

..TITLE

Vote on a request by Nicolas Robinson, on behalf of NNP-Briar Chapel, LLC, for a Compact Communities Ordinance (CCO) waiver to allow a riparian buffer encroachment and stream crossing between phases 16 South and North.

..ABSTRACT

Action Requested:

A request by Nicolas Robinson, on behalf of NNP-Briar Chapel, LLC, for a Compact Communities Ordinance (CCO) waiver to allow a riparian buffer encroachment and stream crossing between phases 16 South and North.

Introduction & Background:

NNP-Briar Chapel is requesting a waiver for an additional stream crossing and buffer impact between Phases 16 North and South on the approved master plan for Briar Chapel. Riparian buffer requirements of the CCO are outlined in Section 9.1 and are applied to Briar Chapel through the approved conditional use permit. It should be noted that the riparian buffer provisions vary between the CCO and Watershed Protection Ordinance (WPO). The watershed protection standards were adopted after the approval of Briar Chapel and are based on an on-site evaluation, whereas the CCO standards are evaluated based on existing mapped streams and drainage areas. Riparian buffers locations were depicted in the 2005 Briar Chapel approved master plan and reconfirmed in 2012; however in 2014 the stream and associated riparian buffer identified in Phase 16 were added and then reconfirmed with the 2017 conditional use permit amendment.

Discussion & Analysis:

The Chatham County CCO includes the following standards:

9.1 Riparian Buffers

In all residential, commercial, and civic areas in each compact community, vegetative buffers of the following widths shall be permanently protected along each side of the following streams:

- At least one hundred (100) feet along all perennial streams;
- At least fifty (50) feet along all intermittent streams;
- At least fifty (50) feet along all ephemeral streams shown on the Soil Survey maps and having a drainage area of more than twenty-five (25) acres;
- At least thirty (30) feet along all ephemeral streams shown on the Soil Survey maps and having a drainage area of between ten (10) acres and twenty-five (25) acres.

Uses Within the Buffer

No new development is allowed in the buffer area except for the following:

- Water dependent structures;
- Other structures such as flag poles;
- Signs and security lights which result in only diminutive increases in impervious area;
- Projects such as road crossings and greenways where no practical alternative exists;
- Desirable artificial stream bank or shoreline stabilization, as determined by Chatham County.

These activities should minimize built-upon surface area, direct runoff away from the surface waters (except sheet flow directed into a buffer), and maximize the utilization of stormwater best management practices.

To avoid a loss of effectiveness in protecting streams, the stream buffer shall remain in natural undisturbed vegetation, except as provided below.

Clearing, grading or other land disturbing activities that would reduce the effectiveness of the buffer shall be revegetated.

Buildings and other features that require grading and construction shall be set back at least ten (10) feet from the edge of the buffer.

Crossings by streets, driveways, culverts, railroads, recreational features, intakes, docks, utilities, bridges or other facilities shall be designed to minimize the amount of intrusion into the buffer.

Section 15. Waiver, “With the approval of the Board of Commissioners, the requirements of this ordinance may be adjusted, modified, reduced or waived based upon the absence of any reasonable relationship or nexus between the impact of the compact community development and the inclusionary or other requirements set forth herein.”

The request is to allow a stream crossing for a road between Phase 16 North and South that is currently not shown on the adopted master plan (see attachment). The waiver request submittal materials include approvals from the US Army Corps of Engineers dated February 24, 2017 and NC Department of Environmental Quality dated February 3, 2017 approving a revised stream and wetlands impact map. The proposed impact is identified as “Impact Y” on the map and a copy is also provided as an attachment.

Board members may recall that Phase 16 South, Section 2 received final plat approval on June 19, 2017 and the Planning Board recommendation was for approval by a vote of 5-4. An issue arose during the final plat review where it was discovered that the developer installed a stub street adjacent to the stream in question that was not shown on the preliminary plat submittal. The developer indicated during the Planning Board

discussion that they were considering submitting a request for a stream crossing in the future. During the May 2017 public hearing for an amendment to the Briar Chapel conditional use permit, staff requested an explanation for the discrepancy between the proposed revisions to the master plan and the wetlands/stream impacts map approved by the Corps earlier in February 2017. Representatives for the developer indicated that they were considering submitting a request for a stream crossing at a future date.

The waiver request is being submitted directly to the Board of Commissioners without review and recommendation by the Planning Board or Environmental Review Advisory Committee and follows the process outlined by the Board in a waiver request approved in August 2010. The Board has the option to forward the request to an advisory board(s) for additional review and recommendation. The waiver provision has been used to modify a condition in the original conditional use permit in 2005. Additionally, requests in 2010, 2012 and 2016 were approved outside of the conditional use permitting process. A waiver request was submitted in 2015 and was ultimately withdrawn. A copy of the draft Order was provided to the County Attorney for review.

The Commissioners discussed this item during their November 20, 2017 meeting and forwarded the item to the Environmental Review Advisory Committee (ERAC) to review the documents that were submitted with the request and provide a recommendation. ERAC reviewed the Briar Chapel request for a waiver for a stream crossing in Phase 16 at their December 14, 2017 meeting. Based on the information submitted, ERAC recommends the request be granted to Briar Chapel. ERAC noted that Briar Chapel has had issues with stream crossings in the past (2010 time frame), but acknowledges that those crossings have since been repaired to the satisfaction of the Corps of Engineers and recent crossings have been performed successfully. In addition, ERAC noted that the mitigation for this stream crossing is not located within the same watershed, so potential impacts to the watershed due to the proposed stream crossing would not be lessened by the proposed mitigation. Lastly, ERAC recommends that the stream crossing be observed by Chatham County staff during instruction to ensure minimum impacts and that the crossing is done in accordance with the approved permits. The decision to recommend approval of the waiver request was unanimous, 6-0.

How does this relate to the Comprehensive Plan:

Goal 3: Promote a compact growth pattern by developing in or near existing towns, communities, and in designated, well planned, walkable, mixed use centers.

Recommendation:

Discuss the waiver and consider taking action on the draft Order prepared by the developer's attorney.