

..TITLE

Request by Nicolas Robinson, on behalf of NNP-Briar Chapel, LLC, to adjust the riparian buffer map for Briar Chapel as indicated in the waiver request, pursuant to Section 15 of the CCO.

..ABSTRACT

Action Requested:

Request by Nicolas Robinson, on behalf of NNP-Briar Chapel, LLC, to adjust the riparian buffer map for Briar Chapel as indicated in the waiver request, pursuant to Section 15 of the CCO.

Introduction & Background:

In June 2012, the Board of Commissioners approved a revision to the conditional use permit for Briar Chapel that was submitted by NNP-Briar Chapel, LLC. This request is to modify the conditional use permit by adding additional riparian buffers in one area and reduce ephemeral buffers in two areas.

The Chatham County Compact Communities Ordinance includes the following provisions:

9.1 Riparian Buffers

In all residential, commercial, and civic areas in each compact community, vegetative buffers of the following widths shall be permanently protected along each side of the following streams:

- At least one hundred (100) feet along all perennial streams;
- At least fifty (50) feet along all intermittent streams;
- At least fifty (50) feet along all ephemeral streams shown on the Soil Survey maps and having a drainage area of more than twenty-five (25) acres;
- At least thirty (30) feet along all ephemeral streams shown on the Soil Survey maps and having a drainage area of between ten (10) acres and twenty-five (25) acres.

Section 15. Waiver, “With the approval of the Board of Commissioners, the requirements of this ordinance may be adjusted, modified, reduced or waived based upon the absence of any reasonable relationship or nexus between the impact of the compact community development and the inclusionary or other requirements set forth herein.”

This waiver request is being submitted directly to the Board of Commissioners without review and recommendation by the Planning Board and follows the process outlined by

the Board in a waiver request approved in August 2010. The waiver provision has been used to modify a condition in the original conditional use permit in 2005 and requests in 2010, 2012 and 2014. The contract to accept a payment-in-lieu of providing affordable housing lots in 2013 was not processed as a waiver request. The County Attorney has been provided a copy of the proposed order for review and comment.

Discussion & Analysis:

The application materials for the 2004 conditional use permit for Briar Chapel included riparian buffer areas based on the standards of the Compact Communities Ordinance (CCO). The buffered areas were based on the stream buffer exhibit included as attachment #1. The application materials for the 2012 amendment included the following statement “CORNERSTONES OF C.U.P ARE NOT CHANGING – C. The application does not seek to change or reduce the buffers originally approved under the conditional use permit” (see attachment #2).

Request A: The first part of the request is to add a 50’ buffer along a newly identified intermittent stream. Administrative approval was conditionally granted for the addition of this riparian buffer when a request for an adjustment to the Open Space/T-Zone boundary was submitted to staff (RE: U.S. Steel Property) earlier this year. This issue was discussed with the County Attorney and confirmation was provided to the developer, and their representatives, by planning staff in February 2014. Staff requested the paperwork associated with the intermittent stream determination for Environmental Quality staff review and it was not provided. If the waiver for this request is granted then the conditional administrative approval for the boundary adjustment of the open space/T-zone boundary is void. The administrative review considered the intermittent stream buffer as part of the request. If the developer thinks approval by the Board of Commissioners is necessary for the additional 50’ buffer that is required by the CCO then a waiver for the boundary adjustment is also needed.

Included with this waiver submittal are two additional requests to modify ephemeral buffers. Under the requirements of the CCO, ephemeral streams are based on drainage areas. The submittal does not include a review of drainage areas to the new stream to determine if there are additional ephemeral streams that need to be buffered. If the Board of Commissioners considers approving the waiver request, then the drainage also needs to be reviewed for compliance for ephemeral streams.

Further, a waiver is not needed to add a riparian buffer along a stream because Section 9.1 of the CCO requires a 50’ vegetative buffer along intermittent streams. Section 15, Waiver, of the CCO addresses adjustments, modifications, reductions or waivers of requirements of the ordinance, not compliance with the requirements of the ordinance, which is the purpose of the addition of new stream buffers. It is staff opinion this request should be denied.

Request B: The second part of the request is to reduce a 50' ephemeral buffer to 30', as provided under the CCO and based on drainage areas depicted on the Ephemeral B Exhibit in the request. The original Briar Chapel Stream Buffer Map (attachment #1 and completed by John R. McAdams Company) shows the drainage area for this stream as 25+ acres. The information provided with this request to reduce the buffer width shows the drainage area for the stream at 19.94 acres. No explanation was given for the discrepancy in drainage area size. Staff thinks a difference of 5+ acres is significant and requires an explanation comparing the original determination by John R. McAdams Company and the new one from McKim and Creed.

Additionally, the request does not acknowledge that the protected buffer of ephemeral B has been impacted with the unauthorized installation of a road culvert (see attachment #3). The 10' no-build buffer of an adjacent stream has also been impacted with the unauthorized installation of a road culvert. Staff proposed a solution to the applicant that involved submitting a waiver request for these impacts to remain in the buffer and 10' no-build area; however, the applicant did not submit the request.

One of the cornerstones of the 2012 conditional use permit application was that the applicant did "not seek to change or reduce the buffers originally approved..." If the applicant is not comfortable with the drainage area calculations in the 2004 application submittal it calls into question all of the drainage calculations in areas that have previously received final plat approval. It is staff opinion this request should be denied.

Request C: The third request is to eliminate a portion of an ephemeral buffer. The original Briar Chapel Stream Buffer Map shows the drainage area for this stream as 10-25 acres. The information provided with this request to partially eliminate a section of the buffer shows the drainage area for this stream at 6.41 acres. No explanation was provided for the discrepancy in drainage area size. It is staff opinion that a difference of 3.5+ acres is significant and requires an explanation comparing the original determination by John R. McAdams Company and the new one from McKim and Creed.

The same concerns regarding statements in the 2012 conditional use permit application for request B also apply to this request. It is staff opinion this request should be denied.

Recommendation:

Planning staff recommends denial of the waiver request due to statements provided in the 2012 conditional use permit application regarding protection of previously approved buffers, inadequate information provided regarding the new stream determinations, and no information provided regarding the original stream determinations.

