, shops, offices, institutions and civic spaces -- but not strip development -- along US 15-501 north of Pittsboro, US 421 north of Siler City and a section of Farrington Road." With the 2005 Conditional Use Permit and this proposed amendment, Briar Chapel will continue to be consistent with the objectives of the Chatham County Land Conservation and Development Plan. It is Planning staff opinion that this finding may be met.

**FINDING #5 – Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided consistent with the county's plans, policies, and regulations.**

Briar Chapel has constructed a wastewater treatment plant to serve the community, and has connected to the County water system. The applicant has donated a site for a county water tank which has been constructed, has donated a site for a public middle school and a charter school, is in the process of transferring a County Park site, and has agreed to provide funding for the county library system as well as a building site for future development of a Fire and EMS station. The Compact Community Ordinance requires Briar Chapel to protect a minimum of 30% of the project area as open space, and the applicant has complied with this provision. NCDOT is requiring Briar Chapel to make off-site road improvements to accommodate the increase in traffic from the development, and Briar Chapel has a stormwater management plan approved by the NC

Department of Environment and Natural Resources. These concerns are also addressed by several conditions in the Conditional Use Permit. It is Planning staff opinion this finding may be met with the Conditions in the Conditional Use Permit.

### **Recommendation**

It is the recommendation of the planning staff to approve this request. The Planning Board has up to three (3) meetings in which to make a recommendation to the Board of Commissioners. Should the Board's recommendation be a favorable one, staff recommends the following conditions to be included in the approval:

### **Stipulations Specific to the Development**

1. Construction Deadlines. This permit shall automatically expire on December 31, 2025 unless the construction of all required improvements has been completed or extended by the County upon request prior to the expiration of the term.

2. Land Use Intensity. This conditional use permit approves:

Gross Land Area 1589 acres

Max Impervious surface area 24%

Maximum Number of Dwelling Units 2389

3. Watershed Management. A detailed watershed protection plan for the entire project area, including impervious surface calculations, has been approved by the County. Prior to approval of a final plat for each phase of the project, the Applicant shall submit evidence satisfactory to the County Watershed Administrator of compliance with the approved plan. County acknowledges that the Briar Chapel development is exempt from the Jordan Lake Water Supply Watershed Buffer Rules (15A NCAC 02B.0267) as an "existing use." Applicant shall provide updated impervious surface calculations on a phase-by-phase basis at the time of each preliminary plat submittal.

4. Storm Water Management. A storm water management plan shall be approved by the County Stormwater Administrator prior to approval of a preliminary plat for each phase of the project. Such plan shall include final construction drawings for storm water management control measures and an impervious surface calculation sheet for that phase. The Applicant shall construct storm water management control measures sufficient to serve each phase of the project area prior to issuance of a Certificate of Occupancy.

5. Commercial Uses. The commercial component of the development shall be limited to 510,000 square feet and the uses allowed within the development shall be all those uses now allowed or later added as allowed in the December 2008 Zoning Ordinance under Section 10.13 Table 1: Zoning Table of Permitted Uses under the Zoning Districts denominated as "O/I," "B-1," "NB," "CB," and "RB." Irrespective of whether such uses are shown as permitted or as requiring a conditional use permit, all such uses shall be deemed allowed as of right within the Briar Chapel development. Applicant has agreed to this specification of allowed uses in order to bring clarity to the scope of

allowed commercial uses with the express agreement of the County that the district-specific restrictions regarding maximum size of buildings and setbacks shall not apply. Signage for the commercial uses shall comply with the Design Guidelines from the original 2005 approval. Commercial components of the Briar Chapel Development shall be accessible via public sidewalks, greenways, paths or trails. Pedestrian Access to SD North is substantially complete. Such pedestrian access shall be made to SD West.

6. Lighting Plan Approval. All area lighting shall meet County standards and not adversely affect adjoining residential areas.

7. Utility and Access Easements. Easement documents as required by the County for any public utilities used or furnished to the project area have been recorded. Chatham County Utilities shall review and approve any future utility easements shown on a plat prior to recordation.

8. Unity of Development. Guidelines for the future development of the project as a unified whole have been submitted to the Chatham County Planning Department.

#### **Stipulations Regarding State and Federal Government Approvals**

9. Permits. Any required State or Federal permits or encroachment agreements, including a commercial driveway permit(s) from NC DOT shall be obtained and copies submitted to the County prior to approval of a preliminary plat for each phase.

10. Improvements. Off-site improvements required by N.C. DOT or any other agency shall be constructed at no cost to the County including the traffic improvements as stated in the most recent TIA and others as ultimately deemed warranted by the NCDOT following its analysis.

#### **Stipulations Regarding Required Improvements**

11. Parking and off-street loading areas. Parking and off-street loading areas shall be installed in accordance with the ordinances and policies of the County. Future submittals for preliminary subdivision plat approval will designate park-and-ride parking spaces (such as additional spaces in proposed parking lots above the minimum number required for retail or office uses) and transit stops, pedestrian and bicycle facilities, and traffic calming devices, as reasonable and necessary to accommodate then-existing multi-modal transit needs at those locations.

12. Streets. Roads will be stubbed-out and/or areas will remain underdeveloped as reasonably necessary to allow for future connections with currently undeveloped parcels, so long as such access takes into account physical features and other access points and are no more than necessary, and with the understanding that future connecting roads will be designed and constructed to approximately the same standards as the connecting roads in Briar Chapel. Where roads are constructed they will be built to required standards up to the perimeter buffer. The exact location of said roads may be determined during preliminary plat review. Signs shall be posted on the property advising of the future extension of said roads.

### 13. Utilities.

- (a) The Applicant shall demonstrate availability of adequate water and wastewater supplies to serve the property and plans for provision of the same shall be approved by the County prior to issuance of a preliminary plat for each phase. Such plans shall be in conformity with any County policies then in effect and the Applicant shall pay all fees and charges associated with the applicable phase, including then current utility fees, review and inspection charges, prior to submittal of the preliminary subdivision plat for each phase. The entire cost of extending public utility services if desired or required under County regulations shall be borne by the Applicant.
- (b) In order to adequately provide fire flow pressures for the project and surrounding area, Applicant has provided and the County has accepted an above ground storage facility.
- (c) Adequate wastewater treatment service for the entire project area shall be designed and approved by the appropriate regulatory agency prior to issuance of a preliminary plat for each phase and constructed at no cost to the County. Adequate facilities for the spray irrigation of treated effluent from each phase of the project shall be designed, approved by the appropriate regulatory agency, and constructed at no cost to the County prior to issuance of a Certificate of Occupancy for any building within that phase of the project.
  - (i) Equipment such as pumps and blowers will be appropriately insulated or buffered to ensure that no motor noise from them will be noticeable on a typical day at the boundary of the wastewater plant lot.
  - (ii) An aeration system has been installed in the 110-day holding ponds.

### 14. Public Facilities.

- (a) Water Storage Tank Site: Applicant has constructed and donated to the County a 1 million gallon capacity water storage tank which is in use and fully operational at this time. The water storage tank and site have been conveyed to the County. This obligation has been fully satisfied.
- (b) Public School Site: Applicant has deeded the public school site to the County and the school is open and operational. This obligation has been fully satisfied.
- (c) Charter School Site: Applicant has deeded the charter school site to the Woods Charter School entity and the school is constructed and operational. This obligation has been fully satisfied.
- (d) Fire Station/EMS Site: Applicant has agreed to and shall tender to the County a special warranty deed for a minimum three (3) acre building site located at the northeastern corner of Mann's Chapel Road and Great Ridge Parkway. The deed shall include, among other things; (1) a covenant not to exceed 24% maximum impervious surface area on the site; (2) a provision allowing a septic system but also an easement sufficient to allow for installation, maintenance and repair of an appropriate sewer collection line for connection to the Briar Chapel Utilities waste water collection system and treatment plant as well as allocated sewer capacity in the amount of no more than 400 gallons per

day; and (3) a covenant subjecting any structure to be constructed or placed on the site to applicable Briar Chapel Design Guidelines and Design Review Committee approval. North Chatham Fire Department shall have ten (10) years from the date of approval of this amendment to notify Briar Chapel of its intent to use the reserved sewer capacity. If North Chatham Fire Department fails to take title to said building site within one year of the date the deed for said building site is tendered to the County, the Conditional Use Permit obligation to donate said site shall be deemed immediately canceled and the unrecorded deed shall be returned to Applicant.

- (e) Park Site: Park site has been constructed and is in process of being deeded to County.
- (f) Library: The County and the Applicant have agreed that, in lieu of contributing and preparing a library site within the development, the Applicant shall be required to make an \$80,000 in lieu payment to the County and the County will determine as to how to use that resource. Said payment shall be made within forty-five (45) days of final, unappealable approval of this amendment. Upon delivery of said payment to the County, condition 14(f) shall be deemed fully satisfied.
- (g) Applicant shall subject one of the commercial lots within SD North, SD East or SD West to a reservation of 5,000 square feet of shell space for the Chatham County Sheriff's Office for a satellite office (the "Reservation"). Because timing, size and potential commercial developers or tenants are unknown at the time of approval of this amendment to the Conditional Use Permit, the selection of which commercial lot that will be subjected to the Reservation shall be entirely in the discretion of Applicant. Applicant, however, shall make good faith efforts to reserve said space within the agreement to convey the first lot located within the portion of SD West located north of Taylor Road. Upon execution of an agreement by which Applicant intends to convey land subject to the Reservation to a developer, Applicant will forward said agreement to the County. It will then be up to the County and the developer of the lot(s) to be conveyed (not the Applicant) to determine whether they can reach an agreement regarding leasing/sale, upfit and all other commercially reasonable terms for the Reservation space. Applicant's obligation will be deemed fully satisfied upon closing of the conveyance called for in the agreement that contains the Reservation irrespective of whether the County declines the space or fails to reach an agreement with the developer of the space. The County acknowledges that, within any agreement with a developer of the space, the County will be responsible for the cost of the up-fit to the shell space for the offices and amenities required (i.e. restrooms, showers, storage, etc.).

Upon completion of the items listed in paragraphs 14 (d) through (g), Applicant shall be deemed to have fully discharged all of its responsibilities with respect to the Public Facilities required by Condition 14 for the Briar Chapel development.

#### **Stipulations Related to Landscape Elements**

15. Landscaping/Screening. All required screening and buffers shall be in place prior to issuance of a certificate of occupancy or next optimal planting season after issuance of a certificate of occupancy. Existing vegetation may be used to fully or partially fulfill the landscaping and buffer requirements of the County. The extent to which the same can be used shall be determined by the Planning

Department prior to issuance of the certificate of zoning compliance.

- (a) A six-foot opaque fence has been erected along the east side of AKPAR parcel number 77798 (formerly referred to as the "Tripp property"), consistent with NCDOT regulations, and landscaped on the side facing AKPAR parcel number 77798 to the extent allowed by the owner and landscaped with 6-8 foot tall trees on the east side of the fence. Applicant has satisfied all obligations with respect to AKPAR parcel number 77798.
- (b) Applicant has satisfied the obligation to construct a pedestrian bridge and trail over Pokeberry Creek to connect Briar Chapel to Polks Landing Subdivision.

### **Miscellaneous Stipulations**

16. Archaeological Survey. All archeological survey requirements set forth in the original Conditional Use Permit have been satisfied.

17. Solid Waste Management. Solid waste is managed and shall continue to be managed by residential curbside recycling and solid waste pick-up, management for construction debris, and non-residential solid waste removal by a licensed contract removal company.

18. Detailed Site Plan. The revised Master Plan attached hereto as Exhibit A (Exhibit D to the Application) and incorporated herein by reference is hereby approved as the applicable sketch plan and revised master plan for Briar Chapel (the "Revised Master Plan") in substitution for and replacement of the original master plan approved with the Conditional Use Permit. Briar Chapel is unique within Chatham County because it is the only compact community approved under the Chatham County Compact Communities Ordinance. The Revised Master Plan has less detail as to specific roadway locations and lot depictions than the original Master Plan. Due to topography, physical conditions, environmental concerns and market changes, over the course of development of Briar Chapel since February 2005 (original approval date), each phase that has been approved has been designed differently (to varying degrees) than it appeared in the original Master Plan. As a condition of approval of the proposed Revised Master Plan, Applicant agrees to meet with the Planning Department and the County Technical Review Committee (TRC) prior to applying for or receiving any permits for submission of preliminary plat. The purpose of this meeting will be to apprise the Planning Department and TRC members as to layout and configuration of roadways and lots to be shown on the proposed preliminary plat. The Applicant shall submit information to the Planning Department for this review at least twenty-one (21) calendar days prior to a TRC meeting. This process is unique to Briar Chapel as a compact community. With regard to each phase, as it is submitted for preliminary plat approval, a detailed site plan, grading plan, utility/lighting plans, storm water management plan with hydraulic calculations, moderately priced dwelling plan and landscape plan for said phase shall be reviewed by Planning Staff for conformity with the Revised Master Plan and the terms of this Amended Conditional Use Permit. Applicant must submit to the Planning Staff an updated Revised Master Plan every two years from and after the approval date of this Amendment to reflect completed portions of the Revised Master Plan and projected future portions of the Master Plan. Non-residential subdivision of the project area shall also require the Applicant to comply with the site plan requirements of the County's subdivision regulations, including approval thereof by the Board of Commissioners. Such subdivision review may allow modification of the Revised Master Plan approved hereunder so long as not substantially



inconsistent with this Amended permit.

19. Stages. If desired, the applicant may construct the project in stages or phases. Each such stage shall be subject to approval by the County pursuant to its subdivision regulations. No final plat of a stage or phase of the development shall be approved if there is any uncorrected violation of any provision of this permit. Upon subdivision review of each phase, the applicable Recreation and Open Space, Community Facilities, Community Design, including housing, standards of the Compact Community Ordinance provisions shall be satisfied. Such subdivision review may allow mutually agreeable modification of the standards referred to therein so long as not substantially inconsistent therewith.

20. Moderate Income Housing. With the consent of the Applicant, and as an approximately equivalent alternative to and in lieu of the housing standards for Moderate Income persons set forth in Option A of the Compact Community Ordinance, the developer shall contribute 2.5% of the approved lots in the overall development, or each phase if developed in stages, for ultimate sale as directed by the County to persons or families whose income is 80% or less of the Area Median Family Income standard by family size and shall contribute \$1,100,000.00 to the County for the purpose of ameliorating the housing needs of Chatham County citizens. Said contribution shall be payable to Chatham County on a prorated basis upon final subdivision plat approval of each phase of the development. Such contribution represents the approximate value of 2.5% of the approved lots in said overall development or phase thereof as applicable.

21. Environment. The lots on Bennett Mountain shall be relocated to lessen the impact of the development on the primary and secondary environmental areas as described in the Natural Areas Inventory. The Bennett Mountain areas will be one of the last areas for line installation and spray irrigation. If future regulatory changes, and/or approved system flow reductions, will ultimately result in this area not being needed for irrigation, lines will not be installed in this area unless otherwise required by the State. Before any lines are installed in the Bennett Mountain area, Newland will seek further flow reduction approval or other necessary state permission under the then existing applicable regulations so as not to be required to install irrigation lines in this area in order to comply with permit requirements and the then existing applicable regulations.

22. Erosion Control. If applicable, an erosion and sedimentation control plan shall be approved by the County, North Carolina Department of Environmental Health and Natural Resources or other authorized governmental entity and submitted to the Planning Department prior to the issuance of a Zoning Determination Permit.

23. Silt Control. The applicant shall take appropriate measures to prevent and remove the deposit of wet or dry silt on adjacent paved roadways.

24. Fees. Applicant shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, building inspection, recreation and impact fees established from time to time. In addition to any fees or charges otherwise required by the County, the applicant shall pay or cause

to be paid to the County as a voluntary contribution the sum of \$2,000.00 per dwelling unit upon the sale of each lot or unit.

25. Continued Validity. The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditions listed above.

26. Non-Severability. If any of the above conditions is held to be invalid, this approval in its entirety shall be void.

27. Non-Waiver. Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.