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A request by NNP-Briar Chapel for a Conditional Use Permit Revision on multiple parcels that make up the Briar Chapel community located off US 15-501 N, being approximately 1589 acres, to increase the dwelling unit count from 2389 to 2500 residential units; modify the use chart to allow up to 200 multi-family units in SD-North, SD-West, or SD-East; to modify and update site plan in various ways as depicted on the proposed revised Master Plan; and update Responses to Compact Communities Ordinance, Baldwin Township.

..ABSTRACT

Action Requested:

A request by NNP-Briar Chapel for a Conditional Use Permit Revision on multiple parcels that make up the Briar Chapel community located off US 15-501 N, being approximately 1589 acres, to increase the dwelling unit count from 2389 to 2500 residential units; modify the use chart to allow up to 200 multi-family units in SD-North, SD-West, or SD-East; to modify and update site plan in various ways as depicted on the proposed revised Master Plan; and update Responses to Compact Communities Ordinance, Baldwin Township.

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, resulting in a gross density of 1.5 units per acre. The development as approved includes a mix of housing types in addition to commercial and office space. Briar Chapel has roughly 1,155 housing units platted to date. Also, as part of the original approval property for Woods Charter School, Margaret Pollard Elementary School and the 66 acre county park has been donated. Briar Chapel received an approval for CUP revision in 2012. The request included updated CUP language to acknowledge requirements completed, modification of the library site contribution, and an amendment of the Master Plan to allow more flexibility.

The current CUP revision request includes the following (tab D of the application):

- Changes to the approved Master Plan, including the addition of a Fire/EMS site, elimination of a perimeter buffer along the U.S. Steel property line, increasing a portion of the Herndon Woods perimeter buffer, seeking a uniform viewshed buffer reduction along US 15-501, realignment of Granite Mill Boulevard, reduction of length of buffered stream channel as well as a new buffered ephemeral stream section and modification of land use intensity zones as reflected on the map.

- An amendment to the “Approved Development to Date” grid to include an update of the total number of platted lots to date, an increase in total dwelling units to 2,500 from 2,389 to allow up to 200 multi-family units within the commercial “Special District” areas, a modification of the T4-b Zone column and an increase in the Single Family cottage block from “up to 30%” to “up to 70%”. An asterisk and footnote have also been removed from the Master Plan map regarding the allocation of the 510,000 sq. ft. of allowed commercial area, which originally established thresholds between office and retail space, to allow more flexibility.
- Lastly, the amendment proposes modified language for the CUP to reflect changes and acknowledge any requirements satisfied since the 2012 revision as well as updated responses to the Compact Communities Ordinance (CCO).

The public hearing for the CUP revision was held August 18th, 2014. The applicant, their witnesses, as well many members of the public offered testimony. The applicant entered the application into the record and provided additional information regarding the projected traffic impacts, a fiscal analysis and a valuation report to justify the request for additional 200 multitenant units. The applicant also provided a professional analysis of the proposed reduction of the buffered ephemeral stream in Briar Chapel Phase 9. Citizen comments included concern for traffic impacts due to the proposed additional residential units, concern for stream and water quality impacts, as well as concern by Ferrington Village residents regarding the proposed multitenant residential units in Briar Chapel’s SD East, which is immediately adjacent to the development. A few citizens spoke in support of the application.

PLANNING BOARD ACTION

The Planning Board met during their regularly scheduled meeting on October 7th, 2014. Discussion was raised regarding the gaps presented within the original Master Plan map (south of Phase 8 and north of SD Civic) submitted by the applicant. Staff explained a revised map was submitted by the applicant, removing the gaps within the buffer. The applicant stated the original intention behind the gaps was for future road connections. Staff indicated that future road connections are handled at the time of future development when the roads may connect to Briar Chapel, and that including these tentative connections within the Master Plan Map may lead to inflexibility in the future.

Planning Board members asked whether the proposed multifamily units would be supported with the existing waste water treatment plant, to which Briar Chapel project engineer, Mark Ashness, P.E., confirmed there would be enough capacity to support the additional dwelling units.

A motion to recommend approval of the Briar Chapel Conditional Use Permit Revision and Revised Master Plan Map (received at the Oct. 7th Planning Board meeting), along with acknowledging condition #14 (d) Public Health and Safety Site as an open item for resolution between the County and Briar Chapel prior to

the November 17th Board of Commissioners meeting, passed by a vote of 8-0 (abstention Mr. Glendinning).

Discussion & Analysis:

The proposed CUP revision includes several components; therefore each section of the application will be discussed individually.

Master Plan Changes

Addition of the Fire/EMS site- Stemming from the 2005 revision, the applicant has formalized the intended location of the Fire/EMS site with the County at the corner of Great Ridge Parkway and Manns Chapel Road.

The elimination of a perimeter buffer along the U.S. Steel property line- This request to completely eliminate the perimeter buffer along the immediately adjoining U.S. Steel Conservation Subdivision property, under the same ownership as the applicant, will use the Briar Chapel road network for access and is intended to seamlessly blend with the existing development.

Increase in a portion of the Herndon Woods perimeter buffer- This increase in perimeter buffer from 100' to 200' stems from a prior agreement with the Herndon Woods development and is intended to be formalized with the revised Master Plan.

Upon review by planning staff, the map shows encroachments into the perimeter buffers. The map shows stormwater ponds depicted within the perimeter buffer along SD-East and SD-West. There are also two small gaps in the perimeter buffer south of Phase 8 and east of the SD-Civic area. When asked if the stormwater features were intended for placement within the buffer during the public hearing, the applicant's engineer confirmed there would be no encroachment of stormwater ponds in the buffer. Staff inquired about the two small gaps within the buffer, to which the applicant responded they are intended for future connections to adjacent properties. Staff has added a condition requiring these encroachments be removed from the perimeter buffer and a revised Master Plan map be submitted before the Planning Board meeting. See the condition #15 (c) under Stipulations Related to Landscape Elements section.

Uniform viewshed buffer reduction along US 15-501- The applicant has already been granted a viewshed buffer reduction on March 17, 2014 for the segment along SD-North. The applicant seeks the same reduction along SD West and East from a uniformity standpoint.

Reduction on length of buffered stream channel within Phase 9- The applicant is unable to provide the original methodology of the stream determinations for the Briar Chapel development. Therefore, the applicant provided testimony in the form of a professional opinion that the removal of the area previously classified as an ephemeral

channel “C” will have no adverse impact on water quality. The stream delineation expert stated no adverse impacts on water quality are expected from the buffer reduction because the storm flow that the subject buffer would receive is from the back of the lots in the Phase 9 development area and from the road gutters, which will pass through 30’ of lawn area and another 25’ of wooded area before it reaches the buffer. Additionally, the stream segment scored with use of the NC DWQ Stream Identification Form Version 4.11 under the threshold to be considered an ephemeral stream.

New buffered intermittent stream section- The revised Master Plan includes a new intermittent stream section with a 50’ buffer. The original stream delineation of Briar Chapel did not catch this intermittent segment and the applicant would at any rate be required to buffer the section due to Chatham County Watershed regulations.

Change to land use intensity zones to reflect updated market projections and primary road connections- The applicant has increased the allotment of the single family cottage block due to market experience thus far.

Change to “Approved Development to Date” table- This table has been updated to reflect the present amount of platted lots within the development. The 2005 revision included 761 lots and the 2014 revision 1,155 lots.

Increase of the maximum number of dwelling units from 2,389 to 2,500- The applicant proposes an increase in the number of allowed residential units by 111 and allow a capped amount of 200 multi-family/townhouse units within Special Districts (North, West and East). Presently the CUP only allows commercial in the SD-East district and commercial plus 80 residential units in SD-North and SD-West. The proposed amendment requests flexibility to have up to 200 multi-family/townhouse dwelling units within SD-N, SD-W and/or SD-E. If fewer than 200 units are ultimately used in those districts, the applicant proposes not to shift the unused multi-family/townhouse residential units to the rest of the development. This would mean that the total number of residential units in the balance of the property would not exceed 2,389. Essentially, the increase solely would allow up 200 multi-family/townhouse units within SD-N, SD-W and SD-E and no increase in the rest of the development.

Traffic- The applicant has provided a Traffic Update (tab E) for the proposed increase in dwelling units. The update, prepared by traffic consultant Kimley-Horn, analyzed the impact of the proposed increase in residential units on the traffic conditions for the development. Compared to the trip generation potential for the development’s Traffic Impact Analysis (TIA) currently approved, the proposed increase from 2,389 to 2,500 units, along with an array of commercial development, the traffic consultant has provided the opinion that the existing TIA for Briar Chapel will not require a modification as long as the commercial square footage

implemented does not exceed 474,000 sq. ft. However, the report states that NCDOT would likely require a TIA revision if 2,500 units are developed with more than 474,000 sq. ft. of commercial development but no more than the approved 510,000 sq. ft. (the total commercial square footage cap).

NCDOT Division 8 has reviewed the submitted traffic report and states that Briar Chapel appears to be limiting a small amount of commercial development to compensate for the increase in residential development. This limitation result results in reduced trips, or small increases in instances, in most scenarios. The applicant intends to revisit the TIA if more development is anticipated and NCDOT will not require the TIA to be revisited at this time.

Market Needs- The applicant provided the testimony and evidence into the record to justify the requested additional 200 multitenant units within the Special Districts. Using the Chapel Hill mixed use development Southern Village as the example, the applicant stated that the request for additional units is a catalyst for commercial development and provided a valuation report for Southern Village as an example as well as testimony from one of the Southern Village developers. A fiscal analysis was also provided as justification for the requested dwelling unit increase.

The T4-b Zone modified to change the Single Family Cottage Block from “Up to 30%” to Up to 70%”- The applicant has increased the allotment of the single family cottage block due to market experience thus far. The increase reflects the developer’s best current estimate of likely outcomes.

Removal of the asterisk and footnote from the Master Plan Map which states, “The total office space for SD-North, SD-West, and SD-East combined shall not exceed 270,000 sq. ft. and the total retail space for these three zones shall not exceed 240,000 sq. ft.” - The applicant has proposed removal of this cap because it is unclear at this time whether the allocations are or will be realistic based on current market conditions. The purpose of the removal of this cap on allotment is to provide flexibility to the developer.

Deletion of the Affordable Housing Map- This map has been proposed for deletion based on the approved payment in lieu Briar Chapel has made in the interim.

Revised CUP language

The revised language of the CUP affects several sections of the approval.

Required Findings- The applicant seeks to update the language regarding affordable housing (Condition #2 and Miscellaneous Stipulation #20) to reflect the completed \$900,000 payment-in-lieu to fund affordable housing in Chatham County. The language

also clarifies the \$2,000 per lot or dwelling unit voluntary school impact fee. The applicant also modified the language of condition #3 to indicate the applicant's adherence to the Compact Communities Ordinance (CCO) requirements.

Stipulations Specific to the Development- The allotted Maximum Number of Dwelling Units (condition #2, Land Use Intensity) has been increased from 2,389 to 2,500 to reflect the requested increase in dwelling units for the multitenant housing in the Special Districts. Condition #5, Commercial Uses, has been amended to include the term "commercial" for the types of uses allowed within the commercial component of the development as it relates to the Office and Institutional (O/I), Business (B-1), Neighborhood Business (NB), Central Business (CB) and Regional Business (RB) districts within the December 2008 Zoning Ordinance.

Stipulations Regarding Required Improvements- Regarding the Public Facilities Condition #14 (d) Fire Station/EMS site, the applicant proposes a covenant providing that if the fire/EMS site is not constructed within ten years of the date of the permit, the ownership of the site shall revert to the applicant. Since the site is tied to an agreement with the County, the County has reviewed the proposed condition and has provided a modified condition 14(d) regarding this site. Discussions between the applicant and the County are still ongoing and the applicant intends to provide an update on this item at the time of the October 7th Planning Board meeting.

Conditions (e), Park Site, and (f), Library, have been modified to state the condition has been met. The park site has been completed and deeded to the county and an accelerated library fee of \$80,000 has been paid to the county August 13, 2012. Condition (g) has been updated to reflect the last remaining conditions to be satisfied by the applicant.

Miscellaneous Stipulations- Condition #18, Detailed Site Plan, includes a reference to the "anticipated uses grid" and updated language regarding the last CUP amendment. Condition #20, Moderate Income Housing, removes previous language about the 2.5% contribution of the approved lots towards ameliorating the housing needs of Chatham County. The county accepted a \$900,000 payment-in-lieu November 16, 2012. This condition has been satisfied by the applicant.

Amended CCO Responses

The applicant has revised a few responses to the CCO. Section 6.2, Maximum Size, the maximum number of dwelling units has been increased to 2,500 from 2,389 to accommodate up to 200 multi-family/townhomes within the Special Districts. The language also explicitly states the 2,389 unit cap on areas outside the Special Districts will remain. Section 6.3, Residential Density, explains the potential increase in dwelling units per acre will increase from 1.5 to 1.57, which is still in compliance with the CCO

limit of 2.0. The minimum net density will increase from 6.64 to 6.94, if all 2,500 units are constructed, still meeting the minimum density requirements.

Section 6.5, Commercial Area, the applicant clarifies the ambiguity in prior responses by stating that all forms of commercial development are restricted to 510,000 s.f. Again, the applicant states the addition of 200 multitenant units into the Special Districts will serve as an accelerator for commercial development. However, the applicant still reserves the right for a waiver modification for the timing requirements depending on market conditions.

Section 7.2, Wastewater Treatment, the applicant assures compliance with CCO standards as it relates to wastewater treatment provisions. During the public hearing, project engineer Mark Ashness, P.E., stated that the additional 111 units can be accommodated through the existing Briar Chapel wastewater treatment facility.

Section 9.2, Perimeter Buffer, the applicant seeks elimination of the perimeter buffer around the U.S. Steel conservation subdivision and the increase in the Herndon Woods perimeter buffer, as explained above. Section 9.3, Viewshed Buffer, states the applicant's desire to reduce the 100' buffer in front of SD- E and SD-W, so that it matches the recent viewshed buffer reduction granted via waiver request for SD-N. Finally, Section 12.1, Performance Standards, includes reference to the inclusion of 200 multi-family/townhouse residential units in the Special Districts.

A conditional use permit must meet the required five findings outlined within the Chatham County Zoning Ordinance. These 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.

Briar Chapel was approved as a Conditional Use-Compact Community Zoning District with a corresponding Conditional Use Permit in 2005 and amended in 2012.

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

Need and Desirability- The requested revisions are in response to market demand demonstrated by the applicant through fiscal analysis, valuation reports, and professional testimony entered into the record. Present and projected demands indicate the addition of 200 multitenant/townhomes within the Special Districts will serve as an accelerant for the commercial development. The applicant sites only two other similar developments of townhomes within northeast Chatham County and cites that no additional public improvements are needed to accommodate the requested changes.

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 has demonstrated the addition of the 111 lots as long as the commercial square footage implemented does not exceed 474,000 sq. ft. However, the traffic report entered into the record states that NCDOT would likely require a TIA revision if 2,500 units are developed with more than 474,000 sq. ft. of commercial development but no more than the approved 510,000 sq. ft. Therefore no significant traffic impacts are anticipated if the development stays under 474,000 sq. ft. and 2,500 dwelling units. Staff proposes an amendment to condition #10, Improvements, to clarify the thresholds are traffic impacts.

The applicant proposes no decrease in perimeter buffers, except for the buffer adjacent to the U.S. Steel conservation subdivision, which is under the same ownership as Briar Chapel and is intended to integrate with the Briar Chapel development.

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

A component 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, stating, “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.” It is Planning Staff’s opinion that the proposed amendment will remain consistent the objectives of the adopted land use 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.

The applicant states that no anticipated substitution of residential for commercial uses within the Special District will generate and overall increase in water sources. The applicant also states the same for wastewater management, as Briar Chapel Utilities, LLC, is permitted to sufficiently handle wastewater capacity changes tied to this request. The applicant also states no changes to access roads and assures that all stormwater requirements and impervious surface limitations will be adhered to.

Recommendation: The Planning Board by a vote of 8-0 with 1 abstention and planning staff recommends approval of the request with the proposed conditions as modified

below, with the exception of condition 14d that requires further discussion between the applicant and County:

1. The use/s requested are among those listed as eligible uses in the district in which the subject property is located or is to be located. The proposed uses are allowed within the district approved as Conditional Use Compact Community (CU-CC).
2. The requested revised conditional use permit is either essential or desirable for the public convenience or welfare because, among other reasons supported by evidence in the record, the applicant has provided or will provide a lot for a water tank for the county water system, sites for two schools, a county park site, a site for a fire/EMS station, funding for the county library system, and an opportunity to develop space for a Sheriff's Office substation. The applicant has made a \$900,000 payment-in-lieu to fund affordable housing in Chatham County, is paying a fee of \$1,100,000 to ameliorate the housing needs in Chatham County, as well as paying an additional voluntary school impact fee of \$2,000 per lot or dwelling unit to the County.
3. The requested revised conditional use 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. Among other reasons supported by evidence in the record, the applicant is required by NCDOT to make off-site road improvements to accommodate the increased traffic on surrounding roadways, is complying with the Compact Communities Ordinance with respect to perimeter and viewshed buffers around the development, and is providing funding or land for public facilities to minimize the impact of the development on the surrounding area.
4. The requested revised conditional use permit continues to be consistent with the objectives of the Land Development Plan by, among other reasons supported by evidence in the record, continuing to develop a mix of uses as a compact community along the 15-501 corridor as encouraged on page 2 of the Plan. The development is located within a WSIV-PA watershed that allows up to 36% impervious surface, but the development is limited to 24% impervious surface by the Compact Communities Ordinance and condition 2. The amended conditional use permit continues to meet many of the policy objectives, major recommendations and goals of the Chatham County Land Conservation and Development Plan.
5. Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided through the proposed revised conditional use permit consistent with the County's plans, policies and regulations and confirmed through any additional conditions placed on its approval as seen

below. Among other reasons supported by evidence in the record, the applicant has provided or will provide a wastewater treatment plant for the development, a site for a county water tank, land for a county park site, two schools, land for a fire/EMS station, funding for the county library system and an opportunity to develop space for a Sheriff's Office substation. The applicant is also constructing off-site road improvements as required by NCDOT to minimize the impact on the road network of the additional traffic generated by the development, as well as preserving over 30% of the land in the development as open space.

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 2,500
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 Water Supply Nutrient Strategy: Protection Of Existing Riparian Buffers (also known as 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. County acknowledges that all phases of the Briar Chapel Development authorized by this Conditional Use Permit constitute "existing development" within the meaning of the Jordan Water Supply Nutrient Strategy (15A NCAC 2B .0263) and are therefore not subject to the stormwater management requirements for new development set out in 15A NCAC 2B .0265. 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 in the locations shown on the Revised Master Plan, and the commercial 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 and the signage provisions set forth in the Chatham County Zoning Ordinance in effect on February 15, 2005 (original approval date). 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. During the preliminary plat review process, the Chatham County Water Department shall review and approve any future water utility easement locations shown on a proposed preliminary plat and shall do so within thirty (30) days after submission by Applicant to the Water Department. If the Chatham County Water Department does not respond within thirty (30) days after submission, the proposed water utility locations shall be deemed approved.
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. Plans for provision of water supply 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 water policies then in effect and the Applicant shall pay all water fees and charges associated with the applicable phase, including then current water 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. Public Health and Safety Site: Applicant has agreed to and shall tender to the County a special warranty deed, reasonably acceptable to the County, 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 (1) a covenant not to exceed 24% maximum impervious surface area on the site; (2) a provision allowing a septic system and 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; (3) a covenant subjecting any structure to be constructed or placed on the site to applicable Briar Chapel Design Guidelines, existing as of the date of this revision, and reasonable Design Review Committee approval, but no other approvals, covenants, terms, conditions, restrictions, fees or charges, (4) a covenant restricting use of the parcel to public health and safety structures and facilities; and (5) a covenant providing that if a building permit for a public health or safety structure is not issued within ten (10) years of the date the special warranty deed is tendered to the County, construction commenced thereon within six (6) months after the issuance of the building permit, and substantially completed within eighteen (18) months after the issuance of the building permit, ownership of the public health and safety site, free and clear of any liens or encumbrances, shall revert to Applicant or its successors and assigns. The County shall have seven (7) years from the date of approval of this amendment to notify Briar Chapel of its intent to use the reserved sewer capacity for the site. If the County fails to record the deed to said building site within one (1) year of the date that a proper deed for said building site, in recordable form and in compliance with all County rules and regulation, is tendered to the County, the Conditional Use Permit obligation to convey 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 has been deeded to County. This obligation has been fully satisfied.
- f. Library: Applicant delivered and the County accepted its accelerated \$80,000 library fee on August 13, 2012. This obligation has been 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, to be constructed and provided to the County at no cost or charge to the County, 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) and (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. Further, the fence has been 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 residential waste is managed and shall continue to be managed by residential curbside recycling and solid waste pick-up. With regard to construction debris and non-residential solid waste removal, Applicant shall continue to contract with builders and contractors to dispose of the same appropriately.
18. Detailed Site Plan. The revised Master Plan attached hereto as Exhibit A (including the anticipated uses grid) and incorporated herein by reference is hereby approved as the applicable sketch plan and revised master plan for Briar Chapel (the "Second Revised Master Plan") in substitution for and replacement of the original master plan approved with the Conditional Use Permit and the amended site plan approved on May 21, 2012 (and signed on June 4, 2012). Briar Chapel is unique within Chatham County because it is the only compact community approved under the Chatham County Compact Communities Ordinance. The Second 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 Second 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 Second 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 Second 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, Applicant 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. The prior obligation to contribute 2.5% of the approved lots was substituted by the County for a \$900,000 payment in lieu pursuant to an approved Payment-in-Lieu Contract between the County and Applicant, dated November 16, 2012, as amended. That portion of the obligation has been fully satisfied by Applicant.
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 be 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.
28. Inconsistencies. To the extent any condition set forth in this Amended Conditional Use Permit (or attached hereto) specifically conflicts with and provides more detail and clarity than a similar provision of the original Conditional Use Permit, including, without limitation, all information incorporated into the original Conditional Use permit as part of the original application and public record, the language of the condition of this Amended Conditional Use Permit shall supersede, it being one of the purposes of this Amended Conditional Use Permit to clarify ambiguity, if any, in the original Conditional Use Permit.
29. Applicable Zoning Ordinance. Unless otherwise specifically stated within this Amended Conditional Use Permit, the Chatham County Zoning Ordinance applicable to Briar Chapel is the Chatham County Zoning Ordinance in effect on February 15, 2005 (original approval date).

30. Compact Communities Ordinance (“CCO”) Responses. Applicant reaffirms its Ordinance Compliance Responses except that Applicant amends its Responses to any provision of the CCO that has been modified from the date of the original CUP approval through the date of this approval, such that said Responses are superseded and replaced with the following response: “Applicant has or shall comply with this amended CCO provision