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Request by NNP-Briar Chapel, LLC for First Plat review of a Conservation Subdivision for U. S. Steel Tract, Parcel #2177, consisting of 127 lots on 131.38 acres, located off Briar Chapel Parkway/Cliffdale Road, Baldwin Township.

..ABSTRACT

Action Requested:

Request by NNP-Briar Chapel, LLC for First Plat review of a Conservation Subdivision for U. S. Steel Tract, Parcel #2177, consisting of 127 lots on 131.38 acres, located off Briar Chapel Parkway/Cliffdale Road, Baldwin Township.

Introduction & Background:

Zoning: R-1

Watershed District: WSIV-PA Jordan Lake Buffer Area

Water: Public, Chatham County

Sewer: Private WWTP – Briar Chapel

Within 100 year flood: Yes, portion in zone AE

The subdivision request is reviewed under the current Subdivision Regulations, Watershed Protection Ordinance, Soil Erosion & Sedimentation Control Ordinance, Stormwater Management Ordinance and all ordinances and regulations regarding subdivision and development of land. The request is a stand-alone subdivision and not part of the Briar Chapel compact community. The subdivision name will be determined at a later date. A public hearing on the request is required per the Subdivision Regulation, Section 5.2 C (4)(a) “During a First Plat review, the first Planning Board meeting shall include a Public Hearing to receive comment on the proposed subdivision.” Item (b) states “Following the Public Hearing, the Planning Board shall review the proposal, staff recommendation and public comments and indicate their recommendation for approval, disapproval or approval subject to modifications. If the Board recommends disapproval or approval subject to modifications, the necessary reasons or modifications will be specified in the minutes of the meeting.” The Board of Commissioners has a maximum of 65 days from the official submission date to act on the proposal.

Discussion & Analysis:

The developer is requesting First Plat approval of a Conservation Subdivision to consist of 127 lots on 131.384 acres. Section 7.7 of the Subdivision Regulations,

Conservation Subdivision – Alternative Standards for Development states in part “As an alternative to conventional layouts, Chatham County encourages the preservation of large, contiguous blocks of land.....When a project voluntarily preserves Conservation Space in accordance with this Section, a project can increase the number of units that would be allowed on the overall property by ten (10) percent.

Calculations of the density bonus shall be based on the applicable underlying land use regulations(s) dictating allowable development density.” Section 7.7 J. states in part “conservation subdivisions proposed for the purposes of sustaining existing on-site bona fide agricultural operations are entitled to a five (5) percent increase in permitted density (this in addition to the ten (10) percent density bonus)...” Please read the entire Section 7.7, Items A – N for a complete understanding of Conservation Subdivisions. Also, please refer to your copy of the **Chatham County Conservation Subdivision Guidelines for Conservation Space Selection** or to the copy on the Planning Department webpage under Subdivision. A Conservation Subdivision requires that a minimum of 40% of the project area be retained as Conservation Space. A minimum of 80% of such Conservation Space shall be Natural Space and a maximum of 20% of the Conservation Space may be Open Space.

Density Calculations: The application states that “The Application seeks the ten percent (10%) standard density bonus for Conservation Subdivisions as well as the additional five percent (5%) Agricultural Preservation Density Bonus (the “Agricultural Bonus”). The land required to be protected within a Conservation Subdivision under other regulatory provisions, i.e. riparian buffers and floodplain, is 30.27 acres per the application. This amount (30.27 acres) was deducted from the total acreage of 131.384 acres to arrive at the net land available of 101.4 acres. Of the 101.4 acres available for development, 53.4 acres will be in Conservation Space with approximately 42 acres in Natural Space and 11 acres in Open Space. See the site plan for the breakdown and location of the Conservation Space. The area set aside for Conservation Space meets the requirement that 40% of the project area be retained as Conservation Space. See the last page of Tab 9 of the application booklet for the density calculation sheet. With a 10% increase in lots allowed in a Conservation Subdivision and the 5% increase in lots for the purposes of sustaining existing on-site bona-fide agricultural operations the number of lots calculated to be allowed is 127. The developer has provided two plans, one for 126 lots and one for 127 lots due to a small wetland feature that may or may not require a riparian buffer. This will be determined prior to Construction Plan submittal. Staff notes are based on 127 lots.

Agricultural Preservation Density Bonus: The application materials submitted indicate that the prior use of the property was for timber management and that a portion (Natural Space) will continue to be under a timber management plan. The applicant submitted documentation that the project qualifies for the agricultural preservation density bonus of a five (5) percent increase in permitted density (this in addition to the ten (10) percent density bonus). In the application materials under Section 3.3, Land Use, the Environmental Impact Assessment, states “The Parcel 2177 site itself is all forested; it appears to have been managed for timber production for the last 50 years.” The Draft Conservation Space Management Plan, Tab 9, Introduction, states “In

addition to being a Conservation Subdivision, the project will also sustain a bona fide timber management area within the Natural Space. The immediate prior owners of the land managed the property for timber.” The Subdivision Regulations Section D, Permitted Uses of Conservation Space, states in Item (2), Agriculture, “Existing and ongoing bona fide agriculture, horticulture, or silviculture, provided that all applicable best management practices are used to minimize environmental impacts”. Attachment # 2 is a letter from Matt Thuman, Timber Management Agent for US Steel, confirming that the property has been under a continuous timber management plan up until the time the property was purchased by NNP-Briar Chapel, LLC.

Natural Space: 80% of the Conservation Space is required to be Natural Space. The Conservation Space Guidelines states “Natural space is unimproved land in its naturally occurring state, or preserved to regenerate to its naturally occurring state, unaltered by human activity, and preserved to maintain or improve the natural, scenic, ecological, cultural, hydrological, or geological values of an area.” As stated previously, the total Conservation Space will be 53.4 acres with 42 acres in Natural Space. This meets the 80% requirement. The Natural Space has been designated by the applicant as the area to be under a timber management plan. The draft Conservation Space Management Plan states Under Management Plan, “The Natural Space within the project will not be developed (except for uses allowed under section 7.7D of the Subdivision Ordinance) and will be subject to timber management in accordance with a forestry management plan to be developed by a North Carolina registered forester.” All impacts within riparian buffers associated with the Conservation Subdivision are subject to the full provisions of the Watershed Protection Ordinance. Forestry practices are allowed within Natural Space, excluding riparian buffers and flood area, provided such practices are conducted in accordance with a Forestry Management Plan. Timbering is not allowed within any riparian buffers or floodable area. After deducting the area within the riparian buffers and flood plain, which is 30.27 acres, the area remaining that could be timbered is approximately 11.73 acres. There are no guidelines in Section 7.7(J) regarding the acreage required to qualify for an agricultural preservation density bonus.

The EIA states under the Executive Summary, “As allowed by Section 7.7 D (6) of the Subdivision Ordinance, the developer will seek authorization from the Chatham County Department of Environmental Quality to utilize portions of the Natural Space for reclaimed water (spray) infrastructure”. Under Item 3.3 of the EIA, Land Use, it is stated “Some of the Natural Space may be used in the future for approved and permitted spray area.” Section 7.7 D (6) of the Subdivision Ordinance, Permitted Uses of Conservation Space, states “Water, Septic, and Sewer Systems.....Shared water, septic and sewer infrastructure is allowed in Open Space, but, not in Natural Space areas unless approved by the Environmental Quality Department”. Staff has met with Dan LaMontagne, Environmental Quality Director and staff to discuss allowing spray

irrigation within the Natural Space that has been designated as a timber management area. Section 7.7(J) of the Subdivision Regulation states “Upon completion of such agricultural uses, all lands previously occupied by those uses shall be preserved in perpetuity as natural space, and shall not qualify for future development”. It is the opinion of EQ staff and Planning staff that the use of land for spray irrigation is considered development and therefore is not allowed on land designated as a bona fide agricultural operation.

Open Space: A maximum of 20% of the Conservation Space may be Open Space. Of the 53.4 acres designated as Conservation Space, approximately 11 acres will be Open Space which meets the requirement that no more than 20% of the Conservation Space can be Open Space. The ‘Guidelines’ state “Open space, as defined in the Subdivision Ordinance, allows amenities such as recreational uses and some non-intrusive common uses (e.g. when land application is not the preferred means of wastewater disposal, community septic systems are allowed in Open Space areas). Reclaimed water (spray) infrastructure is allowed in Open Space. Open space should be located as close to proposed development as practicable, taking into account considerations such as public safety and soil suitability.” See Section 7.7 (D), Items 1 – 7 for allowed uses in Open Space related to Conservation Subdivisions. All land disturbing activities associated with the Conservation Subdivision are subject to the full provisions of the Soil Erosion and Sedimentation Control Ordinance, regardless of the designated use or status of a given area.

Environmental Impact Assessment: Due to the number of lots, an Environmental Impact Assessment was required to be submitted and peer reviewed. The EIA was prepared by Wetland and Natural Resource Consultants, Inc. and peer reviewed by Froehling and Robertson, Inc. The EIA can be reviewed under Tab 4 of the application booklet along with comments from the peer reviewer and response from Lee Bowman. In the **Conservation Subdivision Guidelines for Conservation Space Selection**, Item 2, two maps are required to be submitted, a Fragmentation Map and an On-site Inventory Map. The Fragmentation map illustrates the project site and all land within one mile of its boundaries and is designed to assist the applicant in deciding where Conservation Space should generally be located to create connections with existing Natural Space, or allow future Natural Space connections on adjacent properties. The On-site Inventory Map is used as the “primary decision-making tool for the applicant in selecting specific areas to include in Conservation Space, and the County in issuing approvals. Data required to generate this map can be found on the Chatham County GIS and on-site investigations. This can include information on existing land cover, proposed natural space preservation locations and acreages, topography, locations of streams, wetland, floodplains, and required buffers, adjacent natural areas, and cultural and historic resources. Please review the ‘guidelines’, Item 2.1 and 2.2. The applicant

submitted the maps to Environmental Quality staff to review for compliance with the guidelines and they have been approved.

Water Features: The water features are shown on the First Plat and in more detail on the map labeled 'Typical Buffer Widths'. The features include perennial and intermittent streams, wetlands, and floodable area. As stated previously in the Natural Space information, all impacts within riparian buffers associated with the Conservation Subdivision are subject to the full provisions of the Watershed Protection Ordinance.

Trails and Greenways: The trail /greenway plan is shown on the First Plat. The trails are shown located within the protected riparian buffer areas which are subject to the Watershed Protection Ordinance and have additional standards because the property lies within the Jordan Lake watershed. Natalie Landry, Environmental Inspector with the Environmental Quality Department has reviewed the plan and stated "The Watershed Ordinance lists Trails/Greenways in the buffer as an Allowable use meaning the use may proceed provided that there are no practical alternatives. These uses require a Buffer Authorization from the county. Environmental Quality staff recommends that the trails/greenways be removed from the buffer unless it cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer." It is Planning staff's recommendation that the developer works with Environmental Quality staff prior to Construction Plan submittal for compliance with the riparian buffer requirements of the Watershed Protection Ordinance and obtain any buffer authorizations necessary. A revised trail/greenway map is to be submitted along with the Construction Plan.

Access: The development will be accessed by public, state maintained roadways. Section 7.7 (M) Public and Private Road Standards states in part that "All conservation subdivisions with proposed roads and rights-of-ways shall follow the standards in Section 7.2." Section 7.2 (C), Design Standards for Roads states in part "Except as specified in these regulations all streets in subdivisions shall be public. The design and construction of all public streets and roads,shall conform to the respective current standards of the North Carolina Department of Transportation Division of Highways, except as provided. The minimum cul-de-sac pavement radius for curb and gutter section and shoulder section is 40 feet. The minimum right-of-way radius for curb and gutter section and shoulder section is 55 feet. The roadway into the cul-de-sac shall remain unobstructed. Thomas Bender, Chatham County Fire Marshal has reviewed the cross section of the proposed roadway provided by the applicant and has stated "At the dimensions presented, if parking was restricted to one side of the road it would leave approximately eighteen (18) feet of unobstructed road travel for emergency access. It appears to me that would meet the requirements and intent of the NC State Fire Prevention Code, the NCDOT requirements, and any other ordinances that may be applicable."

Several of the road names shown on the First Plat site plan have been changed. See the site plan dated April 22, 2014 for the correct road names. Cliffdale Road will be extended from Briar Chapel into the project. The other road names will be Old Valley Road, Post Oak Road, Foxbrook Place, Rosebank Drive, Whispering Wind Drive, Ashwood Drive, and Birch Hollow Road. These roads will all be public, state maintained. As shown on the First Plat, a couple of the roadways will extend into another phase of the Briar Chapel Development at a future time. The Emergency Operations Office has approved the names stated above for submittal to the Board of Commissioners for approval.

Water / Sewer: public water will be provided by Chatham County and sewer will be provided by the Briar Chapel WWTP.

Lot size/ Use: The typical residential lot size will be 60 x 125 /.17 acre as shown on the Typical Lot Plan included in the application booklet. The lots are clustered together to provide area to be set aside as the Conservation Space. There are two lots designated as 'Recreation Area'. Only one lot will be utilized as the Recreation Area. The other lot will be designated as 'common space'. The use of the recreation lot has not yet been determined. There are two lots designated as Pump Station lots. Only one (1) lot will be utilized with the other being designated as 'common space'.

Phasing: The applicant has provided a phasing schedule in the application booklet stating that Phase 1 will consist of 63 lots with final plat application submittal by December 31, 2019 and Phase 2 will consist of 63 lots with final plat application submittal by December 31, 2025 which is the same as the 2012 revisions to the Conditional Use Permit for the Briar Chapel Compact Community which extended the final plat submittal deadline to December 31, 2025.

Historical Structures: Per the EIA, no historic structures are documented by SHPO within the proposed site and none were observed.

Ownership / Management of Conservation Space: Section 7.7 (F) of the Subdivision Regulations requires that the applicant identify the current and intended future owners(s) of the Conservation Space and who will be responsible for maintaining the area / facilities. Per the Draft Conservation Management Plan the Natural Space and the Open Space will be maintained by the "applicable homeowners association". Section 7.7 (G) requires that a management plan for the Conservation Space be submitted to and approved by the County. A copy of the draft plan has been provided by the applicant under Tab 9 in the application booklet. Per Section (G) "Upon initial approval of the management plan by the County, changes to the plan shall be allowed only when approved by the County Board of Commissioners." Section (H) requires that the Conservation Space shall be protected in perpetuity by a binding legal document

that is recorded with the deed upon review and approval by the County. The applicant has provided under Tab 9 a draft copy of the deed which will convey the Conservation Space to the third party (homeowners association) and has included a draft copy of the Declarations of Covenants and Restrictions. Prior to final plat recordation, the county attorney shall review and approve the form of the Management Plan, the Declaration of Covenants and Restrictions, and the deed for the Conservation Space.

Construction Plan review: Section 5 D of the Subdivision Regulations states “The approved First Plat will be used to obtain any additional permits (Local, State and/or Federal) or approval letters that are required to obtain a valid Construction Plan. Approval is done by County Staff unless staff deems there are significant changes from the approved First Plat. The Staff shall approve the submitted Construction Plan or require approval of the Construction Plan by the Board of Commissioners if the following significant changes from the first plat are present:

- Increase in the number of lots by five percent (5%) or more
- Increase in the number of stream crossings
- Number of road lanes increases on any segment except where providing for turning, acceleration or deceleration lanes pursuant to recommendation of NCDOT
- Linear feet of road increases by five percent (5%) or more
- Discovery of historically-significant structures or cemeteries after First Plat that may alter the overall design or layout of the subdivision.

If staff requires review of the construction Plan by the Board of Commissioners due to significant changes, the Planning Board and Board of Commissioners will review the plan.

A Public Hearing was held at the Planning Board meeting prior to discussion by the Board. Nick Robinson spoke on behalf of the applicant, NNP-Briar Chapel. See Mr. Robinson’s comments posted on the Planning Department webpage. No one else spoke on the request. The Planning Board discussed the request and had questions regarding the timber management plan, the ownership of the conservation area, and the draft Conservation Space Management Plan. Mr. Robinson stated that staff would be furnished a copy of a new timber management plan prepared by a North Carolina registered forester; that the homeowners association for the development would be the owner(s) of the Conservation Space; that the Management Plan and the Permanent Conservation Easement would be reviewed and approved by the County Attorney prior to recordation of the Conservation Easement in the Office of the Register of Deeds. Mr. Robinson stated that the Conservation Easement would protect the Conservation Space in perpetuity as required by the Subdivision Regulations. The Planning Board

complimented the developer on using the Conservation Subdivision alternative and the plan in general.

Recommendation:

The Planning Board (by unanimous vote) and staff recommend granting approval of the road names Old Valley Road, Post Oak Road, Foxbrook Place, Rosebank Drive, Whispering Wind Drive, Ashwood Drive, and Birch Hollow Road and approval of the request for First Plat approval of Conservation Subdivision for U. S. Steel Tract, Parcel #2177 with the following conditions:

1. The Timber Management Plan shall exclude timbering within riparian buffers and flood plain areas. A copy of the Timber Management Plan shall be provided to staff prior to final plat recordation.
2. The developer shall work with the Environmental Quality staff prior to Construction Plan submittal for compliance with the riparian buffer requirements of the Watershed Protection Ordinance and obtain any buffer authorizations necessary to develop the Trail / Greenway Plan. A revised trail/greenway map is to be submitted along with the Construction Plan.
3. Prior to final plat recordation, the county attorney shall review and approve the form of the Management Plan, the Declaration of Covenants and Restrictions, and the deed for the Conservation Space.