

**A RESOLUTION APPROVING AN APPLICATION FOR A CONDITIONAL  
USE PERMIT FOR A REQUEST BY MITCH BARRON ON BEHALF  
OF NEWLAND COMMUNITIES FOR BRIAR CHAPEL  
PLANNED RESIDENTIAL DEVELOPMENT**

**WHEREAS**, Mitch Barron on behalf of Newland Communities, has applied to Chatham County for a conditional use permit for a certain tract or parcel of land containing approximately 1,589 acres in the vicinity of US 15-501 N., Mann's Chapel Road and Andrews Store Road for use as a Planned Residential Development as indicated in the; and

**WHEREAS**, the Chatham County Board of Commissioners hereby finds as follows:

1. The uses requested are among those listed as eligible conditional uses in the district in which the subject property is located or is to be located.
2. The requested conditional use permit is either essential or desirable for the public convenience or welfare.
3. The requested 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.
4. The requested permit is consistent with the objectives of the Land Development Plan and the Compact Community Ordinance;
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.

**NOW, THEREFORE, BE IT RESOLVED BY THE CHATHAM COUNTY BOARD OF COMMISSIONERS** as follows:

That a Conditional Use Permit be, and it hereby is, approved for the reasons hereinabove stated subject to the additional stipulations and conditions set forth hereinafter; and

**BE IT RESOLVED FURTHER** that the Chatham County Board of Commissioners hereby approves the application for the conditional use permit in accordance with the plan of Briar Chapel dated June 29, 2004 attached hereto and incorporated herein by reference with specific conditions as listed below:

**Stipulations Specific to the Development.**

1. Construction Deadlines. This permit shall automatically expire on the second anniversary of its issuance unless (a) construction has commenced; or (b) a timely filed application for an extension of time has been approved by the County. This permit shall automatically expire on the fifteenth anniversary of its issuance unless the construction of all required improvements has been completed or extended by the County upon request prior to the expiration of the term.

2. Land Use Intensity. This special use permit approves:

Gross Land Area	1589 acres
Max Impervious surface area	24%
Maximum Number of Dwelling Units	2389

3. Watershed Management. A detailed watershed protection plan for the entire project area, which shall include impervious surface calculations, as well as a monitoring plan for each phase as it is submitted for plat approval, to assure compliance with the maximum impervious surface area allowed herein for the entire project, shall be approved by the Planning Department prior to issuance of a Zoning Determination Permit. Prior to issuance of a Certificate of Occupancy, the developer shall submit evidence satisfactory to the Planning Department of compliance with the approved plan.

4. Storm Water Management. A storm water management plan shall be approved by the Planning Department prior to issuance of a Zoning Determination Permit for each phase of the project. Such plan shall include final construction drawings for storm water management control measures and an impervious surface calculation sheet for that phase. The developer shall construct storm water management control measures sufficient to serve each phase of the project area prior To issuance of a Certificate of Occupancy.

5. Fire flow. A fire flow report indicating adequate design be approved by the Chatham County Fire Marshal and Planning Department prior to issuance of a Zoning Determination Permit. Adequate fire flow shall be demonstrated prior to issuance of a certificate of occupancy. Any final plan shall indicate adequate access for pumper trucks.

6. Lighting Plan Approval. All area lighting shall meet County standards and not adversely affect adjoining residential areas.

7. Utility and Access Easements. Easement documents as required by the County for any public utilities used or furnished to the project area shall be recorded prior to issuance of a Zoning Determination Permit.

8. Unity of Development. Prior to issuance of a Zoning Determination Permit, guidelines for the future development of the project as a unified whole shall be approved by the Planning Department. Such guidelines shall delineate architectural elements relating to building materials, roof treatments, and low impact from water runoff and water quality. More particularly, such guidelines shall specify the following at a minimum:

- (a) The dominant building material or combination of materials;
- (b) The means by which the materials or combination is dominant;
- (c) The dominant color or pattern of colors;
- (d) The means by which the colors or pattern of colors is dominant and the use of color on the facades of any structures;
- (e) If selected, the dominant architectural feature or combination of features;
- (f) Architectural features such as roof treatments including style, materials, and color, facade treatments including fenestration patterns and ornamentation; and building form including overhangs, canopies, protected exterior walkways, and entrance treatments; and to the extent practicable, such features shall be consistent with the existing businesses in the area.
- (g) Provisions for the guidelines to be made applicable and binding upon all development within the project including all outparcels.

#### **Stipulations Regarding State and Federal Government Approvals**

9. Permits. Any required State or Federal permits or encroachment agreements, including a commercial driveway permit(s) from NC DOT be obtained and copies submitted to the County prior to the issuance of a Zoning Determination Permit.

10. Improvements. Off-site improvements required by N.C. DOT or any other agency shall be constructed at no cost to the County including the traffic improvements as stated in the most recent TIA and others as ultimately deemed warranted by the NCDOT following its analysis. The County shall forward to NCDOT its peer review comments and request consideration thereof.

### Stipulations Regarding Required Improvements

11. Parking and off-street loading areas. Parking and off-street loading areas shall be installed in accordance with the ordinances and policies of the County. Future submittals for preliminary subdivision plat approval will designate park-and-ride parking spaces (such as additional spaces in proposed parking lots above the minimum number required for retail or office uses) and transit stops, pedestrian and bicycle facilities, and traffic calming devices, as reasonable and necessary to accommodate then-existing multi-modal transit needs at those locations.

12. Streets. Roads will be stubbed-out and/or areas will remain underdeveloped as reasonably necessary to allow for future connections with currently undeveloped parcels, so long as such access takes into account physical features and other access points and are no more than necessary, and with the understanding that future connecting roads will be designed and constructed to approximately the same standards as the connecting roads in Briar Chapel. Where roads are constructed they will be built to required standards up to the perimeter buffer. The exact location of said roads may be determined during preliminary plat review. Signs shall be posted on the property advising of the future extension of said roads.

13. Utilities.

(a) The developer shall demonstrate availability of adequate water and wastewater supplies to serve the property and plans for provision of the same shall be approved by the Planning Department prior to issuance of a Zoning Determination Permit for each phase. Such plans shall be in conformity with any County policies then in effect and the developer shall pay all fees and charges associated with the project, including then current utility fees, review and inspection charges prior to issuance of a Zoning Determination Permit or final subdivision plat approval for each phase, whichever is earlier. The entire cost of extending public utility services if desired or required under County regulations shall be borne by the developer.

(b) Adequate water service may include the provision of an above-ground storage facility at a site satisfactory to the County if necessary to adequately provide fire flow pressures for the project and surrounding area.

(c) Adequate wastewater treatment service for the entire project area shall be designed and approved by the appropriate regulatory agency prior to issuance of a Zoning Determination Permit and constructed at no cost to the County. Adequate facilities for the spray irrigation of treated effluent from each phase of the project shall be designed, approved by the appropriate regulatory agency, and constructed at no cost to the County prior to issuance of a Certificate of Occupancy for any building within that phase of the project.

(i) Equipment such as pumps and blowers will be appropriately insulated or buffered to ensure that no motor noise from them will be noticeable on a typical day at the boundary of the wastewater plant lot.

(ii) A water circulation or aeration system and/or a surface-floating intake will be installed in the 110-day holding ponds.

14. Public Facilities.

(a) A fire station/EMC building site will be donated to Chatham County, but re-located and oriented to the entrance road to Briar Chapel, and a natural buffer will be undisturbed along the south side of Mann's Chapel Road at that location.

(b) The applicant shall donate suitable sites for a water storage facility, library, charter and public schools, recreation facility acceptable to the County or the public body intended to benefit thereby, not substantially inconsistent with the approximate location and size as set forth in the master plan attached to the conditional use permit application and below. The applicant will cooperate with the County in the exact location and area of said facilities. Future maintenance of any public recreation facility shall be acceptable to the County. The school site shall be sufficient for an elementary or middle school facility up to 34 acres in area. The library facility, including parking and site work, shall be constructed by the developer, with input from the County, subject to satisfactory leaseback arrangements with the County or its assignee.

**Stipulations Related to Landscape Elements**

15. Landscaping/Screening. All required screening and buffers shall be in place prior to issuance of a certificate of occupancy. Existing vegetation may be used to fully or partial fulfill the landscaping and buffer requirements of the County. The extent to which the same can be used shall be determined by the Planning Department prior to issuance of the Zoning Determination certificate.

(a) At the time of construction of the road entering Briar Chapel next to the Tripp property, a six-foot opaque fence shall be erected along the east side of Ms. Tripp's property, consistent with NCDOT regulations, and landscaped on the side facing Ms. Tripp's property to the extent allowed by Ms. Tripp and landscaped with 6-8 foot tall trees on the east side of the fence. To the extent practicable, the developer shall meet and consult with Ms. Tripp to try to resolve any issues relating to the exact location and timing of the road in light of the stream buffer requirements and design criteria of the Compact Community ordinance as well as the requirements of NCDOT.

(b) There shall be constructed a pedestrian bridge and trail over Pokeberry Creek to connect Briar Chapel to Polks Landing Subdivision.

### **Miscellaneous Stipulations**

16. Archaeological Survey. A preliminary field reconnaissance archaeological survey to determine the existence or absence of any site of likely archaeological significance will be performed by a professional archaeologist (as listed on the NC Dept. of Cultural Resources website). The reconnaissance survey shall be performed in areas of ground disturbance which would adversely impact potential sites, such as areas of future roadways, active recreation areas to be graded, and lots to be developed (i.e. not including buffers, open space or irrigation areas). Areas determined by the NC Department of Cultural Resources, Archaeology/Historic Preservation Section as a low probability of likely significant sites are not required to be surveyed. Any site identified with likely archaeological significance shall have an intensive survey to determine significance. If a site is determined as a candidate for nomination to the "National Register of Historic Places" it shall be preserved or documented prior to being disturbed. The field reconnaissance survey shall be performed prior to preliminary plat submission. Any recommended intensive survey shall be performed prior to ground disturbing activity in the area of concern. The surveys shall be performed at Newland's expense.

17. Solid Waste Management Plan. A detailed solid waste management plan, including residential curbside recycling and solid waste pick-up, management for construction debris, and non-residential solid waste removal by a licensed contract removal company, shall be approved by the Planning Department prior to the issuance of a Zoning Determination Permit. The final plans shall include a detail of proposed service. Solid waste services shall be at least comparable to County-provided services, or make arrangements for differences in services.

18. Detailed Site Plan. A final detailed site plan, grading plan, utility/lighting plans, storm water management plan with hydraulic calculations, moderately priced dwelling plan and landscape plan for the entire project area as a unified development shall be approved by the Planning Department before the issuance of any Zoning Determination Permit and such plans shall conform to the plans approved in the application and demonstrate compliance with all applicable conditions hereof and of the County's ordinances. Non-residential subdivision of the project area shall also require the developer to comply with the site plan requirements of the County's subdivision regulations, including approval thereof by the Board of Commissioners. Such subdivision review may allow modification of the master site plan approved hereunder so long as not substantially inconsistent with this permit.

19. Stages. If desired, the applicant may construct the project in stages or phases. Each such stage shall be subject to approval by the County pursuant to its subdivision regulations. No final plat of a stage or phase of the development shall be approved if there is any uncorrected violation of any provision of this permit. Upon subdivision review of each phase, the applicable Recreation and Open Space, Community Facilities, Community Design, including housing, standards of the Compact Community Ordinance provisions shall be satisfied. Such subdivision review may allow

mutually agreeable modification of the standards referred to therein so long as not substantially inconsistent therewith. For each phase, a "Zoning Determination Permit," as used elsewhere in this resolution, shall be issued by the Planning Department on a phase-by-phase basis, prior to the issuance of any building permit for structures in that phase.

20. Moderate Income Housing. With the consent of the Applicant, and as an approximately equivalent alternative to and in lieu of the housing standards for Moderate Income persons set forth in Option A of the Compact Community Ordinance, the developer shall contribute 2.5% of the approved lots in the overall development, or each phase if developed in stages, for ultimate sale as directed by the County to persons or families whose income is 80% or less of the Area Median Family Income standard by family size and shall contribute \$1,100,000.00 to the County for the purpose of ameliorating the housing needs of Chatham County citizens. Said contribution shall be payable to Chatham County on a prorated basis upon final subdivision plat approval of each phase of the development. Such contribution represents the approximate value of 2.5% of the approved lots in said overall development or phase thereof as applicable.

21. Environment. The lots on Bennett Mountain shall be relocated to lessen the impact of the development on the primary and secondary environmental areas as described in the Natural Areas Inventory. The Bennett Mountain area will be one of the last areas for line installation and spray irrigation. If future regulatory changes, and/or approved system flow reductions, will ultimately result in this area not being needed for irrigation, lines will not be installed in this area unless otherwise required by the State. Before any lines are installed in the Bennett Mountain area, Newland will seek further flow reduction approval or other necessary state permission under the then existing applicable regulations so as not to be required to install irrigation lines in this area in order to comply with permit requirements and the then existing applicable regulations.

22. Erosion Control. If applicable, an erosion and sedimentation control plan be approved by the North Carolina Department of Environmental Health and Natural Resources or other authorized governmental entity and submitted to the Planning Department prior to the issuance of a Zoning Determination Permit.

23. Silt Control. The applicant shall take appropriate measures to prevent and remove the deposit of wet or dry silt on adjacent paved roadways.

24. Appeal. In the event it becomes necessary for the County to respond to or defend any action, cause of action, claim, or appeal involving this resolution or the decision taken herein, 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 actions, causes of action, claims, demands, damages, costs, loss, expenses, and compensation, either known and unknown, resulting to or from this decision.

25. Fees. Applicant 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, building inspection, recreation and impact fees established from time to time. In addition to any fees or charges otherwise required by the County, the applicant shall pay or cause to be paid to the County as a voluntary contribution the sum of \$2,000.00 per dwelling unit upon the sale of each lot or unit.

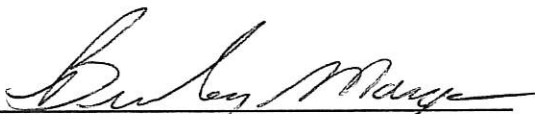
26. Continued Validity. The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditions listed above.

27. Non-Severability. If any of the above conditions is held to be invalid, this approval in its entirety shall be void.


28. 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.

**BE IT FURTHER RESOLVED** that the Board of Commissioners of the County of Chatham hereby approves the application for a conditional use permit in accordance with the plans and conditions listed above.

Adopted this the 15th day of February, 2005, and signed the 21<sup>st</sup> day of March, 2005.

  
Bunkey Morgan, Chairman

ATTEST:

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