

**ORDER OF THE BOARD OF COMMISSIONERS
OF CHATHAM COUNTY
GRANTING A WAIVER PERMITTING NEWLAND COMMUNITIES
TO MAINTAIN CERTAIN EXISTING RETAINING WALLS
IN PHASE 5, SECTION 1 OF THE
BRIAR CHAPEL COMPACT COMMUNITY**

WHEREAS, on or about the 21st day of June, 2010, the Board of Commissioners of Chatham County (the "Board of Commissioners") received an application from Newland Communities and The John R. McAdams Company (the "Petitioners") requesting that the Board of Commissioners grant a Waiver to Newland Communities pursuant to Section 15 of the Chatham County Compact Communities Ordinance. Specifically, Petitioners requested a waiver of Section 9 of the Compact Communities Ordinance (that requires a ten-foot "no build" setback from the edge of a buffer) for Retaining Wall No. 1 that slightly encroaches into the "no build" setback by 98 square feet and for Retaining Wall No. 3 that slightly encroaches into the "no build" setback by 82 square feet. Retaining Wall No. 1 and Retaining Wall No. 3 are located in Phase 5, Section 1, of the Briar Chapel Compact Community; and

WHEREAS, the Briar Chapel Compact Community will consist of 2,389 dwelling units when built out on 1,589 acres, located off Highway 15-501 North and Mann's Chapel Road. The Briar Chapel Compact Community was approved by the Board of Commissioners on February 15, 2005; and

WHEREAS, on January 19, 2010, the Board of Commissioners approved the subdivision final plat for Briar Chapel, Phase 5, Section 1, which consists of 28 lots on 5.11 acres, located off Briar Chapel Parkway; and

WHEREAS, after receiving final plat approval for Briar Chapel, Phase 5, Section 1, The John R. McAdams Company discovered that Retaining Wall No. 1 and Retaining Wall No. 3 slightly encroach in the "no build" setback. The encroachment of the retaining walls in the "no build" setback was due to a mistake in measurement; and

WHEREAS, while Retaining Wall No. 1 encroaches in the "no build" setback by 98 square feet, 885 square feet exist between Retaining Wall No.1 and the "no build" setback. Likewise, while Retaining Wall No. 3 encroaches in the "no build" setback by 82 square feet, 94 square feet exist between Retaining Wall No. 3 and the "no build" setback; and

WHEREAS, since Retaining Wall No. 1 and Retaining Wall No. 3 slightly encroach in the "no build" setback, Petitioners have offered a Mitigation Plan (the "Mitigation Plan") to lessen and mitigate the encroachment in the "no build" setback which Newland Communities agrees to complete to the reasonable satisfaction of Chatham County:

1. Newland Communities will dedicate 885 square feet between the ten-foot "no build" setback and Retaining Wall No. 1 and 94 square feet between the "no build" setback and Retaining Wall No. 3 to the conservation easement. The area between the

“no build” setback and Retaining Wall No. 1 and Retaining Wall No. 3 is described in Exhibit “A” that is attached hereto.

2. Petitioners will provide plantings and perform additional specified tasks along Retaining Wall No. 1 and Retaining Wall No. 3 as shown and described in the Re-Vegetation Plan attached hereto as Exhibit “B”; and

WHEREAS, the Chatham County Environmental Resources Director performed a site visit, has reviewed and approved the Mitigation Plan, and has recommended that the Board of Commissioners grant the Waiver and require Petitioners to comply with the Mitigation Plan; and

WHEREAS, the Board of Commissioners has determined that the removal of the retaining walls would likely create more environmental damage than the retaining walls will cause by remaining in their current location; and

WHEREAS, based upon the review of the information presented by Petitioners and the Chatham County Environmental Resources Director, and considering the facts and circumstances of Petitioners’ Application for a Waiver, the Board of Commissioners has concluded that the requirements for granting a Waiver to Newland Communities pursuant to Section 15 of the Chatham County Compact Communities Ordinance have been met; and

WHEREAS, it appears to the Board of Commissioners, and the Board of Commissioners hereby finds, that the Waiver requested by Petitioners, when combined with the Mitigation Plan, is a reasonable solution to the retaining walls constructed in the “no build” setback and should be granted;

NOW, THEREFORE, BE IT ORDERED by the Board of Commissioners of Chatham County:

1. The recitals set forth above are incorporated in this Order.
2. The Waiver requested by Petitioners with respect to Retaining Wall No. 1 and Retaining Wall No. 3 is granted, subject to the completion of the Mitigation Plan to the reasonable satisfaction of Chatham County.
3. The Mitigation Plan is approved.
4. No waiver or consent except the specific waiver set forth above is granted.

Adopted this the 2nd day of August, 2010.

CHATHAM COUNTY BOARD OF COMMISSIONERS

By: Sally Kost
Sally Kost, Chair

ATTEST:

Sandra B. Sublett, CMC, NCCC
Sandra B. Sublett, CMC, NCCC, Clerk to the Board
Chatham County Board of Commissioners