

..TITLE

Amendment to Westfall Conditional Use Permit

..ABSTRACT

Action Requested:

Request by Westfall Associates, LLC, and Charles & Janet Meyers on Parcel No. 20092 and other parcels that make up the Westfall Subdivision (formerly Booth Mountain), located off Lystra Rd., and Jack Bennett Rd., Williams Township, for a conditional use permit (CUP) amendment to add approximately 14.071 acres and 62 lots and decreasing the overall footprint by at least 23 acres through a redesign of the lots and lot sizes.

Introduction & Background:

(Planning Board meeting information may be seen in BOLD, Italics below)

A quasi-judicial public hearing was held on this request November 19, 2012. Planning staff presented the request and Attorney Nick Robinson spoke on behalf of the applicant. Also speaking for the applicant were Mark Ashness, Randall Stevens, David Gainey, Colin Davidson, and Joe Faulkner. Also speaking were Jenny DeLoach, Peter Theye, Leila Weeble, and George Lucier. Concerns were raised regarding traffic, tree removal, not utilizing local builders, the need for new conditions to ensure the environment would not be damaged, and disappointment no representative from the school was present to discuss the use of the WWTP in the future.

The Planning Board met at their regularly scheduled meeting on January 8, 2013. Planning staff noted the applicant and planning staff agreed to postpone the Planning Board review for one month to allow the applicant time to prepare the subdivision revised master plan map submittal. This allowed the two requests to be considered simultaneously.

Westfall, formerly Booth Mountain, was originally approved as a 294 acre PUD in 2005 for 180 lots. 94 lots have received final plat approval which leaves 148 to be designed and platted. Within the first phase of development, all roadways and utility mains have been constructed. Water will continue to be served by the county and sanitary sewer will continue to be provided by Aqua NC. During the first phase of construction, there were several issues that arose from non-compliant erosion control measures and those violations have been corrected. This was one concern raised at the public hearing.

Discussion & Analysis:

During the public hearing, testimony was provided that addressed various concerns raised by several speakers. Those issues are discussed below under the appropriate finding of fact.

In order for a matter to be considered for approval, there are five findings that must be addressed and proof given that each one can be supported. Should one condition not be supported, the application should be denied. Conditions may be placed in order to achieve a mutually agreeable alternative between the governing body and the applicant in order for the finding to be made. The five findings are addressed below.

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. Planned residential developments continue to be a conditional use within the R-1 Residentially zoned district

provided the standards can be met. It is planning staff opinion these standard requirements for permitting a PRD still exist and therefore this finding is supported.

FINDING #2 – The requested conditional use permit is either essential or desirable for the public convenience or welfare. It was determined in 2005 this use was needed and subsequently approved. When development began with the recording of the first 94 lots is when the housing market declined. The previous owners filed bankruptcy and abandoned the site. The current owners purchased the property and have begun taking measures to redesign the site to make it more marketable to ensure a sound development. Construction on infrastructure has also resumed in the development, as well as the construction of several homes. Additional open space; new housing options to reach a larger market; and the addition of a walking trail, playgrounds, and an amenity area are being provided.

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 applicant is requesting an increase in the total number of lots from 180 to 242. The net land area computation provided in the application shows that a total of 262 units are allowed.

The riparian buffers for the water features in the proposed layout will meet the current standards in the Watershed Protection Ordinance, which have been revised since the original conditional use permit approval. An additional 14.071 acres is also being added to the overall development, which will increase the overall site size to 308.4 acres. By redesigning some areas, a higher density development footprint will be created as seen in Section B that will increase open space from 108.81 acres to 143.95 acres.

A 50 foot wide perimeter buffer around the entire development will remain. In addition, properties near Herndon Creek, adjacent to the Booth Hill Subdivision, will also be further protected by an additional 74 feet of no-build area.

Traffic was a concern raised at the public hearing. An updated report from Ramey Kemp & Associates was provided with the application stating the build out of the development is not expected to have any significant impact for residential use. There are proposed roadway improvements on Jack Bennett Road for a new high school in the future. However, the second phase of those improvements, which will consist of a signalized intersection at the drive for the school and Jack Bennett Road, will not be constructed until after the build out of the development.

Planning staff reviewed the findings of fact and the board heard supporting testimony from the applicant and allowed concerns to be stated by three (3) citizens. Some concerns that were raised were hunting on game lands adjacent to the development, traffic, easement for utilities, and odor control from the WWTP. Jennie Deloach, Lila Webster, and Pierce Cassidy all voiced concerns. Ms. Webster was against the development as a whole.

Nick Robinson, attorney for the applicant, stated NCDOT and Kimley-Horn and Associates conducted revised traffic studies and found there to be no adverse affects due to the proposed reconfiguration of the development or the addition of lots. NCDOT has noted there is a plan in place to redesign a portion of Jack Bennett Road in order to straighten out the curve closest to the entrance to the development. This will help in alleviating a potential hazard in that area.

Mr. Robinson also noted that an EIA (Environmental Impact Assessment) was conducted as part of the subdivision requirements and followed newly adopted regulations in the zoning ordinance. Additional streams and wetlands were found and have been buffered accordingly to ensure further protection of those areas.

The amenity area is still proposed in the development. One correction from the submitted materials is the amenity area will be relocated to the “North” side of Herndon Creek, as shown on the site plan, and not the “South” side as described in the text. A walking trail is also proposed from Section C to the new amenity area. Permits required to cross the creek will be obtained by the appropriate agencies.

Planning Board member, BJ Copeland, had a general concern over the allowance of hunting on the adjacent game lands. He asked if the Wildlife Commission could be asked to allow for archery only or if they would consider disallowing hunting all together in that area of the land.

FINDING #4 – The requested permit will be consistent with the objectives of the Land Use Plan. The development will continue to meet the Land Conservation and Development Plan as previously determined through its approval. The protection of surface waters may be better protected by the revised site layout as submitted. There will be more open space between the lot boundaries and the setback areas of the surface water features. There is also an increase in open space and a decrease in overall impervious surface than the currently approved site plan. The developer plans to increase the use of reclaimed water to be used for spray irrigation purposes as encouraged on Page 45 of the Plan.

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. Chatham County will continue to provide water for the development and Aqua NC will maintain the wastewater treatment facility and collection system. Stormwater and erosion and sedimentation control measures will be permitted and comply with current regulations. NCDOT has approved the subdivision road connections to the existing NCDOT roads and improvements for two of the three have been completed. The developer is working with NCDOT on the third entrance with NCDOT providing Spot Safety funds to further improve a section of Jack Bennett Road.

Mr. Robinson stated there is a 30’ foot utility easement on the site to serve the WWTP. A question was raised as to when it was permitted and Mark Ashness with CE Group stated the easement was originally to go to Governor’s Club to service a new school. This was done prior to the Booth Mountain Development.

The Planning Board voted 10-0 to approve the request.

Recommendation:

It is planning staff and Planning Board recommendation to approve the request. Should the Board of Commissioners approve this application, a consistency statement on how this request complies with the Land Conservation and Development Plan should be stated and approved in a separate resolution. The Planning Board recommends by vote of 7-3, the following consistency statement:

“The request is consistent with the Land Use Plan”.

Should the Board of Commissioners recommend approval, the Planning Board and staff have provided a set of conditions for review to be included in the approval. They are:

Site Specific Conditions

1. Buffers and setbacks shall be as set forth on the Perimeter Buffer/Development Setback Exhibit approved herewith.
2. With regard to the “no-build” areas (between the rear lot line and the edge of the building area) as shown on the submitted site plan, a restriction will be put in place that will allow homeowners to clear such areas only with hand tools (effectively limited clearing to underbrush and removal of dead vegetation) and disallowing grading.
3. The wastewater treatment plant will be a concrete facility with the blowers being enclosed. The developer will install an aerator in the wastewater treatment plant storage pond. Further, the developer shall use odorophos or other equivalent chemical agent, a chemical addition, at the pump station in order to minimize odors.
4. The roads in the development will be private, but will be built to the NCDOT standard. Private roads may be gated, provided access is made available to emergency vehicles.
5. The developer has created an easement for a trail from the village area to the school site as shown on Plat Slide 2008-97. The installation of such trail will be contingent upon agreement by the Chatham County Board of Education.
6. The developer shall erect signs along the mutual boundary with the US Army Corps of Engineers. Said signs shall be placed at sufficient intervals to be visible from a distance of 75 feet. The signs shall provide warning of adjacent Game Lands which allow archery hunting only at this time. On one side the signs shall warn of hunting in the area and on the other side warn of residential development nearby. Said signs shall be of a size and height to be easily seen and of all weather materials such as metal painted traffic control signs. Said signs shall be posted prior to final plat approval. The final plat shall display a note disclosing adjacent Game Lands which allow archery hunting only at this time.
7. All street lighting shall comply with the Chatham County Zoning Ordinance, Section 13 to minimize light pollution and light trespass. The development's covenants shall also require residential lighting to meet said provisions.
8. The developer and Aqua NC shall negotiate with the Chatham County School Administration to determine if an agreement can be reached regarding school site wastewater treatment and storage.

Standard Site Conditions

9. The application, standards and adopted regulations of the applicable ordinances and policies, and the approved recommendations as provided for and/or conditioned, are considered to be the standards as set forth and shall comply as stated. Changes or variations must be approved through the Planning Department or other approving board before any such changes can take place.
10. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Health Division, Stormwater Management, Building Inspections, Fire Marshal, etc.) shall be obtained, if required, and copies submitted to the Planning Department prior to the initiation of the operation/business.

Standard Administrative Conditions:

11. Fees - Applicant and/or landowner 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, and building inspection, established from time to time.
12. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditions listed above.
13. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
14. 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.