



# Chatham County, NC

## Legislation Details (With Text)

**File #:** 17-2168      **Version:** 2  
**Type:** Resolution      **Status:** Passed  
**File created:** 4/28/2017      **In control:** Planning  
**On agenda:** 9/18/2017      **Final action:** 9/18/2017

**Title:** Vote on 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, (4) revise the color key table on the master plan map to reflect adjustments to residential densities in particular locations, and (5) update the moderately priced dwelling unit requirement for any increase above the original 2,389 approved units.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. More Information from Planning Department Website

Date	Ver.	Action By	Action	Result
9/18/2017	2	Board of Commissioners	adopted	Pass
5/15/2017	1	Board of Commissioners	referred	

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**Action Requested:**

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, (4) revise the color key table on the master plan map to reflect adjustments to residential densities in particular locations, and (5) update the moderately priced dwelling unit requirement for any increase above the original 2,389 approved units.

### **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.

**The Planning Board discussed this item during their July 11, 2017 meeting. Planning staff reviewed the notes and highlighted items requiring further review. There were no proposed changes to what was outlined in the notes. The following are the items requiring further discussion by the Planning Board:**

- **Concerns remain over the enforcement of the parking restrictions that are currently in effect and those that will be forthcoming. The developer is still evaluating options and discussing them with North Chatham Fire Department staff and Briar Chapel residents. A homeowner's association meeting was scheduled during the time between the July and August Planning Board meetings.**
- **Concerns about raising the residential cap in the Compact Community Ordinance for a development that is at half built and that is approved for the current maximum. There were issues raised about traffic, lack of amenities to serve all residents, impacts on the surrounding community, and environmental concerns.**
- **Concerns remain over the increase in traffic on Andrews Store Road with consideration given to the existing amount of traffic that includes two existing schools and the possibility of two new schools. Richard Adams with Kimley-Horn stated that roundabouts may be helpful in these areas but an official assessment needs to be done when appropriate and would be under the direction of NCDOT. He also explained that NCDOT**

has an internal group designated to evaluate school sites.

The applicant's attorney, Nick Robinson, suggested some changes to the wording of the Site Specific Conditions No. 1 and 5. The applicants agree to all other conditions as written. The proposed word changes are: Condition No. 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 unless subsequently modified pursuant to an order entered or a resolution adopted by the Board of Commissioners; .and Condition No. 5 - An updated impervious surface calculation must be provided within six months from the date of the adopted approval and an engineer assessment of the overall impervious surface calculation will be required at the completion of the project. If county staff requests an updated impervious surface calculation during the development of the project the developer shall provide one within 60 days of such request.

The Planning Board continued discussion on this item during their August 1, 2017 meeting. The majority of the discussion focused on the dwelling unit increase and a minority and majority report have been provided and both have been posted on the county website. The Planning Board recommendations are provided in bold for each of the items noted below.

#### **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:

**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.

- **The Planning Board voted 10-0 to recommend approval of this finding.**

**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 Planning Board voted 7-3 to recommend approval of this finding. A minority report was submitted citing support could not met due to lack of affordable housing, traffic issues, walkability, and watershed protection.**

**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.**

- **The Planning Board voted 7-3 to recommend approval of this finding. A minority report was submitted citing support could not be met for the same and other reasons as noted for Finding #2 and in the report.**

**Item 1** - The application includes a revision to the civic site located at the intersection of Andrews Store and Parker Herndon Roads to provide more flexibility for a Chatham County Elementary School in order for the school system to begin preparations for engineering and site planning. The school administration has confirmed the need for an additional elementary school site in this area of the county. County water and the Briar Chapel wastewater treatment plant (WWTP) will serve the location. 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.

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.**

- **The Planning Board by vote of 9-1 recommends approval of Item 1.**

**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. The amendment to the Compact Communities Ordinance is recommended for approval by the Planning Board.

- **The Planning Board by vote of 7-3 recommends approval of Item No 2. The minority and majority reports provide more detail about the opposing viewpoints.**

**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.

**This is recommended for approval by planning staff.** A revised impervious surface calculation summary has been provided and currently complies with the 24% limit.

**The Planning Board by vote of 10-0 recommends approval of Item No 3a.**

**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.

**The Planning Board by vote of 9-1 recommends approval of Item 3b with the stated condition No. 4 below.**

**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.**

**The Planning Board by vote of 10-0 recommends denial of Item No. 3c.**

**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.

**The Planning Board by vote of 9-1 recommends approval of Item 4 with the conditions as noted below.**

**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.

**The Planning Board did not make a recommendation on this matter deeming it an administrative matter between the applicant and the county. At the time these notes were written the applicant and County Manager's Office were still discussing this item. This item will need to finalized prior to the Board of Commissioners taking action on the conditional use permit amendment.**

**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.

**The Planning Board by vote of 7-3 recommends approval of Finding 4. Please refer to the minority report for the recommendations for denial.**

**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 but significant progress and plans have been made and presented to planning staff and the planning board in that they are agreeable to the proposed changes to be implemented by the developer and HOA of Briar Chapel.

**The Planning Board by vote of 9-1 recommends approval of Finding 5.**

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:**

The Planning Board recommends approval of the proposed amendment and adoption of a resolution amending the conditional use permit as noted above to the Board of Commissioners. The Planning Board voted recommend approval with the exception of the reduction of the 100' buffer to 75' along the boundary of Phase 15S.

As noted in the Discussion& Analysis section of the notes, the affordable housing payment for the additional lots was under discussion at the time the notes were written. An agreement has be made prior to the Board of Commissioners taking action on conditional use permit amendment. Additionally, language will need to be included in the conditional use permit to reflect the agreement reached by the applicant and county.

The following conditions are requested as part of this approval:

### **Site Specific Conditions**

1. A revised Master Plan shall be provided to the Planning Department reflecting no reduction to the perimeter buffer along the boundary of Phase 15S as was requested in the amendment application.
2. The revised 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 unless subsequently modified pursuant to an order entered or a resolution adopted by the Board of Commissioners.
3. 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.
4. 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.
5. 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.
6. An updated impervious surface calculation must be provided within six months from the date of the adopted approval and an engineer assessment of the overall impervious surface calculation 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**

7. 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.

8. 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:**

9. 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.
10. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditional listed above.
11. Non-Severability - If any of the above conditions is held to be invalid, this approval in it's entirety shall be void.
12. 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.