

A RESOLUTION APPROVING A REVISION TO A CONDITIONAL USE PERMIT  
REQUEST

BY NNP-Briar Chapel, LLC

**WHEREAS, NNP-Briar Chapel, LLC** has applied to Chatham County for a revision to an existing conditional use permit on Parcel Nos. 79946, 88052, 87621, 1184, 2617, 18911, 82827, 82828, 82829, 86288, 86790, 87080, 87090, 87852, 2611, 87089, 87024, 80420, 82826, 2757, 2714, 88053, 87088, 80418, 79184, 85632 located in Baldwin and Williams Townships, to modify certain conditions and revise the approved site plan, and;

**WHEREAS,** the Chatham County Board of Commissioners having considered all of the evidence in the whole record and based upon the competent, substantial and material evidence in the record, including, without limitation, the Applicant's written materials, all of which are incorporated herein by reference, hereby finds as follows:

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 also providing lots to the County to be developed for moderate income housing,~~ [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](#)~~has provided~~ 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.

NOW, THEREFORE, BE IT RESOLVED BY THE CHATHAM COUNTY BOARD OF COMMISSIONERS, as follows:

That a Conditional Use Permit be, and it hereby is, approved, as revised, for the reasons hereinabove stated subject to the additional stipulations and conditions set forth hereinafter; and

BE IT RESOLVED FURTHER, that the Chatham County Board of Commissioners hereby approves the application for the revised conditional use permit in accordance with the revised master plan, attached hereto as Exhibit A, submitted by the Applicant, NNP-Briar Chapel, LLC, and incorporated herein by reference with specific conditions as listed below;

### **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~~<sup>389</sup>

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) Fire Station/EMS Site: Applicant has agreed to and shall tender to the County a special warranty deed 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, among other things; (1) a covenant not to exceed 24% maximum impervious surface area on the site; (2) a provision allowing a septic system but 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 and Design Review Committee approval; ~~and~~ (4) a covenant restricting use of the parcel to Fire Station/EMS uses; and (5) a covenant providing that if the Fire/EMS structure is not fully constructed within ten (10) years of the date of this permit, ownership of the Fire/EMS site, free and clear of any liens or encumbrances, shall revert to Applicant or its successors and assigns. North Chatham Fire Department shall have ~~seven~~ five (5) years from the date of approval of this amendment to

notify Briar Chapel of its intent to use the reserved sewer capacity. If the County fails to record the deed to said building site within one year of the date the deed for said building site is tendered to the County, the Conditional Use Permit obligation to donate 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 is in process of being~~ 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.~~The County and the Applicant have agreed that, in lieu of contributing and preparing a library site within the development, the Applicant shall be required to make an \$80,000 in lieu payment to the County and the County will determine as to how to use that resource. Said payment shall be made within forty-five (45) days of final, unappealable approval of this amendment. Upon delivery of said payment to the County, condition 14(f) shall be deemed 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 through~~ (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, ~~and as an approximately equivalent alternative to and in lieu of the housing standards for Moderate Income persons set forth in Option A of the Compact Community Ordinance, the developer shall contribute 2.5% of the approved lots in the overall development, or each phase if developed in stages, for ultimate sale as directed by the County to persons or families whose income is 80% or less of the Area Median Family Income standard by family size and~~ 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.”

BE IT FURTHER RESOLVED, that the Board of Commissioners of the County of Chatham hereby approves the application for a conditional use permit in accordance with the plans and conditions listed above.

Adopted this, the \_\_\_\_ day of \_\_\_\_\_ 20142

By:

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Brian Boek~~Walter Petty~~, Chair

Chatham County Board of Commissioners

ATTEST:

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Lindsay Ray~~Sandra B. Sublett, CMC, NCCCC~~, Clerk to the Board

Chatham County Board of Commissioners