

..TITLE

A request from Brantley Powell on behalf of Polk's Village, Inc., to revise the approved conditional use permit on Parcel Numbers 2407 and 89420 thru 89429, located at 10677 US 15-501 North, to modify the site plan and uses allowed on the site to include Congregate Care Facility, Hospital, Health and Welfare Centers, Nursing Homes, and Daycare Center with a revised listing of "non-approved" uses for the project.

..ABSTRACT

Action Requested:

A request from Brantley Powell on behalf of Polk's Village, Inc., to revise the approved conditional use permit on Parcel Numbers 2407 and 89420 thru 89429, located at 10677 US 15-501 North, to modify the site plan and uses allowed on the site to include Congregate Care Facility, Hospital, Health and Welfare Centers, Nursing Homes, and Daycare Center with a revised listing of "non-approved" uses for the project.

Introduction & Background: Planning Board information is noted in BOLD

A quasi-judicial public hearing was held April 15, 2013 on this request. Planning staff, Attorney Michael Birch, Jack Smyre (consultant for the applicant), and Sam Hooker (Board of Director for Ridge Care Assisted Living) all presented to the Board.

Mr. Jack Smyre testified there was a typo in the application on the size of food store permitted. The application had 10,000 sq. ft. but it is approved for a 12,000 sq. ft. store.

Mr. Birch testified the applicant has requested to revise some additional requirements for the conditional use permit. They are:

- The applicant now has an interest from a food store to locate on the site and that the 12,000 sq. ft. limit would not work. He is requesting this be raised to a 30,000 sq. ft. maximum.
- He also noted the congregate care facility is proposed to be 47,000 sq. ft. which exceeds the current threshold of 40,000 sq. ft. The applicant is requesting that the limit be raised to 47,000 sq. ft accommodate the facility.
- Due to the increase in the food store size and the congregate care facility size, the maximum development square footage of 125,000, be increased to 129,000.

These revised changes and/or additions are required to go to public hearing. The Board of Commissioners, under advisement of the county attorney, agreed there will need to be another public hearing for these matters, but that the request could move forward to the Planning Board for review and recommendation. The public hearing was held open and planning staff will be sending the notice for a May 20, 2013 public hearing.

Polk's Village was approved as a commercial center in 2006. Since then there have been two other modifications on uses requested and approved with the latest being in 2011. With the economy downturn in 2008, Mr. Powell has been attempting to tailor his development to meet the needs of potential tenants so that development could go forward. In 2012, Mr. Powell begin construction for a medical facility, which was an approved added use from the 2011 modification, and is due to open mid to late summer 2013.

In the original approval, the applicant had created a list of uses permitted within the development, which has been modified twice. In this application, the applicant is converting that list to uses not approved to be located in the development. This is an easier list to work with for the applicant and planning staff.

The Planning Board held their regularly scheduled meeting on May 7, 2013. The Planning staff presented the request and the changes to be presented at the second public hearing on May 20, 2013. Also present were the applicant, Attorney Michael Birch, and Jack Smyre. Planning Board comments as well as those from the applicant or his representatives are noted after each finding below.

Discussion & Analysis:

A conditional use permit revision 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. A text amendment has been submitted to add the use of a Congregate Care Facility to the B-1 zoning district. The other uses requested by the applicant, being Daycare Center, Hospital, Health and Welfare Centers, Nursing Homes, and food stores are permitted uses within the B-1 zoning district.

There was no further discussion on this finding.

FINDING #2 – The requested conditional use permit is either essential or desirable for the public convenience or welfare. Mr. Hooker testified there is a need for a 91 bed assisted living facility that would also house an Alzheimer's unit. In order for these types of facilities to locate in an area, the State of North Carolina must approve a Certificate of Need which has been done per Mr. Hooker. He stated their company is a "for profit" organization that would also add to the tax base.

Mr. Birch, attorney for the applicant, testified the applicant was approached by potential tenants requesting to locate in his development. In an effort to meet that demand, he requested this revision to the existing permit and site plan. By locating these uses

within a compact, mixed use project, it could minimize sprawl and allow for convenient access to uses complimentary to each other.

One Planning Board member wanted to know how it was working with trying to be flexible with the changing market. Mr. Birch stated the added flexibility helps the applicant work more efficiently with potential tenants and the county knows exactly what kinds of uses would be allowed. He also stated a “reactive” process is easier to develop.

Planning Board members had no issue with converting the list of permitted uses to a list of non-permitted uses sighting it is easier to manage and presents a clearer picture of what may be allowed and not allowed in the development.

There was no other discussion on this finding.

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 modification of the site has been limited to the internal portions of the development. All perimeter conditions, landscaping, signage, buffers, setbacks, and road system are unchanged and remain as currently approved.

The daycare center and assisted living facility will be replacing currently approved retail/office space with no changes to the approved clearing limits.

An updated traffic analysis was done showing a one-third reduction in traffic flow. However, it was noted by staff at the public hearing a revised Traffic Impact Analysis (TIA) is required based on the additional request for a larger food store (up to 30,000 sq. ft.). Planning staff did speak with Travis Fluitt with Kimley-Horn & Associates on April 23, 2013 who advised they have completed the revision and that there would be a slight increase in traffic associated with the food store. He also stated they would no longer be requesting the turning lane be reduced in length due to the expansion of the food store. The new TIA is attached and will be available for the public hearing on May 20, 2013.

A Planning Board member wanted to know the actual number of decreased trips from the TIA report. Mr. Birch stated based on the revised report, there is an approximately 111 vehicle trip reduction in the a.m. peak hours and an approximately 98 vehicle trip reduction in the p.m. peak hours. No further discussion was made on traffic.

A Planning Board member wanted to know why there was a limit set for any one building on this site. Planning staff stated in the original approval, the applicant

agreed to limit the size of any one building as part of the draw for the development. Mr. Birch stated the limit was also to stop concerns that were being asked about a potential big box store coming to the site.

Mr. Birch also stated the overall increase from 125,000 sq ft to 129,000 sq ft is the result of the congregate care facility. A Planning Board member stated it really wasn't a concern about the individual buildings and that the overall plan was what needed review. He also stated that it appears there are no other changes to the disturbed footprint, no perimeter changes, and no new improvements needed or required so thought the request could go forward with a recommendation of approval following the public hearing.

One Planning Board member wanted to know why the applicant/developer was being required to incorporate LEED type construction; especially with the cost that's involved in today's climate. Planning staff stated the original request had incorporated the condition in an effort to meet "green" initiatives being sought at that time and the applicant agreed to do it. Planning staff also stated that when the first structure was being permitted, there arose a question about the requirement for an actual certificate of LEED construction. Planning staff had received direction from the county attorney, Jep Rose, who stated there was enough ambiguity in the wording that we could require some level of LEED construction but that an actual certificate was not required. Condition No. 2 states the new wording for this revision.

FINDING #4 – The requested permit will be consistent with the objectives of the Land Use Plan. The Land Conservation and Development Plan assists in guiding development in various areas of the county. It encourages a mix of uses rather than a separation of uses. By broadening the list of uses for this development, this can be accomplished. The plan goes on to encourage sighting commercial uses along major highways in clusters at specific locations and to design them to retain a rural crossroad or village character.

With regards to the watershed impervious surface allowances and flood plain considerations, there are no changes proposed to the current approved erosion and sedimentation control plans or permit or the stormwater permit requirements. The clearing limits will not need to be changed for the added uses.

There was no further discussion on this finding.

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 Public Utilities

has advised they will need to review the tap and usage requirements for the added uses but did not anticipate any issues with being compliant with their regulations.

A letter was provided from AWT, Inc. stating there are suitable soils on the remaining nine acres of the site. Planning staff has not received any documentation from AWT or the Chatham County Environmental Health Department stating where those acceptable soils are or to what extent the currently approved septic system will need to be expanded. This will be required before any permits for construction can be issued. There are no changes in the currently approved roadway or access system. As stated, a revised TIA is required based on the additional use of a food store.

All other utilities, stormwater, erosion and sedimentation control permitting are unchanged. There are no changes to the currently approved clearing limits to accommodate the changes in use.

The Planning Board had no additional concerns regarding this finding.

In summary, based on the information submitted, it is planning staff's and **Planning Board's** recommendation to approve this request based on support of all five findings.

Recommendation:

Planning staff **and Planning Board by vote of 7-0-2** recommends approval of this conditional use permit revision and adoption of a resolution approving the modifications. Conditions previously approved that have been met have not been included in this revision approval but remain valid to the continued compliance with the conditional use permit approval.

The following conditions should be reviewed at this time and upon acceptance by the applicant and shall be approved as part of any approval of this request.

Site Specific Conditions:

1. The following uses **are not permitted uses** within this development:

Amusement enterprises such as a pool, bowling, roller rink when housed entirely within a permanent structure	Automobile repair garages
Automobile sales and service	Automobile service stations (as defined in the zoning ordinance)
Bait and tackle shops	Boat, trailer, and other utility vehicle sales and service

Bus passenger stations	Cabinet shops (sales & service allowed but excludes manufacturing)
Churches and other places of worship	Feed, seed, fertilizer retail sales
Fire stations & emergency medical service facilities	Food stores, retail (allowed up to 30,000 sq ft maximum size)
Fur storage	Funeral homes, embalming including crematoria
Horticulture, specialized	Furrier, retail sales
Landscaping & grading business	Hotels, motels and inns
Lock and gunsmith	Leather goods (sales & service allowed but excludes manufacturing)
Mobile homes sales and service	Lodges, fraternal & social organization clubs
Open air sales & service of accessory buildings & gazebos and like free-standing structures	Motorcycle sales and service
Public & private schools, training & conference centers	Pawnshops and secondhand stores
Radio & television stations and their towers when the towers are located on the same site with the station	Public & private recreation camps and grounds with a minimum lot area of 10 acres as further defined in the zoning ordinance
Swimming pool & related items sales & service	Self-storage facility/mini-warehouse storage facility with related retail and services (i.e. moving truck rental)

2. Each building shall be constructed in a manner that would achieve acknowledgement of LEED level construction. A LEED certificate is not required.
3. The Congregate Care Facility shall not exceed 47,000 square feet as requested by the applicant. All other building sizes shall follow Condition No. 10 as previously approved of no larger than 40,000 sq. ft.

4. The site plan dated March 22, 2013 shall be considered the existing approved plan. All requirements and agreed upon conditions regarding the addition of a five (5) foot wide sidewalk from Polk's Landing Road across from Holly Ridge Road into the development to allow for pedestrian connectivity that also includes bicycle/disability access ramps; the addition of four (4) bike racks installed at central points throughout the development; the modified evergreen undisturbed margin along Polk's Landing Road bordering the development which allows for selective clearing and re-vegetation with new plantings; the addition of a sign on Polk's Landing Road at the first entrance into the development stating "shopping center entrance only," and that entrance should be wide enough to accommodate a tractor-trailer, shall remain valid and required.
5. The recommendations of the Chatham County Appearance Commission (CCAC) for landscaping and screening of dumpsters shall remain in effect as originally approved. The CCAC and the Planning Division may conduct yearly inspections to ensure design and intent are maintained and may advise on additions or changes be made to the site whether to the developers expense or some other entity.
6. The interior road leading through the development from US 15-501 South connecting to Polk's Landing Road shall be installed and maintained in its entirety before the certificate of occupancy for the first structure is approved and prior to Polk's Landing Road being converted to right out only at US 15-501.
7. Setbacks from Cub Creek shall be 100 feet on each side for buffers and the stormwater management pond. A new storm water management plan shall be submitted to the Planning/Zoning Division prior to issuance of the first building permit. The design shall at a minimum as specified in Section 8.5.4 Storm Water Runoff in the original application.
8. The site plan shall be developed as approved on the site plan dated March 22, 2013. A reduction in one building's square footage may be transferred to another building in the development with no one building exceeding 40,000 square feet.

Standard Site and Permit Conditions:

9. Signage, parking, and lighting shall conform to the current regulations in the Chatham County Zoning Ordinance (December 2008 version).
10. All parts of the application, notes, and 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.
11. All required local, state, or federal permits (i.e. North Carolina Department of Transportation(NCDOT) commercial driveway permits, North Carolina Division of Water Quality (NCDWQ), Chatham County Erosion & Sedimentation Control,

Environmental Health Division, Stormwater Management, etc.) shall be obtained, if required, and copies submitted to the Planning Department prior to the issuance of the first building permit and as needed throughout the remainder of the development of the project.

Standard Administrative Conditions:

12. Appeal - The County shall be under no obligation to defend any action, cause of action, claim, or appeal involving the decision taken herein. In the event a response is authorized by the County concerning this resolution, or any action to enforce the provisions hereof, the applicant, its successors or assigns shall indemnify and hold the County harmless from all loss, cost or expense, including reasonable attorneys fees, incurred in connection with the defense of or response to any and all known or unknown actions, causes of action, claims, demands, damages, costs, loss, expenses, compensation, and all consequential damages on account of or resulting from this decision.
13. 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.
14. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditions listed above.
15. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
16. 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.