

**CHATHAM COUNTY PLANNING BOARD
MINUTES
October 5, 2010**

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:

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

Absent

Planning Division:

Jason Sullivan, Planning Director
Lynn Richardson, Subdivision Administration
Kay Everage, Clerk to the Board

Others Present

Tom Glendinning
Board Parliamentarian

- I. CALL TO ORDER: Chair Elza called the meeting to order at 6:33 P.M.
- II. DETERMINATION OF QUORUM: The clerk stated that a quorum was present to begin the meeting [10 Board members were present at this time].
- III. APPROVAL OF AGENDA: Mr. Hinkley made a motion; seconded by Ms. Turner to approve the agenda as submitted. There was no discussion and the motion passed unanimously.
- IV. APPROVAL OF CONSENT AGENDA:
Minutes: Consideration of a request for approval of the September 14, 2010 Planning Board minutes.

Mr. Copeland made a motion; seconded by Mr. Hinkley to approve the consent agenda as submitted.

Comment from Bill Sommers: - **Re: Ferrington – Section X, Phases 1 and 2**

Mr. Sommers reported that he had received the information he requested during last month's Planning Board meeting regarding the above issue, i.e., treatment plant, total number of customers and etc. He noted that he had no revisions to the minutes.

There was no discussion on the above motion to approve the consent agenda as submitted and the motion passed unanimously.

- V. 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.

- VI. PRELIMINARY PLAT APPROVAL:

Request by Bill Mumford, Assistant Vice President, on behalf of NNP Briar Chapel, LLC for subdivision preliminary plat approval of “Briar Chapel – Phase 5 North”, consisting of 174 lots on 45.92 acres located off Andrews Store Road, S. R. 1528 and Parker Herndon, S. R. 1526, Baldwin Township.

Ms. Richardson reviewed the agenda notes for this subdivision request. She stated that tonight’s agenda notes incorrectly listed the original plan having 172 lots; that this number should have read 184 lots; that the original plan has since been reduced by 10 lots and should now read 174 lots; that the road names, **Serenity Hill Circle** and **Tobacco Farm Way** would remain the same as previously approved; that some road names shown on the preliminary plat were changed; that these have now been approved by the Chatham County Emergency Operations Office as well as Orange County; and that the road names will be shown on the final plat as follows:

Cross Meadow Drive, Summersweet Lane, Silverbell Lane, Preservation Lane, Long Hollow Drive, Pokeberry Bend Drive or Lane, Southhall Street, Mena Road, Vanolinda Lane, Sharpless Street, Wilburn Avenue, Hunting Ridge Road, Wishing Well Lane, Whispering Falls, Owen Towne Road, Porthaven Place, and Wynd Path.

Ms. Richardson explained that the reason staff did not make a recommendation on this issue was that at the time staff notes were completed, there were still questions from staff regarding issues with, 1.) width of sidewalks (as shown in the street design guidelines of the original application booklet for Briar Chapel), 2.) accessibility of sidewalks in relation to wheelchair ramps, 3) stormwater compliance with permit, and 4) emergency vehicle access (width of pavement) and turning radius for emergency vehicles. She stated that some of these concerns have since been addressed; that concerns of Melissa Guilbeau, Transportation Planner, regarding sidewalks and wheelchair ramps have been addressed and proposed plans are acceptable; that Fred Royal, Environmental Resources, had concerns with, 1.) surface water, 2.) impervious surface area and 3.) compliance with the storm water permit; 4) that the plan indicated that some of the storm water features were to be located close to the edge of the ten foot no-build area and that all features should be clearly located outside of the no-build area; that this has been noted and that all stormwater features will be shown on the final plat as being located out of the 10 foot no-build area; that Mr.

Royal's concerns have been addressed; that Briar Chapel has agreed that pavement width on the private alleyways, Cross Meadow Drive and Hunting Ridge Road, will be increased to meet the fire code, but that the question regarding turning radius remains unresolved.

Ms. Richardson referenced an e-mail from Chief John Strowd, North Chatham Fire Department, dated 9-29-10 included in tonight's agenda packet. She stated that Chief Strowd's comments indicate his reservations to 1.) approve the current drawing as shown, 2.) the need for more consideration in the turning radius required for emergency vehicles and width of apparatus, 3.) safety of the fire personnel, and 4.) safety of occupants living in the structures; that Tom Bender, Chatham County Fire Marshall, reviewed the plans and noted that it appears that the intent of the NC Fire Prevention Code has been met in regards to fire apparatus road access widths; but that he also shares Chief Strowd's concern regarding the maneuvering of large apparatus with the current street layout as depicted on the plan.

Bill Mumford, Assistant Vice President, NNP Briar Chapel LLC; Lee Bowman, Project Manager, Newland Communities; Grant Livengood, McKim & Creed, Engineers, Surveyors, Planners; and Attorney Nicholas Robinson, were present representing the application.

Lee Bowman gave an update of the Briar Chapel development. He stated that Briar Chapel was the top selling development in the Triangle for 2nd quarter 2010; that currently there are approximately 110 residents with roughly 20 more to move in within the next two months; that they are heavily involved with many not-for-profit benefits; that construction has begun on the first affordable housing unit; and that members of the consultant team were present tonight to address any concerns of the Board.

Grant Livengood stated that there would not be a problem with emergency apparatus pulling across the grassed porous pavement area (designed for standard highway loading); that truck weights would not be a problem; and that all codes have been met.

Board discussion followed. Some specifics noted and addressed by Mr. Bowman and Mr. Livengood were:

- 4 streets to be public, State maintained - process for State taking over road
- Water main extension - approved by NCDENER and Chatham County Water Department
- Streams - no impacts in this phase
- No on-street parking - how effective is the Homeowners Association in controlling on-street parking
- Turning radius of the vehicles - touching curb on both sides - concerned with truck getting through

- Purpose of triangular space - open space for the community - possibly eliminate part of this corner
- Chief Strowd's continued concern
- 2 sharp curves on plan, i.e. traffic – possibly smooth out curves
- Affordable housing units - denoted as purple area on map - no attached, all single family units.

Karl Ernst arrived at this time [7:08 p.m.]

Motion to temporarily set issue aside

Mr. Glick made a motion that this issue be set aside for the time being until we have in writing from the fire chief that there is an acceptable design. Mr. Hinkley seconded the motion. Chair Elza gave Mr. Ernst a brief review of the issue using the large map to explain concerns regarding turning radius.

Amendment to motion

Ms. Harrelson made an amendment to the motion to approve the development contingent upon final negotiations with Chief Stroud and Fire Marshall Tom Bender. The amendment to the motion was seconded by Mr. Sommers.

Discussion followed. It was noted that the above motion (to temporarily set the issue aside) would need to be dispensed of before considering the motion to amend.

Attorney Nicholas Robinson stated that the above concerns are legitimate; that the Board seems to be struggling with what the responsibility is in this entire set of facts; that the reality is that all of the components of this preliminary plat have been met; that getting a recommendation from the fire marshal is not one of the components nor that every one of the fire marshal's concerns be met and satisfied; that the actual language of the ordinance is that the Planning staff should hear from the fire marshal (if he has anything to say); and that the fire marshal should make some recommendations. Mr. Robinson cited that it would be a fulfillment of the Planning Board to approve the request with a contingency that, as requested by the fire marshal, the issue continue to be reviewed with Chief Strowd.

Amendment to motion - withdrawn

Ms. Harrelson withdrew her above amendment to the motion; and Mr. Sommers seconded the withdrawal.

Vote on above original motion-with additional wording noted in bold/italic - failed

Mr. Glick restated his above motion that this issue be set aside for the time being until we have in writing from the fire chief (adding language: **by the next Planning Board meeting November 1, 2010**) that this is an acceptable design. Mr. Hinkley seconded the motion. Discussion followed. Mr. Hinkley requested to withdraw his second.

Call the Question

Mr. Ernst called the question which was a unanimous vote by the Board.

Vote on Mr. Glick's motion - failed

The above motion failed 1-10 with Glick voting in favor of the motion; and all other Board members voting against.

Additional condition – regarding proposed road names

Ms. Richardson asked that an additional condition be added to staff recommendations

- to approve the proposed road names addressed by Ms. Richardson earlier in tonight's discussion and noted in bold/italic above.

Motion to approve:

Ms. Harrelson made a motion to grant approval of the request with the full original recommendation of staff; with the addition of a condition #5 to approve the proposed road names as noted in tonight's agenda notes; and with an added condition #6 ****that it is recommended*** that the fire marshal and Chief Strowd continue to work with Briar Chapel and come up with a suitable situation (regarding turning radius). Mr. Sommers seconded the motion.

Motion to amend as noted in bold/italic above

*Mr. Ernst made a motion to amend Ms. Harrelson's above motion to add language, *"***that it is recommended***" and indicated above. Mr. Sommers seconded the motion to amend; and the motion passed unanimously.

Motion to approve - passed

The motion to approve with amendment as noted above passed unanimously. The six (6) conditions are as follows:

1. The final plat shall show all storm water features to be located out of the 10 foot no-build area.
2. The final plat shall incorporate the road design changes as depicted on the revised road plan for Lots 507 through 514.
3. The final plat shall list the correct road names as approved by the Chatham County Emergency Operations Office and the Chatham County Board of Commissioners.
4. Storm water devices shall be as approved in the Storm water Permit for Phase 5 North.
5. Approval of the proposed road names as noted in tonight's agenda notes
6. It is recommended that the Fire Marshal and Chief Strowd continue to work with Briar Chapel and come up with a suitable situation.

VII. NEW BUSINESS:

No reports were submitted.

VIII. STAFF ITEMS:

Planning Director Staff Report

1. *Minor Subdivisions Update*

Mr. Sullivan stated that staff received only one (1) minor subdivision since last month's update.

2. *Continued discussion of the recently adopted NC House Bill 683 – “An Act to Amend the Permit Extension Act of 2009.*

Mr. Sullivan stated that material was provided in last month's packet regarding this issue; that the information explained that the Permit Extension Act of 2009 has been amended to extend all permits covered by the original Act one (1) additional year; that the Bill added a provision to allow local governments to “opt out” of the additional year by adoption of a resolution; that during last month's Planning Board meeting the Board asked that staff provide additional information; that a spreadsheet was included in tonight's packet showing the impact of the 2009 Legislation on subdivisions and conditional use permits (does not show deadline of new 1 year extension); that some staff concerns were included in tonight's agenda notes; and that the main issue is if the Planning Board wants to continue or make a recommendation to the Board of Commissioners [BOC] to “opt out” of the extension or not. Mr. Sullivan cited some issues to consider if the Board wants to consider the “opt out” as follows:

- The BOC can adopt to opt out for, 1.) all locally approved permits; 2.) for only selected approvals, or 3.) they could choose to do nothing
- Locally approved permits covered more than just conditional use permits and/or subdivisions, i.e., building; Environmental Health; Erosion and Sediment Control; different expiration dates
- Some subdivision expirations extend beyond the December 31, 2010 expiration of this Legislation, i.e., 2013; 2014
- Building permits – expirations are set by N.C. building codes, i.e., contractor has six months for first inspection then one inspection every year
- Subdivision and conditional use permit approvals are set by the BOC
- Limit recommendation where Board has review authority
- If a local government opts out of this 2010 Legislation it would also be opting out of the following criteria:

Re: 2010 Legislation, “Section 7.1, Conditions for qualification; termination; right of appeal.

(a) For any development approval extended by S.L. 2009-406, as amended by Section 5.1 of S.L. 2009-484, Section 5.2 of S.L. 2009-550, Sections 2 and 3 of S.L. 2009-572, and by this act, the holder of the development approval shall:

(1) Comply with all applicable laws, regulations, and policies in effect at the time the development approval was originally issued by the governmental entity.

(2) Maintain all performance guarantees that are imposed as a condition of the initial development approval for the

duration of the period the development approval is extended or until affirmatively released from that obligation by the issuing governmental entity.

(3) Complete any infrastructure necessary in order to obtain a certificate of occupancy or other final permit approval from the issuing governmental entity.”

Mr. Sullivan noted that this would be a policy decision by the Planning Board to recommend to the BOC to either opt out of the extension or not.

Board discussion followed. Some specifics reviewed were:

- Take no action until after the upcoming elections - the BOC has until the end of December 2010
- Advantage/disadvantage of opting out
- Need additional time to review material from School of Government
- Issues for attorney
- Section 2 of Bill, i.e., should follow the law
- Vested Rights Section (page 5)
- Expiration dates, i.e., some subdivisions currently in bankruptcy
- ERB [Environmental Review Board] recommendation to opt out
- Our ordinance lacks expiration dates, i.e., some site plans with no expiration date
- Opt out of subdivisions only / or include conditional use permits
- Newly adopted ordinances

Motion to opt out - passed

Mr. Copeland made a motion; seconded by Mr. Glick, to recommend to the Board of Commissioners to opt out of HB 683 for both subdivisions and conditional use permits (site plans). Discussion followed. Mr. Ernst reiterated his view that we should follow the laws that are made. The motion passed 10-1 with all Board members voting in favor of the motion except Mr. Ernst who voted against.

3. *Reminder - next month's Planning Board meeting will be held on Monday, November 1st due to Election Day.*

Chair Elza reminded the Board of the above change for next month's Planning Board meeting date.

4. *E-mail from Dan LaMontagne*

Mr. Sullivan referenced E-mail dated September 28, 2010 from Dan LaMontagne, Chatham County Solid Waste Director distributed to Board members earlier tonight. He stated that Mr. LaMontagne addressed some questions voiced during last month's Planning Board Meeting.

5. *On-site meeting at Briar Chapel*

