

CHATHAM COUNTY PLANNING BOARD
MINUTES
December 1, 2009

The Chatham County Planning Board met in regular session on the above date in the classroom of the Henry H. Dunlap Building in Pittsboro, North Carolina. Members present were as follows:

Present:

Jim Hinkley, Chair
Warren Glick, Vice-Chair
B.J. Copeland
Karl Ernst
James Elza
Barbara Ford
Judy Harrelson
Timothy Keim
Susan Levy
Delcencia Turner

Absent

Bill Sommers

Planning Division:

Jason Sullivan, Acting Planning Director
Benjamin Howell, Planner
Angela Birchett, Zoning Administrator
Lynn Richardson, Subdivision Administrator
Kay Everage, Clerk to the Board

Others Present

Tom Glendinning
Parliamentarian to the Board

- I. CALL TO ORDER: Chair Hinkley called the meeting to order at 6:30 p.m.

Board Quorum:

The clerk stated that a quorum was present to begin the meeting; and that B.J. Copeland had notified her earlier today that he would be arriving late. Chair Hinkley stated that Bill Sommers was out of town.

- II. APPROVAL OF AGENDA: Mr. Glick made a motion; seconded by Ms. Harrelson to approve the agenda as submitted. There was no discussion and the motion passed unanimously.

- III. APPROVAL OF CONSENT AGENDA:

A. Minutes: Consideration of a request for approval of the November 3, 2009 Planning Board minutes.

Ms. Harrelson made a motion; seconded by Ms. Ford to approve the consent agenda as submitted. There was no discussion and the motion passed unanimously.

- IV. PUBLIC INPUT SESSION: Fifteen-minute time of public input for issues **not on agenda**. Speakers limited to three minutes each.

There were no requests to speak at this time.

V. FINAL PLAT APPROVAL:

A. Request by Keith Hurand, Sr., Vice President on behalf of NNP Briar Chapel, LLC for subdivision final plat approval of "Briar Chapel, Phase 4, Section 4", consisting of 37 lots on 13.13 acres located off Briar Chapel Parkway, Baldwin Township.

Ms. Richardson reviewed the agenda notes for this request.

Board discussion followed. Some specifics discussed were:

- water quality pond (1 acre in surface area)
- treatment plant
- spray irrigation (to begin Spring 2010)
- affordable housing
- topo map – presented at preliminary plat (topo lines not required to be shown on final plat)
- 50 homes currently occupied
- 401 inspections – completed and approval received June 2009 from Corp and State
- perennial stream – 100 ft. buffers proposed
- emergency provisions, i.e., police, fire
- municipal incorporation

Mr. Keim referenced comments from Bill Sommers' E-mail dated 11-30-09 (distributed to the Board earlier tonight) concerning spraying of the treated effluent with regards to:

- tentative estimated spraying schedule based on estimated usage, and
- how often the spray would be applied and in what areas.
- When would the spray fields be platted and what entity would be responsible for the maintenance of the fields.

Bill Mumford was present representing Briar Chapel.

There were no requests from citizens to speak regarding this application.

Motion to approve:

Mr. Glick made a motion; seconded by Mr. Ernst to grant final approval of "Briar Chapel, Phase 4, Section 4" as submitted and as recommended by planning staff, with the following condition:

1. The final plat shall not be recorded until the county attorney has approved the financial guarantee.

Discussion followed regarding the spray area. Mr. Elza stated that this area needs to be platted and turned over to the Homeowners Association; and that the sewer system is not complete without it. Mr. Mumford explained that this is on record with an easement; that the easement runs with the land; and that the operating entity still has the ability to spray. Mr. Ernst asked if Mr. Elza's

concerns were substantiated by Law, by regulations by Chatham County, or other. Mr. Elza stated that he is referring to a complete sewer system functioning as the plat has specified that includes a spray irrigation area that belongs to the homeowners; and that there is none.

Call the question:

Mr. Ernst called the question; seconded by Mr. Keim. It was unanimous to end the discussion.

Vote on above motion for approval:

The motion passed 8-1 to grant final approval of "Briar Chapel, Phase 4, Section 4" as submitted and as recommended by planning staff; with all Board members present voting in favor of the motion; except Mr. Elza who voted against.

The condition is as follows:

- The final plat shall not be recorded until the county attorney has approved the financial guarantee.

B. Request by Windjam 23, LLC for subdivision final plat approval of "The Hamptons Summit" formerly (The Hamptons – Phase II), consisting of 49 lots on 93.27 acres, located off S. R., 1700, Mt Gilead Road, Baldwin Township.

Ms. Richardson reviewed the agenda notes for this request. She stated that this is the last phase to be approved in the subdivision (a total of 89 lots); and that perpetual septic sites are noted on the plat as "Septic Easements" but that wording would be revised on the final plat to read, "Perpetual Septic Areas". Ms. Richardson referenced Mr. Sommers' concern noted in his E-mail referenced above regarding:

- The subject property drains to a portion of the Haw River that may contain an aquatic species of concern, and
- Since the sewerage is via individual septic systems, who is generally responsible for its continued operation, i.e. property owners, Windjam23, LLC, or homeowner.

Ms. Richardson stated that the Environmental Review Board [ERB] determined that this land does drain into the Haw River; that the Cape Fear Shiner is within this area; and that NCDWQ and Corp of Engineers approved a request for an After the Fact permit with more impact on stream crossings than initially anticipated.

Board discussion followed. It was noted that all streams indicated on this property are intermittent streams with 50 foot buffers.

There were no requests from citizens to speak regarding this application.

Brad Hart, Engineer, Withers & Ravenel, 111 MacKenan Dr., Cary, NC, was present representing the applicant.

Member B.J. Copeland arrived at this time [7:16 p.m.].

Motion to approve:

Ms. Ford made a motion; seconded by Ms. Harrelson to grant approval of the road names *Citori Court and Mountaintop Circle*, and subdivision final plat approval of "The Hamptons Summit" with changes as noted below and as recommended by staff:

1. The final plat shall not be recorded until the county attorney has approved the financial guarantee.
2. The Mylar copy of the final plat shall read "Perpetual Septic Area" instead of "Perpetual Septic Easement".
3. The Mylar copy of the final plat shall show the extent of public and private storm drainage easements per NCDOT requirements.
4. A notation shall be placed on the Mylar copy of the final plat to clarify the shaded areas as match-lines for the various plat pages.

The motion passed 9-0-1 with all Board members present voting in favor of the motion; and Mr. Copeland abstaining (since he was not present for the entire review).

VI. ZONING AND ORDINANCE AMENDMENTS:

Items A. & B. from September 21, 2009 and November 16, 2009 Public Hearing:

- A. Request by Brian Sawyer for a conditional use rezoning on Parcel 82735, located at 525 Old Farrington Rd., Williams Township, from R-1 Residential to Conditional Use Neighborhood Business (CU-NB), on approximately 1.16 acres.

Ms. Birchett reviewed the agenda notes for this request. She stated that this would be a two part discussion; that review of the legislative rezoning application would be followed by the quasi-judicial conditional use permit request; and that staff recommends approval of this rezoning request from R-1 Residential to Conditional Use Neighborhood Business (CU-NB).

Chair Hinkley stated that the Board has heard this request at three separate public hearings and that many of the questions raised were answered.

Motion to temporarily table discussion:

It was the consensus of the Board to table discussion of this zoning request until after review of the following conditional use permit request. Mr. Glick made a motion; seconded by Mr. Keim to postpone making a decision on this request until after review of the conditional use permit request. There was no further discussion and the motion passed unanimously. See Board discussion under Item B. below.

*See motion to remove zoning request taken from table below under Item B discussion.

Continued discussion.

Motion to approve:

Mr. Copeland made a motion; seconded by Mr. Ernst to approve this rezoning request from R-1 Residential to Conditional Use Neighborhood Business (CU-NB) as submitted and as recommended by staff. Discussion followed. Chair Hinkley voiced concern that the property may need to have a light industrial zoning, i.e. building not in keeping with character of neighborhood, and increased traffic. The motion for approval passed 8-2-0 with all Board members present voting in favor of the motion; except Hinkley and Turner who voted against.

**At this time the Board reverted back to discussion of the conditional use permit request below.

B. Request by Brian Sawyer for a conditional use permit on Parcel 82735, located at 525 Farrington Rd., Williams Township, for multiple uses as stated in the application and as allowed in the Table of Permitted Uses for the Neighborhood Business District.

Ms. Birchett reviewed the agenda notes and the five required findings for this conditional use permit request. She reminded Board members that any new evidence or information not heard at the public hearings should not be discussed tonight. Ms. Birchett stated that staff recommends approval of this request with the eleven (11) conditions listed in tonight's agenda notes; and with one revision to condition #6 (change 24 months to read 12 months) as follows:

“A building permit on the primary structure shall be obtained; receive an approved passing inspection; and remain valid at all times within ~~24~~ **12** months of this approval or the conditional use permit becomes void;”

Board discussion followed. Some specifics reviewed were:

- storage of equipment and/or materials outside
- design of building not being in harmony with the surrounding properties
- traffic delays from pulling in and out of the property with a pickup truck pulling a trailer full of equipment
- why are two driveways needed
- number of parking spaces for the business use as well as the residential component
- time allowing for the beginning of construction before the permit would become void.

The Board supported allowing the use of Mr. Sawyer's current business practice as the only permitted use allowed on the property. It was noted that a revision to the conditional use permit is an option should the applicant or other occupant wish to seek a change in use/s.

Sue Gibbs, K & M Designs, 525 Old Farrington Road, and
Mark Ashness, P.E., CE Group, Inc., 1100 Regency Parkway, Cary, NC
were present representing the applicant.

Ms. Gibbs and Mr. Ashness addressed the above. The concerns were either satisfied or corrected through staff conditions. Mr. Ashness noted that the Leyland Cypress trees shown on the revised site plan were “bonus” trees to shield the parking lot areas; and that they were not a screening requirement. It was agreed that this type tree would be replaced with some other type as described by the Chatham County Appearance Commission.

Motion to approve:

Mr. Ernst made a motion; seconded by Ms. Levy to accept the recommendations of staff including the conditions; with amendment to condition #6 (changing the period from 24 months to 12 months as noted above with all other conditions as written). Mr. Sullivan suggested that the Board vote on the district request before voting on this conditional use permit application.

Motion withdrawn:

Following discussion, Mr. Ernst, by mutual agreement, withdrew his motion.

Remove Zoning proposal taken from the table:

Mr. Ernst made a motion; seconded by Mr. Keim to remove the zoning proposal taken from the table. There was no discussion and the motion passed unanimously. – *See continued discussion above under Item VI. A.

**Conditional Use Permit request discussion continued.

Motion to approve:

Mr. Ernst restated his motion that the application be approved with the recommendations of staff including the change to condition #6 (changing the period from 24 months to 12 months) and that all other conditions stand as written. Ms. Levy seconded the motion. There was no further discussion and the motion passed 9-1-0 with all Board members present voting in favor of the motion; except Mr. Glick who voted against. The conditions are as follows:

Site Specific Conditions:

1. The uses permitted with this conditional use permit application are limited to those of mixed use building that is limited to a contractor’s office with related storage and residential on the second story. Storage of materials and/or equipment is limited to internal storage only unless a revised site plan detailing a specified outside storage area and means of fencing and screening are provided and approved. This will result in an amendment to the conditional use permit.

Standard Site Conditions:

2. All parts of the application, notes, and approved recommendations as provided for and/or conditioned, are considered to be the standards as set forth and shall comply as stated. Changes or variations must be approved through the Planning Division or other approving board before any such changes can take place.

3. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Health Division, Stormwater Management, etc.) shall be obtained, if required, and copies submitted to the Planning Department prior to the issuance of the first building permit.
4. An “as-built” impervious surface calculation shall be submitted to the Planning Department prior to issuance of a certificate of occupancy.
5. Off-site improvements required by NCDOT or any other agency shall be constructed at no cost to Chatham County.
6. A building permit on the primary structure shall be obtained; receive an approved passing inspection; and remain valid at all times within 12 months of this approval or the conditional use permit becomes void; or from the time of the expiration of an appeal period or any court decision, whichever is later.

Standard Administrative Conditions:

7. Appeal - The County shall be under no obligation to defend any action, cause of action, claim, or appeal involving the decision taken herein. In the event a response is authorized by the County concerning this resolution, or any action to enforce the provisions hereof, the applicant, its successors or assigns shall indemnify and hold the County harmless from all loss, cost or expense, including reasonable attorneys fees, incurred in connection with the defense of or response to any and all known or unknown actions, causes of action, claims, demands, damages, costs, loss, expenses, compensation, and all consequential damages on account of or resulting from this decision..
8. Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspection, established from time to time.
9. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued determination with the plans and conditions listed above.
10. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
11. 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.

Break

A five-minute break was taken at this time [8:15 P.M.].

Items C. & D. from November 16, 2009 Public Hearing:

- C. Request by Kenneth Hoyle and Floyd Coleman for a conditional use rezoning on Parcel 2759, located at 9555 US 15-501 N, Baldwin Township, from R-1 Residential to Conditional Use Neighborhood Business (CU-NB), on approximately 2.285 acres.

Ms. Birchett reviewed the agenda notes for this request. She stated that staff recommends approval of the rezoning request to Conditional Use Neighborhood Business (CU-NB) as requested.

Motion to temporarily table discussion:

Ms. Harrelson made a motion; seconded by Ms. Turner to table discussion of this request until review of the Conditional Use Permit request below. There was no discussion and the motion passed 9-1-0 with all Board members present voting in favor of the motion; except Mr. Ernst who voted against.

*See conditional use permit discussion below (Item D.)

**Continued discussion of the rezoning request:

Motion to approve:

Mr. Copeland made a motion; seconded by Mr. Keim to approve the rezoning request from R-1 Residential to Conditional Use Neighborhood Business (CU-NC) as submitted and as requested by staff. There was no further discussion and the motion passed 8-2-0 with all Board members voting in favor of the motion; except Ms. Turner and Mr. Elza who voted against.

*The Board reverted back to the Conditional Use Permit request (Item D. below).

- D. Request by Kenneth Hoyle and Floyd Coleman for a conditional use permit on Parcel 2759, located at 9555 US 15-501N, Baldwin Township, for multiple uses as stated in the application and as allowed in the Table of Permitted Uses for the Neighborhood Business District.

Ms. Birchett reviewed the agenda notes and the required five (5) findings for this request. She stated that staff recommends reducing uses for the property to those that are "in kind" from the Table of Permitted Uses that include only: Antique shops; Art Supply Retail Sales; Gift Shops; Interior Design Shops; Mixed Use Building; Office - business, professional and governmental; Retail stores and personal service shops similar to those listed dealing in direct consumer and personal services; and Secretarial and job service offices; that currently there is an approved Conditional use Permit on the property that allows an antique shop only; that the applicant is seeking some additional uses for flexibility with the property; and that staff recommends approval of the application with the nine (9) conditions as listed in tonight's agenda notes.

Kenneth Hoyle, applicant, was present. Mr. Hoyle stated that he accepted the permitted uses proposed by staff.

Board discussion followed regarding permitted uses and traffic. It was noted that any alteration of the approved permitted use would revert back through the conditional use permit process.

Remove Zoning proposal taken from the table:

Mr. Keim made a motion; seconded by Mr. Ernst to un-table review of the zoning request. There was no further discussion and the motion passed unanimously.

**See continued discussion of the rezoning request above under Item C.

*Conditional Use Permit review continued.

Mr. Hoyle stated that the applicants are satisfied with staff conditions

Motion to approve:

Mr. Copeland made a motion; seconded by Mr. Keim to grant approval of the conditional use permit application as recommended by staff. Discussion followed regarding the permitted uses of the permit. The motion passed 7-3-0 with Copeland, Keim, Hinkley, Ernst, Ford, Harrelson and Levy voting in favor of the motion; and Glick, Elza and Turner voting against.

The nine (9) Conditions are as follows:

Site Specific Conditions:

1. The uses permitted with this conditional use permit application are limited to those of:
 - a. Antique shops; Art Supply Retail Sales; Gift Shops; Interior Design Shops; Mixed Use Building; Office - business, professional and governmental; Retail stores and personal service shops similar to those listed dealing in direct consumer and personal services; and Secretarial and job service offices.

Should any additional uses not specifically noted be desired, a revision to this conditional use permit will be required.

2. The proposed use of the property shall be consistent with the site plan included with the application and any changes shall require an amendment to the conditional use permit.

Standard Site Conditions:

3. All parts of the application, notes, and approved recommendations as provided for and/or conditioned, are considered to be the standards as set forth and shall comply as stated. Changes or variations must be approved through the Planning Division or other approving board before any such changes can take place.

4. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Health Division, Stormwater Management, etc.) shall be obtained, if required, and copies submitted to the Planning Department prior to the issuance of the first building permit.

Standard Administrative Conditions:

5. Appeal - The County shall be under no obligation to defend any action, cause of action, claim, or appeal involving the decision taken herein. In the event a response is authorized by the County concerning this resolution, or any action to enforce the provisions hereof, the applicant, its successors or assigns shall indemnify and hold the County harmless from all loss, cost or expense, including reasonable attorneys fees, incurred in connection with the defense of or response to any and all known or unknown actions, causes of action, claims, demands, damages, costs, loss, expenses, compensation, and all consequential damages on account of or resulting from this decision..
6. Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspection, established from time to time.
7. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued determination with the plans and conditions listed above.
8. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
9. 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.

VII. NEW BUSINESS:

No reports were submitted.

VIII. STAFF ITEMS:

A. Planning Director Staff Report

1. *Minor Subdivisions Update*

Mr. Sullivan stated that an updated minor subdivision list was included in tonight's agenda packet. He explained that a minor subdivision consists of 5 (or less) residential lots.

IX. BOARD MEMBER ITEMS:

1. *Joint Chatham/Cary Planning Meetings*

Chair Hinkley encouraged Board members to attend these meetings. He stated that there has been much public participation; that staff provided stations at the meetings and addressed public questions and/or concerns of the proposed master plan; and that from his perspective there was generally positive response. Mr. Sullivan stated that there had been various ranges of comments received; and that a spreadsheet would be compiled of comments received and provided to the Board after the December 11 response deadline.

2. Planning Staff Budget

Mr. Sullivan stated that there was no additional information at this time.

3. 15-501 Sidewalk

Mr. Howell stated that bid openings are scheduled this Thursday (Dec. 3); that the Commissioners would pre-award the contract on December 14; that at this point NCDOT would have to concur; that the construction contract would have to be fully executed by December 31, 2009; and that if all deadlines are met the contractor could begin work as early as January 1, 2010 with a completion date of June 15, 2010. Mr. Howell provided funding/expense totals as follows:

<i>Stimulus funds received</i>	<i>\$245,000</i>
<i>Engineering design work - spent so far</i>	<i>21,000</i>
<i>Last estimate for construction of sidewalk</i>	<i>174,000</i>
<i>Landscaping</i>	<i>19,000</i>
<i>Estimated total project</i>	<i>\$215,000</i>
	<i>\$230,000</i>

4. Corridor Joint Task Force [County Commissioners and Planning Board]

Mr. Elza stated that it was decided (with consensus of the Planning Board) that we would wait until the Plan is complete; that we would then tailor the overlay to the Plan so that sidewalks are not needed everywhere; that the first overlay would probably be the Chatham/Cary area; and that meetings of the Joint Task Force are complete.

5. Board Collaboration Meeting

Mr. Sullivan stated that this meeting is scheduled December 10 from 6:00 p.m. to 8:00 p.m. in the auditorium of the Agriculture Building in Pittsboro, NC; and that the chair and vice-chair from various advisory boards would be attending this meeting to discussion different items.

6. Land Use Conservation Plan

Chair Hinkley stated that during last month's Planning Board meeting, Commissioner Lucier gave a brief presentation regarding the Land Use Plan; that the Planning Board has been charged by the Commissioners to update the Land Use Conservation Plan; that Commissioner Lucier suggested that the Planning Board establish a subcommittee; that the Board is now awaiting the proposal from Cynthia Van Der Wiele, Director of the Sustainable Communities Development Department, relative to which direction the Planning Board is to take and who should serve on the subcommittee; that it is hopeful that Ms. Van

Der Wiele will address the Board at the January 2010 Planning Board meeting; and that Commissioner Lucier is eager to get this work done.

*7. Approve 2010 Planning Board Calendar
[Meetings and Deadlines]*

Ms. Harrelson pointed out the following scheduled dates:

- July 6 - two days after 4th of July Holiday
- September 7 - one day after Labor Day Holiday

Mr. Copeland noted:

- November 2 - Election Day

Motion:

Mr. Elza made a motion; seconded by Mr. Ernst to change the above meeting dates as follows:

- July 6 - to July 13
- September 7 - to September 14
- November 2 - to November 9

Discussion followed. Ms. Ford suggested moving the May meeting date (since this is a Primary Election Day) as follows:

- May 4 - to May 11

Mr. Elza restated his motion; seconded by Mr. Ernst, to revise the above dates [including May] as follows:

- May 4 - to May 11
- July 6 - to July 13
- September 7 - to September 14
- November 2 - to November 9

The motion passed 9-1-0 with all Board members present voting in favor of the motion; except Ms. Levy who voted against. Ms. Levy stated that she could not attend additional meetings on the second Tuesday of the month due to a prior commitment.

Karl Ernst left the meeting at this time (9:10 p.m.).

Motion to override the above motion:

Mr. Glick made a motion to override the above motion and change the calendar to accommodate Ms. Levy (by moving at least two (2) of the above dates to a Wednesday). Mr. Sullivan reminded Board members that sometimes there are scheduled church meetings on Wednesday nights.

Judy Harrelson left the meeting at this time (9:17 p.m.).

Consensus:

Following discussion, it was the consensus of the majority of the Board to revise the following meeting dates:

May meeting from the second Tuesday (May 11)
to Monday, **May 3**

November meeting from the second Tuesday (November 9)
to Monday, **November 1**

July meeting remain as rescheduled above
for the second Tuesday (**July 13**), and the

September meeting remain as rescheduled above
for the second Tuesday (**September 14**).

The clerk stated that she would revise the calendar and forward copies to Board members within the next few days and also post on the website.

- X. ADJOURMENT: There being no further business, the meeting adjourned at approximately 9:30 p.m.

James R. Hinkley, AICP, CZO, Chair

Date

Attest:

Kay Everage, Clerk to the Board

Date