



## Chatham County Planning Board Minutes July 11, 2017

The Chatham County Planning Board met in regular session on the above date in the Agriculture Building Auditorium, Pittsboro, North Carolina. Members present were as follows:

Present:

George Lucier, Chair  
Caroline Siverson, Vice Chair  
Bill Arthur  
Brian Bock  
Tony Gaeta  
Emily Moose  
Jon Spoon  
Allison Weakley  
Jamie Hager  
Gene Galin  
Jim Elza

Absent:

Other:

Diane Hales, County Commissioner Liaison  
Brian Taylor, Town of Pittsboro Liaison

Planning Department:

Jason Sullivan, Planning Director  
Lynn Richardson, Land Planner II/Subdivision Administrator  
Angela Birchett, Zoning Administrator  
Paula Phillips, Clerk to the Planning Board

- I. INVOCATION AND PLEDGE OF ALLEGIANCE:  
Mr. Galin delivered the invocation and afterwards everyone stood and recited the Pledge of Allegiance.
- II. CALL TO ORDER:  
Chair Lucier called the meeting to order at 6:30 p.m.
- III. DETERMINATION OF QUORUM:  
Chair Lucier stated a full quorum was present (all 11 members were present)
- IV. APPROVAL OF AGENDA:  
No changes were proposed and the agenda was considered approved as submitted.
- V. APPROVAL OF CONSENT AGENDA:  
Minutes: Consideration of a request for approval of the May 2, 2017 Planning Board minutes. Ms. Weakley had a request for one change on page 59 under the Board discussion section. She believed there was a discussion that Andrews Store Road was one of three roads to enter and

exit the western part of Briar Chapel. Motion was made by Mr. Arthur and seconded by Ms. Hager to approve with the one change. All were in favor, the vote passed unanimously.

Consideration of a request to approve the June 6, 2017 minutes was delayed until the August Planning Board meeting. Ms. Allison Weakley had several requests for changes and Chair Lucier, requested that she provide a hard copy with changes to planning staff.

VI. PUBLIC INPUT SESSION:

Ms. Shelly Colbert of 157 N. Serenity Circle Briar Chapel wanted to give input on the Briar Chapel CCO regarding raising the 2500 cap and the implications for doing that. Ms. Colbert did speak at the June 19, 2017 BOC meeting as well. When asked by a planning board member if she wrote an email with photos attached that was sent to some board members earlier today, she indicated yes she was. The board member said that he had not had time to look at it yet. She did say that she will not repeat that information at this meeting. She indicated that she is deeply unhappy with the growth in the community and how it is being handled. She said that the community has had a number of incidents with all kinds of their facilities. She feels that at the midway point of this development with all these types of problems that we should look at more than just the scale of the development. She reported that the compact community is not being run right. Her concern is that if the problems are not anticipated and addressed in the beginning, the burden gets shifted to the county and residents, resulting in more cost and money for things that are not being handled in the community itself. She is scared to death of what the community is going to look like with the increase in the cap and that we are only at the halfway point.

VII SUBDIVISION:

1. Request by Lee Bowman, Project Manager, for subdivision Recombination and Final Plat review and approval of SD West – Parcels A and D, consisting of 2 lots on 10.10 acres, located off SR-1529, Taylor Road, Baldwin Township, parcel #'s 18911 and 86288

Ms. Richardson reviewed the agenda notes for this request as follows:

Introduction & Background- Some details noted were:

- Zoning-Conditional Use District / Compact Community
- Public Water System-Chatham County
- Subject to 100 year flood-No floodable area in SD West
- General Information: Compact Community approved in 2005 for 2,389 dwelling units and commercial uses on 1.589 acres, permit revised in 2012 and 2014 and dwelling units increased to 2,500

She reported that Briar Chapel is reviewed under pre-2008 Subdivision Regulations. The preliminary plat for SD West, consisting of 9 non-residential lots and 2 stormwater pond lots was approved by the Board of Commissioners on February 20, 2017.

Discussion & Analysis- Some details noted were:

This request is for recombination of property and a final plat approval.

Recombination: In 2010 NNP Briar Chapel petitioned the North Carolina Department of Transportation to abandon state maintenance along a portion of Old Highway US 15-501. The request was approved by the North Carolina Department of Transportation on February 4, 2010.

NNP Briar Chapel also requested that Chatham County permanently close the same portion of the Right-of-Way of Old Highway 15-501 in Baldwin Township. The request was approved by the Board of Commissioners on April 5, 2010 and an Order closing said portion of Right-of-Way was recorded in Deed Book 1514, Page 251. The portion of rofw closed was described in the Order and allowed the property within the abandoned rofw to be recombined to the two (2) adjacent properties, Parcel #'s 18911 and 86288, both owned by Briar Chapel. Parcel #86288 is being recombined with the northern portion of Parcel #18911 as shown on the Final Plat.

Per Jep Rose, County Attorney, the Order contained sufficient language to protect the rights of existing utility easements, i.e. Chatham County Utility Department, Time Warner Cable, PSNC, etc., that were located within the abandoned area of the Right-of-Way and any future relocation of said easements on Petitioners property to be selected by Petitioners. See Note # 9 on the Final Plat.

The conditions of preliminary plat approval are listed below and have been addressed as follows:

1. The design of the greenway from Briar Chapel to SD West be completed and necessary permits be obtained prior to final plat submittal. The design has been completed and approved by NCDOT. The applicant has received an executed Right of Way Encroachment Agreement which covers "The Installation of curb & gutter and sidewalk on SR 1529 in Chatham County, and any associated pre-construction work." A copy of the Encroachment Agreement and design plan can be viewed on the Planning Department webpage at [www.chathamnc.org/planning](http://www.chathamnc.org/planning) 2017, Rezoning and Subdivision Cases. Condition # 1 has been met.
2. Condition # 11 of the 2014 CUP revision regarding designation of park-and-ride spaces and the bus shelter be resolved between Chatham Transit and NNP Briar Chapel, LLC prior to final plat submittal with the understanding that Briar Chapel has committed to at least 18 spaces. Staff received confirmation from Dan LaMontagne, Assistant County Manager, Jep Rose, County Attorney, and Anna Testerman, Executive Director, Chatham Transit Network, that the park & ride spaces and bus shelter will be part of Lot D and 18 spaces will be provided. Condition # 2 has been met.

3. Condition 14 (g) of the 2014 CUP revision regarding 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") be resolved between Chatham County and NNP Briar Chapel, LLC prior to final plat submittal. Dan LaMontagne, Assistant County Manager, and Jep Rose, County Attorney have confirmed that the language as stated in the cover letter, Item # 2, is correct and acceptable. Condition # 3 has been met.
4. The final plat shall state the width of the riparian buffers and clearly designate the 10 foot no-build. Condition # 4 has been met.
5. The access and maintenance easement for the stormwater pond on Parcel A shall be located as shown on attachment # 4 in order to lessen the impacts on the viewshed buffer and adjacent property owners. Condition # 5 has been met.

Final Plat: The final plat submittal is for two (2) lots, Lots A & D. Lot A is a stormwater pond lot and Lot D is a non-residential lot. Rachael Thorn, Water Protection Supervisor has reviewed the final plat and requested the following two (2) revisions be made to Lot A prior to final plat recordation:

1. Provide the approximate location of the stormwater BMP (using existing top of bank).
2. Label the stormwater easement "Private" and specify the entity responsible for maintenance.

Per Chris Seamster, RLA, McKim & Creed, the revisions will be made and approved by Ms. Thorn prior to final plat recordation.

The final plat was submitted with a request for a financial guarantee for completion of the necessary infrastructure for Lots A & D. Per the cost letter submitted by Chris Seamster, RLA, dated June 15, 2017, the improvements for Lots A & D were 67% complete as of the final plat submittal date. An updated cost letter will be provided prior to final plat recordation. The county attorney will review and approve the form of the contract and financial guarantee prior to final plat recordation.

As discussed during the preliminary plat review, the roadway serving the lots will be a 60 foot wide private easement to be maintained by the developer or Briar Chapel Commercial Association, Inc.

Ms. Richardson reported that The Technical Review Committee met on June 21, 2017 to review the request. Various county staff attended the meeting along with Chief John Strowd, North Chatham Fire Department. Chief Strowd stated that the private roadway would provide accessibility to the lots for emergency vehicles. Other items discussed included meeting required conditions from the preliminary plat review, recombination of property, and revisions to the final plat regarding the stormwater pond.

Staff Recommendation-Ms. Richardson noted that the Planning Department recommends granting approval of the recombination and final plat request titled **Final Subdivision**,

**Recombination, Easement, and Private Right-of-Way Dedication Plat of SD-West – Parcels A and D** for NNP Briar Chapel, LLC with the following conditions:

1. Prior to final plat recordation the plat shall be revised to provide the approximate location of the stormwater BMP (using existing top of bank).
2. Prior to final plat recordation the plat shall be revised to label the stormwater easement “Private” and specify the entity responsible for maintenance.
3. The county attorney shall review and approve the form of the contract and financial guarantee prior to final plat record action.

Board Discussion followed. Some specifics noted were:

- Has the county purchased Parcel D
- Regarding condition 3, under new shared satellite office reservation language, how are you guaranteeing that is going to be done?
- Who will be responsible for the maintenance of the private roadway, storm water ponds and greenway?
- Why isn't the pond and stream shown on the plat?

Mr. Robinson addressed the Board and stated that the County will not purchase Lot D until after the final plat is recorded; that language, approved by the County Manager and the County Attorney, is being provided in the contract between Briar Chapel and Chatham County to assure that Condition 2 of the 2014 CUP Revision will be met; that a commercial property owners association will be responsible for the maintenance of the private right of way and storm water pond; and that the greenway is located within the public right of way of Taylor road, but that the Briar Chapel HOA will be responsible for maintenance of the greenway and not NCDOT.

He explained that the provision in the CUP in 2012 it was not for sure at that time if there would be a substation or not. When the time came to develop lots in the commercial area, Briar Chapel agreed to enter into a contract that whoever buys the first lot in SD West will be subject to a potential reservation of 5000 sq. ft. for the Chatham County Sheriff's department. It was very explicit, it was up to the purchaser of that lot and the county to work out a deal. Mr. Robinson explained that the purchaser of the first lot happened to be the county. So, technically all the developer had to do was add the provision in the contract stating that the county had to make 5000 sq. ft available to themselves. He said the county then pushed back since it worked out a little differently for them. He continued to explain that if the next contract was for an out parcel for instance, it would have that reservation in the contract. Mr. Robinson stated he does not have the language in front of him and we would need to check with the County Attorney for that. Chair Lucier, stated that they had checked and the County Attorney was fine with that language. Mr. Robinson said that the obligations would be the same as it was before for the language. It was agreed and confirmed by the County Attorney the language was in good faith to get that provision in place stating 5000 sq. ft. would be reserved for the substation.

Mr. Robinson also stated that the pond and stream questioned that are not shown, are separate and not part of this submittal, those will be platted with other lots at a later date.

Motion to approve- Mr. Gaeta made a motion with conditions specified; seconded by Mr. Galin. 10 in favor, 1 opposed, Jon Spoon

## VIII ZONING:

**Quasi-Judicial Request-** Ms. Birchett stated that a conditional use permit revision request by CE Groups on behalf of the F-L Legacy Owner LLC for a conditional use permit revision on Parcels 17378, 83655, 89437 to revise the current site/sketch plan to relocate some residential lots, increase open space, reconfigure some road r-o-w, reduce total roadway length, and to eliminate one subdivision road connection to Big Woods Road.

Ms. Birchett reviewed the agenda notes for this request as follows:

**Introduction & Background-** A quasi-judicial public hearing was held on the request June 19, 2017. Planning staff presented the request and the applicant's representative, Attorney Patrick Bradshaw, provided the summary for the request.

The Legacy PUD subdivision was originally approved in 2004 and modified the first time in 2005 to relocate the amenity area. In 2014, a second modification was approved to relocate some lots and reconfigure some roadways.

The development is currently approved for 463 lots and there is no increase in the number of lots with this request

**Discussion and Analysis-** Ms. Birchett stated that in reviewing and considering approval of a revision to a conditional use permit, the Board shall find that all of the following Findings of Facts shall be supported. If the Board should find, after public hearing, the proposed conditional use permit should not be granted, such proposed permit shall be denied." The findings are as follows:

**Finding 1 – The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located.** A Planned Unit Development is still a valid use within an R-1 zoning district.

**Finding 2 – The requested conditional use permit or revision to the existing permit is either essential or desirable for the public convenience or welfare.** The relocation of lots and changes in the roadway will be beneficial to the development and the environment as a whole. More open space will be created, less impervious surface due to the decrease in linear road footage, and removes activity from creeks and streams located in close proximity to their current

location. No additional land is being added and these modifications do not otherwise change the need and desirability for the approved development. No additional public improvements are needed.

**Finding 3 – The requested permit or revision to the existing 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.** There is no additional property being added to the existing development footprint. The boundary will continue as it is currently approved. The change creates a more compact development by eliminating one subdivision road connection to Big Woods Road which should reduce impacts on surrounding areas.

**Finding 4 – The requested permit will be or remain consistent with the objectives of the Land conservation and Development Plan.** The form and function of rural character is unchanged. There will be less impervious surface with the elimination of a road on the currently approved plan and more open space provided with the shifting of the lots. The revision should improve water protection by moving the 26 lots further away from the creek/streams located within the currently approved area.

**Finding 5 – Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided consistent with the County’s plans, policies, and regulations.** Wastewater capacity and approvals remain valid and will continue to serve all lots in the development. The development will continue to be served by the county water system.

***Planning staff recommends approval of the CUP revision***

Recommendation-Ms. Birchett stated that the Planning Board has up to three meetings in which to make a recommendation to the Board of Commissioners. Should you recommend approval, the following conditions are to be considered and/or amended as needed. Ms. Birchett read the following conditions:

Site Specific Conditions:

1. The Master Plan and supporting documentation submitted with this amendment shall be the guide for development of remaining phases of the project. The road system, buffers, water features, and open spaces shall remain as shown on this master plan.
2. All other previously approved conditions shall remain in effect as of the adoption of this approval, except as modified with this amendment.

In closing, Ms. Birchett stated that all of the other Standard Site Conditions remain.

Board Discussion-Some specifics noted were:

- Is that Parkers Creek that crosses the stream and is that one less stream crossing? Ms. Birchett said that yes, that is Parker's Creek that crosses the stream and it is one less stream crossing.
- Under the proposed Phase VII leased space, will it remain or be part of the wastewater spray field?
- Will there be removal of trees?
- It was stated by a board member that Parkers Creek has good water quality & that it drains to the Jordan Lake State Recreational Area. If there is anything that can be done in order to minimize impact of streams and to maintain the hardwood cover for the waterfall area, it is important to the water quality and natural areas of Big Woods. Will you get a permit to cross the stream?

Mr. Ashness said there has always been the permitted area, they have permits to spray in the open area of Phase 7 and that will be done. He noted that some trees will come down and that is typical just as it was in the open space at the Legacy. There will be thinning in areas to allow the spray to occur, no grading activity will be done.

Mr. Ashness addressed whether or not they will get a permit to cross the stream, he said that yes, they could have crossed the stream. He noted that there is more demand for compacted lots. He explained that this allows them to take the overall development footprint and shrink it, that area was always for the satellite area, they would have to have there on entrance on Big Woods Road. Now all the lot owners will be treated the same and it makes sense on several levels to take those lots out to reduce the area.

Chair Lucier gave some of the background and history on this development when he first came to the Planning Board in 2004. He stated this is an improvement from the previous approval because of one less stream crossing, less excavation and less sediment going in to Jordan Lake and Parkers Creek.

- A question for staff is how likely or what would have to happen for that area not to be developed? Could the developer come back and ask for a change in the CUP? Ms. Birchett said they always have the right to come back and ask for a revision.
- Would you consider reconsider keeping it as Open Space?
- With the spraying how is it determined what trees will be cut down?

Attorney, Patrick Bradshaw spoke and said he does not think it is appropriate to do in this context. He stated that this is the Master Plan for the community to be approved, it's better than the current plan. From the developers stand point and he believes everyone agrees it is better for the community environmentally. The only way for it to be changed is to come back through the CUP process. He does not know how we could commit or how to make a commitment that anyone who owns that property would request to change the CUP. It would have to go through the Quasi-Judicial process, Public



Hearing and BOC approval. It will be conveyed to the HOA and restricted as use to Open Space to the community.

Mr. Ashness spoke regarding what trees will be cut down, he explained that they will have vegetated cover and you typically will not have a tree within 30' of the spray head. They will treat this area like they have treated other areas sprayed. There will be ground cover and lighting will be allowed to come through trees. The land that was a timber tract, there are hardwoods on the property, they are not going in those areas. They will be spraying the mostly pine stand areas.

Motion to approve: Mr. Galin made a motion with the 8 conditions stated by staff; seconded by Mr. Bocks to approve the CUP. There was no further discussion and the motion passed unanimously; 11-0.

VIII-1 A request by NNP Briar Chapel for a revision to the Chatham County Compact Community Ordinance, Section 6.2 Maximum Size, to increase the dwelling unit cap from 2, 500 to 2,650 Sullivan gave the following update.

Mr. Sullivan reviewed the agenda notes for this request as follows:

Introduction & Background: The Compact Communities Ordinance (CCO) was adopted by the Board of Commissioners in April 2004 after several years of work by the Land Use Plan Implementation Committee (LUPIC). Section 6.2, Maximum Size, states "No compact community shall include more than two thousand five hundred (2,500) dwelling units." Laurie Ford, representing NNP-Briar Chapel, LLC, submitted an application to amend Section 6.2 to increase the dwelling unit cap to 2,650 dwelling units. Section 6.1 of the CCO includes a map outlining the boundaries within which a compact community can be located (copy of map provided.)

Discussion & Analysis: A public hearing was held on May 15, 2017 and Nick Robinson, attorney representing Newland Communities, provided a presentation outlining the request. His comments included that the CCO includes a maximum density threshold of 2 dwelling units per acre; maximum impervious surface limit of 24%; a 30% open space requirement; a conditional use permit is required for compact community; and that no amendments were requested of these standards. His comments also included that density should be concentrated where "water, sewer, public parks, education centers, and roadway infrastructure is already available"; would allow a mixed use environment with a concentration of multi-family housing located within commercial areas; and would avoid sprawling development (a copy of the presentation is available on the planning website)

Mr. Sullivan reported that several people spoke on this item and comments of those opposed to the request included that the increase in units will generate more students and impact the school system; there will be increased traffic on existing two lane roads; there's no guarantee that the additional units will be affordable; the dwelling unit count for Briar Chapel has already been increased from the original 2,389 approval to the current 2,500 maximum; there's been no evaluation of the facilities to support the increasing number of dwelling units and is being done incrementally; there are currently parking issues within the development and additional evaluation is needed; the master plan was

worked out in 2004 and the developer keeps requesting changes to permit; and the development is half built out and parking and traffic issues are already a concern. Comments in favor of the amendment were that the developer has been supportive of local non-profit organizations and been a good corporate steward (draft minutes from the Commissioners May 15, 2017 meeting are provided online).

During the drafting of the CCO from 2002 through 2004 there were several discussions by the LUPIC, Planning Board, and Commissioners regarding the density cap for a compact community and how it would apply to the designated area in the ordinance. The following information is a brief review of minutes and documents produced during that time period (digital copies of the documents are provided on the planning website).

- February 25, 2003 Minutes of a joint meeting of LUPIC and Board of Commissioners: The minutes included a Memo from LUPIC Chair to the Chair of the Board of Commissioners dated February 23, 2003 and discussions by the committee to limit a compact community to 1,100 acres and a density of 1,400 to 1,500 dwelling units. Discussion also included the possibility of a two mile separation requirement between compact communities. (the minutes, memo, and supplementary attachments are available online)
- March 29, 2004 Letter from the Board of Commissioners Chair Thomas Emerson, Commissioner Bunkey Morgan, and Planning Board Chair George Lucier to the County Manager and County Attorney: The letter outlines that they “have agreed, in principle, that 2,500 houses is a reasonable maximum limit of controls that can be implemented provided that no other compact community is built in the designated area.” (a copy of the letter is provided online)
- April 6, 2004 Planning Board notes and meeting minutes: The Planning Board discussed the CCO and voted 6-4 to forward the public hearing draft of the ordinance with removal of the waiver provision. The public hearing draft reflects the currently adopted wording for section 6.2 with a dwelling unit cap of 2,500 units. The recommendation did not include a restriction on the number of compact communities within the designated area.
- April 19, 2004 Board of Commissioners notes and meeting minutes: The Board of Commissioners discussed the proposed ordinance and voted 3-2 to adopt it as presented at the public hearing.

Mr. Sullivan noted that there are items the board may want to consider and discuss may include; whether there have been sufficient changes in the designated area for a compact community that warrant an increase in the number of dwelling units (i.e. utilities, schools, parks, road infrastructure, etc.), whether sprawling development will result from a denial of the request, and whether an increase in dwelling units will negatively impact areas outside of the designated compact community boundary.

Recommendation: Staff is not making a recommendation and believe that it is more of a policy decision. During the agenda review with the Chair and Vice-Chair of the Planning board is to have a discussion tonight and not move on this item. There are still some issues and may want to continue this discussion until August in order to keep the items together.

Chair Lucier agreed with that decision since there are two issues, and working out the parking issues. To act on one and not the other would not make sense, that the vote could take place during the August Planning Board meeting.

Board Discussion: Some of the questions discussed are as follows:

- Why are we increasing it from 2500 up to 2650 now?
- Will any of the amenities in the Briar Chapel area be offered to the residents in the area where the possible additional units will be?
- Does moving marketing study indicate the need, what is the projection for month's construction to get to 100% occupancy with multifamily units?
- What is your experience with these types of developments?
- What about the traffic impact of the request?

When asked about how they got to the 2500 unit number, Chair Lucier indicated that when Briar Chapel was first proposed there were commissioners and others that the number arose as a compromise and reasonable number. It requires no additional footprint or to add more land to the compact community.

When asked if we change the compact community ordinance to make it 2650, are we doing it for any future request? Mr. Sullivan replied yes, that is correct. If approved, the increased dwelling cap would also be available to another community.

- There appears to be a vagueness of where the units are going, can you tell me where they are going to go?
- Can you live with 300 instead of 350?
- Why do you need more units, why can't you take allowed dwelling units from your pot or other areas of Briar Chapel and try to reallocate them?
- What is the density of the built upon area of Briar Chapel, subtracting out the open space?
- Is this the only place the compact community ordinance applies? Yes, one would have to get a CUP. They would have to amend the ordinance to apply for the approval of a project. The math is embedded in the ordinance.
- If this request is approved, when would you have more specific plans for allocation of additional units?
- Is something keeping you from developing plans to rehash this process so they can see the units?
- If it isn't approved, will you find other quotas for them to get this done or would you move on?
- Is the same developer of Southern Village still providing assistance in this process? Yes, the company is Montgomery Development and they are talking to them but they are not interested in the multifamily units.

- When they first came to you with their recommendation, did they come to you with the 200 units? Did they throw out a number? 200 units were in place since 2014, they did have conversations during that time. Since that time they have exited. The numbers came up during conversations with other developers of multifamily communities.
- Are you still working with the company and getting their assistance with multi-family units that developed Southern Village? Yes, they are having conversations with Morgan Company.
- Do you plan on putting a grocery store there?
- For this specific request is there anything blocking Briar Chapel from building these units. No, not with this request
- What is stopping you from doing this now without revising the law?
- How many times will you keep raising the bar?
- Will the apartments be affordable?
- What is the cost per unit?

Chair Lucier commented that he has a history with Briar Chapel and that he believes having apartments is a good idea and there is a need for that in Chatham County. What would be the difficulty to have something in between the 2500 and 2650, not going up to the 2650 because of the impact of traffic and supporting commercial development? The number they arrived at will help them meet their goal for attracting the right kind of users. Residential impact on the traffic would be less than if it were commercial development, based on the traffic study performed.

Mr. Robinson answered some of the board's questions as follows:

Regarding the increase of having up to 2650 units, he said that the end result of what Mr. Sullivan's summary from 13-14 years ago resulted in a compact community that provided a cap of 2500 units. At that time, there was no such community like this one in Chatham County. It allows for 2 units per acre, one of the elements of Briar Chapel is a compact community and developers are encouraged to maximize density to the highest level. At the same time, there were many protections built into the compact community's ordinance. The tradeoff is there a maximum impervious surface of a maximum of 24 % and a minimum of 30% dedicated to Open Space. The driving force of the compact community you concentrate on open space and commercial to allow people from the community and county to get these services. You encourage development in a compact way. What does it mean for sewer, you have to come up with 50k waste water treatment permit for Briar Chapel, water is there, schools are in place, lands given free to charter schools, land for the civic site, all the infrastructure is going as planned. Question is does it make sense to re-evaluate the maximum number of 2500 units. Now we have to go through the Legislative and CUP process, it is being driven by a specific market. There is a need for 150 additional multifamily units by the highway. Evidence at the public hearing was up to 300 multifamily units. There are specific proposals and ability to do the additional increase. And yes there could be up to 350 units being built and some apartments. Mr. Robinson noted that with the increase it would go from 6.94 units to 7.36 units per acre. He also noted the cost per single family unit is \$464.

He also wanted to mention there is support from the community for this development and it is important to look at all of them. Some of the people that oppose the development do not live in Briar Chapel. The reality of commercial development, is the people developing look at how many people within a circle.

Ms. Ford, Briar Chapel, LLC also addressed some of the board's questions as follows: Regarding the existing pool, there is a card required to access that area and soon the sport court areas will also require card access. The new multifamily units will not have access to these areas. She said that citizens would have access to the trails as it was harder to manage those areas.

Their company has over 50 years of experience and are one of the largest private developers. They have completed similar communities Fish Hawk Range in Florida, pursuing one called River Life in Wilmington. These communities offer the multifamily units. She said as for where the units will be located, that would come out of the actual site plan. It will come down to the site plan exercise. It is not likely to come down to all 350 units on one location. The nursing home has an interest in purchasing the property adjacent to the nursing home for a senior nursing. Preliminary conversations indicate they are pretty confident in the 350 number without getting too aggressive. The nursing home does not count towards the number, it is considered a care unit and it is not counted against that number.

Ms. Ford said what they are trying to accomplish here also, is to inspire and create more demand for commercial to attract higher quality commercial usage to the site. They will need the additional units to support the commercial usage and what is already out there. She believes they would have more specific plans for allocation of units to be 12 months to 3 years. She indicated there is a demand for this marketing place, she thinks the occupancy would come very quickly.

Ms. Ford explained that it would be up to the developer whether or not another pool would be put in to accommodate the additional units. She also said that the number one request from residents is that they want a grocery store in the community. They have a number of entities showing interest in that request and that it is a competitive environment. She also mentioned that the physical realities driving this is that, we are in the closing stages of Briar Chapel. The commercial area is basically all that is left. They find it very unlikely that another request would be made. This is a timely process and they are under pressure to sell the property. She also wanted to add that the residents requested that the multifamily additional units would be built across the highway. The reason is that, they believed it would drive down the value of their homes. The other request the residents made was that the residents of the multifamily not have access to their amenities. As far as affordability, it will depend on how the mixture of units and cost of developing determines the cost. An affordable choice would not work in this scenario.

Regarding developing plans to show the units, Ms. Ford said they would not be building the units, but would be working with a company to do that. It is rare that someone in that position to design, spend the time and money to provide plans during this stage to show where units will be located. She also said they would not be doing a spec plan. She said if the additional units are not approved, they would not be working with those particular

users or others. She indicated they would just make it work and other land would be used for commercial development.

One of the board members wanted to say that from the green building perspective, building up instead of out is better. Also that a developer would need more density to have a meaningful compact development. Another board member thinks the county needs more multifamily units. It is a reasonable place to look at having multifamily units. As a resident since 2009, the management there is doing a very good job with the amenities and other issues that have come up. He believes Briar Chapel has been a positive and not negative community for Chatham County.

## VIII-2 Zoning-

A request by NNP Briar Chapel for a revision to the Conditional Use Permit to (1) revise the civic site at the intersection of Andrews Store Rd and Parker Herndon Rd (possible Chatham County elementary school site) on master plan to allow for full development of the site (rather than just 2 acres as shown), (2) create the possibility of having up to 2,650 residential units (currently approved for 2,500), (3) revise the master plan map to reduce the perimeter buffer (a) from 100' to 50' along the frontage with Chapel in the Pines church (at the church's request); (b) from 100' to 50' along the short boundary with Duke Energy ROW at SD-N; and (c) from 100' to 75' along Phase 15-S boundary to eliminate the need to build a retaining wall within the perimeter buffer, and (4) revise the color key table on the master plan map to reflect adjustments to residential densities in particular locations.

Ms. Birchett reviewed the agenda notes for this request, she stated that she hoped that the board members have had a chance to read over the draft minutes from the Public Hearing because there was a lot of information provided. There are 4 components of this request with subsections in each section.

Introduction & Background: A quasi-judicial public hearing was held on the request on May 15, 2017. Planning staff presented the request, Attorney Nick Robinson presented on behalf of the applicant, expert testimony, as well as comments from residents of Briar were given. A presentation by the Chatham County Fire Marshal, Tom Bender, was also provided. Due to extensive evidence presented by the applicant and citizens, the Planning Department postponed forwarding the request to the Planning Board by one month as allowed in the zoning ordinance.

The notes are a summary of the changes requested by the applicant and the supporting information provided for each item. It will also outline any remaining concerns planning staff have that continue to be unresolved and/or need further discussion. The draft minutes from the four hours of testimony at the public hearing have been attached. Also attached is the revised Master Plan submitted during the hearing and several professional reports related to traffic, market study, housing, etc. Written comments provided during the hearing are also provided online.

Discussion & Analysis: In reviewing and considering approval of an amendment to a Conditional Use Permit, the Board shall find that all of the following Findings of Facts shall be supported. Per the Zoning Ordinance "In considering an application for a conditional

use permit the Board of Commissioners shall give due regard that the purpose and intent of this Ordinance shall be served, public safety and welfare secured and substantial justice done. If the Board should find, after public hearing, the proposed conditional use permit should not be granted, such proposed permit shall be denied.” The findings are as follows: **It is recommended that the Planning Board discuss and vote on each modification separately since some of them have not been recommended for approval by staff.**

Ms. Birchett read the following findings:

**Finding 1 – The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located.** A compact community continues to be a permitted use within the CCO district it is located.

**Finding 2 – The requested conditional use permit or revision to the existing permit is either essential or desirable for the public convenience or welfare; and Finding 3 – The requested permit or revision to the existing 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.**

Ms. Birchett noted that Findings 2 and 3 were grouped together because of their similarity and information overlapped one another.

**Item 1 –** The application includes a revision to the civic site located at the intersection of Andrews Store and Parker Herndon Roads. The revised master plan details the site as the entire tract being Parcel No. 79946, 26.627 acres per the Chatham County Tax registry located at the corner of Andrews Store Road and Parker Herndon Road. Ms. Birchett noted that Chatham County School systems is currently in negotiations for the purchase of this site to build an elementary school. There were concerns expressed about increased traffic on an already busy three mile roadway with two existing schools and one more under consideration, in addition to the elementary school. A publication on roundabouts was provided by a resident and is attached for consideration. If an elementary school locates on the property, NCDOT will review the traffic impacts and determine the improvements that will be needed. A report from NCDOT or the traffic consultant will also be required to show new traffic count information if warranted.

Since there isn't a site plan to review at this time, a review of the landscaping, parking, lighting, signage and building locations cannot be reviewed by the Chatham County Appearance Commission (CCAC). A condition is noted below if approved.

**This is recommended for approval by Planning staff.**

**Item 2 –** Increase the dwelling unit cap to 2,650 residential units (currently approved for 2,500). The applicant also filed an amendment to the Company Community Ordinance (CCO) to increase the current cap 2,500 unit total. The entire compact community area map extends beyond the confines of Briar Chapel. At present, Briar Chapel is approved for the maximum number of dwelling units currently allowed by the CCO and other compact communities could be approved within the compact community area outlined in

the ordinance. In a 2014 CUP revision request by the applicant, they requested an increase from 2,389 units to the maximum allowed by the ordinance in order to construct approximately 200 multi-family dwelling units. In the previous submittal, the applicant stated "The CUP has always provided for this mix as it currently allows for 80 multi-family/townhouse units within SD-N and SD-W. Developers have made it clear that in order to be financially viable, the number of multi-family/townhouse units within the Special Districts needs to be approximately 200. Adding 120 residential units to the project, however, would put the project over the 2,500 unit maximum imposed by the CCO. Rather than seek a change to that number, Applicant has resolved to "borrow" from the previously approved 2,389 residential units in order to make a multi-family/townhouse project viable when or if such a 200 unit multi-family/townhouse proposal comes to fruition." This implied that there wouldn't be a need for an increase in the overall dwelling unit cap for the project. There were concerns raised about increased traffic with the additional units. The application included a letter from Richard Adams with Kimley-Horn and Associates that included "Our understanding is that the developer views it as unlikely to develop 2,650 residential units and more than 301,500 s.f. of commercial development (but no more than the approved 510,000 s.f.). However, if such a scenario should arise, we expect that the developer would be required to seek approval of a revised TIA from the North Carolina Department of Transportation." A new TIA was not performed but a condition has been applied as noted below, if approved.

The developer also stated residents of the multi-family dwelling units would not be permitted to utilize the Briar Chapel amenities, which they believe would help with internal traffic concerns and overcrowding of the amenities themselves. This is not enforceable by the county and is considered a private covenant agreement with the tenants and the HOA.

**This request is contingent on the outcome of the Compact Communities Ordinance revision request.**

**Item 3a** – A reduction in the perimeter buffer of 50 feet along the boundary with Chapel In The Pines church to allow for additional parking. This property is landlocked between Mann's Chapel Road and Great Ridge Parkway with an easement given to them by the developer. The increase in Impervious Surface must be taken into account for the entire Briar Chapel community. This information has not been provided to date but is being prepared by the applicant.

**Item 3b** – A reduction from 100' to 50' along the boundary with Duke Energy ROW at SD-North. At the request of staff, the applicant has provided a site map of this area showing what is to be disturbed/removed in order to accommodate parking (the exhibit has been posted on the planning website as SD-North Buffer Exhibit and is attached). The property adjoins the Duke Energy power transmission line easement. The county has not received an approval letter from Duke Energy on this issue and whether or not they will permit it and what landscaping, if any, they will permit to be planted on the edge of the parking area that is at a perimeter boundary. A condition has been noted below if approved.

**Item 3c** – A reduction from 100' to 75' along Phase 15-S boundary to eliminate the need to construct a retaining wall at edge of the perimeter buffer. This boundary adjoins



property that is not owned by Newland Communities. The developer stated if the reduction couldn't be approved, they would need to build a retaining wall to further support that section of that phase of residential development. However, a subdivision preliminary plat has been submitted for approval by the Board of Commissioners and is scheduled for action on July 17. The preliminary plat included all regulatory permits needed to construct this phase, and the erosion control plan has been approved which doesn't include a reduction into the buffer, and the retaining wall location was shown on the plan.

**This is recommended for denial by Planning staff.**

**Item 4** – Propose a revision the color key table on the master plan map to reflect adjustments to residential densities in particular locations. When the application was originally submitted, there was a phase noted at the northern area of the development that was be proposed for multi-family dwellings. During discussion with residents on Briar Chapel and county staff, it was later decided to remove the request for multi-family in that area. Single family dwelling units and townhomes may be constructed per the revised master plan that was provided during the public hearing.

During the public hearing staff questioned the applicant about the area adjoining the Dollar property, which is shown as the white rectangle in the middle of north of the project that accesses Mann's Chapel Road. There is no buffer shown around these properties on the master plan; however, the developer has provided an exhibit with a 50' buffer for these properties that will allow for grading and revegetation (the exhibit has been posted on the planning department website and is attached). The Dollar property was included as part of the original approval of Briar Chapel in 2005. In 2013, the owners submitted applications to rezone the properties from the compact community designation to R-1, Residential, which was subsequently approved by the Board of Commissioners.

Ms. Birchett reported that keeping with findings 2 and 3, Item 5 was talking about the affordable housing payment that Ms. Ford spoke about earlier. There was a neglect in getting the payment in lieu options for the additional units. There is an Addendum included in your packet that Mr. Sullivan will now discuss.

Mr. Sullivan reviewed the following included in the addendum:

**Item 5** – Provide a proposed payment-in-lieu option for the provision of affordable housing units for the additional dwelling units. First, The applicant has proposed to continue providing a payment of \$460.44 per unit above the 2,389 dwelling units following the current process, which is payment at the time of final plat submittal. Second, the applicant has proposed a lump sum payment of \$33,346.19 for the balance of the dwelling units using a methodology similar to what was applied in 2012. At that time a \$900,000 payment was provided to the county for the balance of the affordable housing lots under the original conditional use permit. Staff has requested additional information from the applicant regarding the 2012 lump sum payment to use for comparison. Mr. Sullivan said that the formula used in 2012 will be provided at the August Planning Board meeting.

Ms. Birchett continued reading the following findings:

**Finding 4 – The requested permit will be or remain consistent with the objectives of the Land conservation and Development Plan.** The development was approved in 2005 and the conditional use permit was amended in 2012 and 2014. The development is on-going and continues to comply with the current Land Conservation and Development Plan. The development includes a mix of residential units, as well as complementary non-residential uses. The northeastern portion of the county has continued to experience rapid development in part due to its proximity to RTP, Wake, Orange, and Durham Counties. The developer continues to work with the county Land and Water Resources department to take measures to protect ground and surface waters.

**Finding 5 – Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided consistent with the County’s plans, policies, and regulations.** The development will continue to utilize the county water system and the applicant indicated that wastewater treatment plant has been permitted with adequate capacity to support the approved development, as well as the requested increase. Recreation and open space will continue to be protected and provided through site design and compliance with ordinances and regulations.

There has been an on-going concern over the road network within the development and proper access for emergency vehicles, as well as ease of general traffic of the residents. Planning staff participated in two separate ride-alongs with the North Chatham Fire Department to gain first-hand knowledge of the obstacles and issues that the fire department has noted on several occasions. Photos and videos were taken by staff and shown at the public hearing. The footage indicated that there are issues for emergency vehicle access due to informal on-street parking. There have been discussions between the developer, staff, and the fire department and remedies are being discussed to address some concerns. They are:

- Intersection markings to restrict parking within a certain distance to allow for proper emergency vehicle turning movements.
- Restrictions to one side only parking on roads with higher density residential lots.
- Maintaining a minimum clearance width, etc.

Discussions between the developer, staff, and fire department are on-going and **a recommendation cannot be provided at this time.**

An updated impervious surface calculation is required due to the expansion of the parking area for Chapel in the Pines Church and SD North, addition of rock/stones that have been placed along some of the roads to address rutting that has occurred at the edge of pavement, and the removal of the Dollar property from the compact community land calculation. This is conditioned below.

**Recommendation:** Planning staff recommends that the Planning Board discuss the item, but delay voting on the request until a future meeting. The Planning Board has up to three meetings in which to make a recommendation to the Board of Commissioners. The

following conditions are recommended by staff; however, additional conditions may be provided based on the outcome of on-going discussions with the developer.

### **Site Specific Conditions**

1. The Master Plan and supporting documentation submitted with this amendment shall be the guide for development of remaining phases of the project. The road system, buffers, water features, and open spaces shall remain as shown on this master plan.
2. The site plan for the proposed school to be located on the civic site of Briar Chapel must be reviewed by the Chatham County Appearance Commission before any land disturbing activities commence.
3. A Traffic Impact Analysis shall be required if the developer intends to construct 2,650 dwelling units and exceed 301,500 square feet of non-residential development.
4. An approval letter from Duke Energy must be provided before land disturbing activity can begin on the northern portion of SD North as shown on the supplementary exhibit. This letter should detail what is permitted within the Duke Power easement and any landscaping that may be provided to shield the view from US 15-501.
5. An updated impervious surface calculation must be provided within six months from the date of the adopted approval and a final as built will be required at the completion of the project. If county staff request an updated impervious surface calculation during the development of the project the developer shall provide one within 60 days of such request.

### **Standard Site Conditions**

1. The application, standards and adopted regulations of the applicable ordinances and policies, and the 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 Department or other approving board before any such changes can take place. These include but are not limited to landscaping, lighting, signage, parking, building construction, etc.
2. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Land and Water Resources, Environmental Health Division, Building Inspections, Fire Marshal, etc.) shall be obtained, if required, and copies submitted to the Planning Department to the initiation of the operation/business.

## **Standard Administrative Conditions:**

1. 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 inspections.
2. Continued Validity – The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditional listed above.
3. Non-Severability – If any of the above conditions is held to be invalid, this approval in it's entirety shall be void.
  1. 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.

Board discussion-Some specifics followed during the Q&A session with the board members, developers and other representatives:

- Regarding Item 3 C-it was stated that there is a plan they are going to vote on 7/17/17 meeting, if they approved that one as the current plan, then this request will go away? Yes, it should.
- Duke Power has been addressed as a condition and before they can disturb the land they must have an approval letter from Duke Energy Progress. Has that letter been received? No, not at this time.
- Since the Public Hearing on May 15<sup>th</sup>, they have worked very hard to address the elements brought up.

Mr. Richard Adams of Kimley-Horn gave a brief summary explaining that they did all the traffic work on the project. Specifically, working collaboratively with planning staff and fire staff. They recognize there are some tight spots, they have a long history working with the county and NCDOT going back to 2006. There were parking issues during that time they addressed. 2011 internal street guidelines adopted by the BOC DOT approved road designs with curb and gutter, sidewalks and widths you see today. 2012 they went through the process with homeowners about the parking guidelines, signage was put up. In 2014 updated parking rules regarding homeowners not parking in guest parking spots. After the fire truck demonstration was done there have been meetings to address these concerns. Intersections are a big issues. On certain streets there are more narrow streets or high density of the housing, recommended parking only on one side of the street. They also have off-street parking areas throughout the development. This is still a work in progress, proposing restrictions in the intersection areas. DOT is very aware of traffic issues in this area. Both access points at Andrews St Rd, the road was completely rebuilt. The traffic study did include schools and the community college. At this time they do not know who will enforce parking in the areas of concern. There have been security people notifying people they cannot park in certain areas. When asked about the

impacts on the proposed elementary school, he explained they are looking at doing a traffic study to look at Andrews Store Road area. He also added that they are not just looking at the entry points of the school.

Mr. Robinson reports that the contract between Briar Chapel and the school system is underway, probably will be complete in a few months. He went through the 5 proposed conditions and updated staff and board members where they are with each one and he noted they have no problem with these. He discussed that Briar Chapel does intend in good faith, to prioritize the Affordable housing issue. First Condition, regarding the Master Plan is to possibly talk to staff about wording that differently so, they don't get in a trap that you can only do it exactly as it is shown on the master plan. For example, Open Space that is not shown on the Master Plan, but it is built in at a certain phase and not prohibiting them from doing that. He understands this is used for a guide for the developer. Lastly, the context we are in, we are requesting a CUP through Quasi-Judicial process, they have put in time and evidence to support all 5 of the findings. He wanted everyone to know that they have competent and qualified experts to support all of the findings. They appreciate the findings in 1, 4 and 5, for 2 and 3 they firmly believe are more substantial than that.

Chair Lucier asked the board if there were further questions or discussions and below are some of those:

- What is the average cost of the units? The value of a single unit for the developer not the monthly cost. The figures shown is \$20k per unit, the estimated net value is \$6,448/unit.
- If we approved up to 2650, how much control would we have over where they would go? Mr. Sullivan said that it is already mapped out on the chart where the units go.
- If we voted on it tonight, could they put 350 units in one place? Mr. Sullivan said, if approved they would be built as shown on plans. One member recommended residential be built on SD East and the commercial be built on SD West.

Chair Lucier and Ms. Weakly requested that all board members take the time to read the BOC draft minutes from the June 19, 2017 meeting prior to the next month's August Planning Board meeting. Ms. Weakley also recommended that it be done due to the amount of information. Mr. Sullivan said that public comments and materials have also been uploaded on the website.

#### IX. COMPREHENSIVE PLAN UPDATE & DISCUSSION:

Mr. Sullivan reported that the Draft Plan for the Comp Plan will be posted on the Planning Board website on July 14, 2017 and no later than August 8, 2017 a public comment section will be offered on the website as well. There will be a presentation of the Natural Gas study on August 21, 2017 at the BOC meeting.

X. NEW BUSINESS:

XI. BOARD MEMBER ITEMS:

Chair Lucier reminded board members that the next Public Hearing is scheduled for August 21, 2017.

XII. PLANNING DIRECTOR'S REPORTS:

- **Minor Subdivisions/Exempt Maps** - Information was included in tonight's agenda packet.

XIII. ADJOURNMENT: There being no further business, the meeting adjourned at 10:15 pm.

Signed: \_\_\_\_\_ / \_\_\_\_\_  
George Lucier, Chair Date

Attest: \_\_\_\_\_ / \_\_\_\_\_  
Paula Phillips, Clerk to the Board Date