



Chatham County, NC

Legislation Text

File #: 23-5010, Version: 1

Vote to approve a request by Landon Lovelace, P.E. on behalf of Oak Crest Commercial, LLC for subdivision **First Plat** review and approval of **Jordan Retreat**, consisting of 33 lots on 52.17 acres, located off Jordan Dam Road (SR-1970), parcel 11433 in Haw River Township.

Action Requested:

Vote to approve a request by Landon Lovelace, P.E. on behalf of Oak Crest Commercial, LLC for subdivision First Plat review and approval of Jordan Retreat, consisting of 33 lots on 52.17 acres, located off Jordan Dam Road (SR-1970), parcel 11433 in Haw River Township.

Introduction & Background:

Zoning: R-1

Water System: Public

Sewer System: Proposed Private Wastewater Treatment Tanks

Subject to 100-year flood: None

General Information: The subdivision process is a four (4) step process: Concept Plan, First Plat, Construction Plan, and Final Plat. The applicant has completed the community meeting and the Concept Plan review. This is a conservation subdivision and lot sizes and setbacks vary, but the method to calculate net density is outlined in the Subdivision Regulation, Section 5.2 C (4) (a) "During a First Plat review, the first Planning Board meeting shall include a Public Hearing to receive comment on the proposed subdivision." Item (b) states "Following the Public Hearing, the Planning Board shall review the proposal, staff recommendation and public comments and indicate their recommendation for approval, disapproval or approval subject to modifications. If the Board recommends disapproval or approval subject to modifications, the necessary reasons or modifications will be specified in the minutes of the meeting."

Discussion & Analysis:

The request is for First Plat review and recommendation of Jordan Retreat, consisting of 33 lots on 52.17 acres, located off Jordan Dam Road, S.R. 1970. There is a cabin on the property and one of the 33 lots will be reserved for the existing cabin. As previously stated, the Planning Board has two (2) meetings to act on the proposal.

Section 7.7 of the Subdivision Regulations, Conservation Subdivision - Alternative Standards for Development states in part "As an alternative to conventional layouts, Chatham County encourages the preservation of large, contiguous blocks of land...When a project voluntarily preserves Conservation Space in accordance with this Section, a project can increase the number of units that would be allowed on the overall property by ten (10) percent. Calculations of the density bonus shall be based on the applicable underlying land use regulations(s) dictating allowable development density. Land required to be protected under other regulatory provisions, such as riparian buffers and

floodplain, are not permitted to be included in the Conservation Space calculation.” Please read the entire Section 7.7, Items A - N for a complete understanding of Conservation Subdivisions. Also, please refer to the Chatham County Conservation Subdivision Guidelines for Conservation Space Selection which is available on the Planning Department webpage under Ordinances and Regulations. A conservation subdivision requires that a minimum of 40% of the project area be retained as Conservation Space. A minimum of 80% of such Conservation Space shall be Natural Space and a maximum of 20% of the Conservation Space may be Open Space.

Density Calculations: The land required to be protected within a Conservation Subdivision under other regulatory provisions, i.e. riparian buffers and floodplain, is 15.58 acres and 13.22 acres of riparian buffers. This amount (15.58 acres) was deducted from the total acreage of 52.17 acres to arrive at the net land available consisting of 36.59 acres. Based on the net land area the lot yield would be 56 lots and without adding the 10% density bonus. The proposed project is 33 lots.

Conservation Space: Of the total project area of 52.17 acres with 38.95 acres outside of the riparian buffers, 15.58 acres are required to be in Conservation Space and the site plan indicates that 21.84 acres will be set aside. See the site plan for the breakdown and location of the Conservation Space. The developer allowed staff from the NC Natural Heritage Program to visit the proposed project prior to designing the subdivision layout. The area set aside for Conservation Space meets the requirement that 40% of the project area be retained as Conservation Space.

Natural Space: 80% of the Conservation Space is required to be Natural Space. The Conservation Space Guidelines states “Natural space is unimproved land in its naturally occurring state, or preserved to regenerate to its naturally occurring state, unaltered by human activity, and preserved to maintain or improve the natural, scenic, ecological, cultural, hydrological, or geological values of an area.” The site plan indicates this requirement will be met.

Open Space: A maximum of 20% of the Conservation Space may be Open Space, of the 38.95 acres designated as Conservation Space the site plan indicates this will be met. The ‘Guidelines’ state “Open space, as defined in the Subdivision Ordinance, allows amenities such as recreational uses and some non-intrusive common uses (e.g. when land application is not the preferred means of wastewater disposal, community septic systems are allowed in Open Space areas). Open space should be located as close to proposed development as practicable, taking into account considerations such as public safety and soil suitability.” See Section 7.7 (D), Items 1 - 8 for allowed uses in Open Space related to Conservation Subdivisions. All land disturbing activities associated with the Conservation Subdivision are subject to the full provisions of the Soil Erosion and Sedimentation Control Ordinance, regardless of the designated use or status of a given area.

Previous Conversation Calculations: Conservation calculation prior to amending the regulations would allow the riparian buffers to be included in the overall calculations of the project. With this project 52.17 acres 40% of the conservation space would be 20.87 acres and all riparian buffers could have been included in the 20.87 acres. Under the current regulations riparian buffers will need

to be subtracted from the overall acres. With this project there are 13.22 acres of riparian buffers that would be subtracted from 52.17 acres leaving 38.95 acres for the project; 40% of 39.15 acres is 15.58 acres of conservation plus the 13.22 acres of riparian buffers.

Roadways: The roads are to be built with a 20-foot-wide travel way and 60-foot-wide private right-of-way, a total of .43 miles of private right-of-way. The roads are to be privately maintained. The entrance to the development is on the US Army Corp of Engineer property. An email correspondence dated August 1, 2023, from Shannon C. Maness, Chief Ranger states, "Our Operations Project Manager will be sending a letter to document this action for future inquiries. Also just be advised that any proposed utilities, (i.e., electric, phone, cable, water, etc.) will need their own separate easement across public land, to be coordinated through our office."

Historical: The developer corresponded with Sy Robbins with Chatham County Historical Association (CCHA). CCHA stated they looked over the reports and maps and have no comments or concerns. They request to keep a sharp lookout for burial sites and artifacts during construction activities.

Schools: Notification of the proposed development was provided to the Chatham County School System.

General Environmental Documentation: The developer submitted the General Environmental Documentation and a letter dated May 12, 2021, from North Carolina Department of Natural and Cultural Resources Natural Heritage Program (NCNHP) to Chatham County Land & Water Resources Division for review. The letter states "A query of the NCNHP database, indicates that there are no records for rare species, important natural communities, natural areas, and/or conservation/managed areas within the proposed project boundary. Please note that although there may be no documentation of natural heritage elements within the project boundary, it does not imply or confirm their absence; the area may not have been surveyed. Per the NCNHP letter it states, "rare species and natural communities that have been documented within a one-mile radius of the property. The proximity of these records suggests that these natural heritage elements may potentially be present in the project area if suitable habitat exists." Some of the element occurrences documented within one-mile radius are Checkered White, Drey-Mesic Oak Hickory Forest, bog spicebush, buttercup phacelia, etc. NCNHP recommends contacting the US Fish and Wildlife Services (USFWS) for guidance.

Taylor Burton, Watershed Specialist, reviewed and approved the information submitted.

Ownership / Management of Conservation Space: Section 7.7 (F) of the Subdivision Regulations requires that the applicant identify the current and intended future owners(s) of the Conservation Space and who will be responsible for maintaining the area / facilities. Per the Draft Conservation Management Plan the Natural Space and the Open Space will be maintained by the Homeowners Association. Section 7.7 (G) requires that a management plan for the Conservation Space be submitted to and approved by the County. A copy of the draft plan has been provided by the

applicant. Per Section (G) “Upon initial approval of the management plan by the County, changes to the plan shall be allowed only when approved by the County Board of Commissioners.” Section (H) requires that the Conservation Space shall be protected in perpetuity by a binding legal document that is recorded with the deed upon review and approval by the County. The applicant has provided a draft copy of the deed which will convey the Conservation Space to the third party (homeowners association) and has included a draft copy of the Declarations of Covenants and Restrictions. Prior to final plat recordation, the county attorney shall review and approve the form of the Management Plan, the Declaration of Covenants and Restrictions, and the deed for the Conservation Space.

Community Meeting: A community meeting was held in-person October 4, 2022, at Sprott Youth Center in Moncure. Approximately twenty-five people attended the meeting. Some concerns and/or comments:

- Concerns with septic fields located near the eastern property line near the Hoods property.
- Will traffic signals be installed at existing intersections?
- Will there be any contribution to the local public schools by the developer?
- Will the developer make additional contributions to schools/fire and police departments outside of what is required?
- Size of homes to be built and cost.
- Will the houses be excessively tall due to the small lot sizes?
- Why are the lots small?
- How will the tree roots not conflict with the pipes in the systems if the septic fields contain trees?
- What safety mechanisms are in place if the septic systems malfunction?
- Does the County inspect the system? If yes, how often?
- Who is responsible for maintaining the septic system?
- How large is the force main?
- Is the HOA financially responsible for the spills or malfunctions of the septic?

Technical Review Committee: The TRC met virtually on September 13, 2023, to review the First Plat submittal and the applicant Landon Lovelace and developer Nate Byelick, were present. Mr. Lovelace provided a brief overview of the proposed project. Stating initially the plan was to create a recreational area for short visits to enjoy Jordan Lake, with the concerns from adjacent property owners they refocused and decided to develop a conservation subdivision. The following items were discussed during TRC meeting:

- Emergency Operations - Road names are approved.
- Water Dept. - they will need to have a fire flow test done to model the fire flows for this subdivision; need a copy of the utility plan, they would like some changes to make; and need the fire flow analysis and fire hydrant spacing chart. (These items are needed prior to construction plan submittal)

- Environmental Health Dept. - The developer is proposing to permit an engineered option for wastewater treatment which is an available option.
- Planning Dept. - A ail kiosk needs to be shown on the plat.

Septic: A soils report and map by Piedmont Environmental Associates, P.A. was submitted to James Tiger, R.E.H.S. Chatham County Environmental Health On-Site Wastewater Supervisor. Mr. Tiger stated that a review by Environmental Health is not required since the project will be using an EOP private option permit.

Water: Water will be public and provided by Chatham County Water Department.

Road Name: The road names Jordan Retreat Court and Poe's Ridge Court have been approved by Chatham County Emergency Operations Office as acceptable for submittal to the Board of Commissioners for approval.

Existing Conditions: There are trails and access road to the cabin lot within the 50' perimeter buffer and within the project most of the trails will remain. Parcel 93052 owned by Jonathan and Jessica Byelick has ownership to the center of the proposed 60' wide private right-of-way. When the final plat is approved, the portion of parcel 93052 that lays within the 60' wide private right-of-way will become part of the private right-of-way for the approved subdivision.

Water Features: Kim Hamlin with Sage Ecological Services, Inc. (Sage) submitted the Riparian Buffer Review Application and riparian buffer map, to Drew Blake, Watershed Protection Asst. Director and Phillips Cox, Senior Watershed Specialist for review. Sage Ecological Services previously visited the site and found the following three (3) potential ephemeral segments, three (3) potential intermittent segments, and fifteen (15) potential wetlands on the property. Mr. Blake and Mr. Cox visited the site December 16, 2022. Mr. Blake's confirmation letter dated January 23, 2023, states two (2) ephemeral stream segments, four (4) intermittent stream segments, and 15 (15) wetlands were identified. The two (2) ephemeral streams require 30-ft buffers, four (4) intermittent streams require 50-ft buffers, and the fifteen (15) wetlands require 50-ft buffers from all sides landward. Mr. Christopher Hopper with the US Army Corps of Engineers provided an email dated February 3, 2023, that stated on November 28, 2022, and January 3, 2023, received information requesting the Wilmington District, Regulatory Division review and concur with the boundaries of an aquatic resource delineation. The email states, "the aquatic resources delineation has been verified by the Corps to be sufficiently accurate and reliable representation of the location and extent for aquatic resources within the identified review area." Permits shall be provided at construction plan submittal.

Stormwater and Erosion Control: One stormwater device is proposed. As part of the stormwater permitting process additional information will be provided to the Watershed Protection Department. A Stormwater Permit and Sedimentation & Erosion Control Permit will be obtained from the Chatham County Watershed Protection Department prior to Construction Plan submittal. No land disturbing

activity can commence on the property prior to obtaining Construction Plan approval.

Site Visit: Site visits were held on September 18 and September 20, 2023 and Planning Department staff and various Board members attended. Landon Lovelace, P.E., was present to walk the property with staff and Board members and discuss the project. Pictures of the site visit can be viewed on the Planning Department webpage at www.chathamcountync.gov/planning <<http://www.chathamcountync.gov/planning>>, Rezoning and Subdivision Cases, 2023.

Planning Board Discussion:

The Planning Board reviewed the request during their regular meeting on October 3, 2023. Landon Lovelace, P.E. and David Barcal, P.E. were present on behalf of the developer. Mr. Lovelace presented the project to the Board and commented that the project was originally proposed for a RV campground with recreation activities, but there was a lot of public concern. Then a conventional subdivision was considered but the owner decided on a conservation subdivision. The proposed subdivision is the first conservation subdivision to be processed under the revised conservation subdivision rules.

Six property owners near the project spoke during the public hearing.

- Ms. Anne Stomp stated that the property is flat at the top, then it falls off into a very steep ravine and most of the adjacent property owners live in that bowl which is a very sensitive area with lakes and ponds. All the stormwater will flow down off the proposed subdivision into the adjacent property owners' ponds and then into the Haw River. There are 30 homes in this area all with conventional septic systems and within the first year Ms. Stomp lived in her house she had to upgrade the septic system because the ground was saturated and it failed. There is considerable stormwater runoff from that property with just regular thunderstorms and she does not believe the proposed stormwater ponds are sufficient to capture all the stormwater and that will cause damage to our private roads. The Dam is one of the best places in the county for star gazing and bird watching and there will be light pollution from that very dense subdivision which will compromise those activities. They also have Bald Eagles that come down and when you place that much density it will be detrimental to wildlife. We also need to be mindful that this property is located within the evacuation zone for Shearon Harris nuclear powerplant and adding evacuation of 33 units all on the same road, if there is an accident it will be a recipe for disaster.

- Ms. Eleanor Hawkins echoed Ms. Stomp's concerns.

- Mr. Travis Hebner stated his primary concern his little kids that like to fish, swim, and kayak and the people who live near Jordan Lake have done a lot to make sure the lake stays clean, and he wanted to make sure the septic systems and the stormwater runoff is not going to impact Jordan Lake.

- Mr. Owen Durso spoke on behalf of his mother Ms. Amy Durso. The proposed subdivision is not consistent with the existing residential development, the open space/conservation land management of bordering State and Federal properties nor the Chatham County Comprehensive Plan of 2017 and the Small Area Plan for Moncure, that he believes has already been approved by this Planning Board. He requested the Planning Board carefully consider and examine the stormwater runoff and lack of storm control measures in the submitted plans. Given the topology of parcel 11433 and the high levels of erosion that will

ensue from the bulldozing and soil moving necessary to create a high-density subdivision, the health of the adjacent ponds (that are cared for by Hermitage and Forest Lake Estates) and surrounding wetlands are at great risk of likely becoming silt retention ponds. Dirt will enter and damage the streams that feed these ponds. These ponds drain into the Haw River. The likely damage to the ponds will be inconsistent with aquatic and plant life and potentially negatively impact the Haw River, a drinking water supply. While Chatham County's streams and wetlands have already been seriously compromised by the Vinfast site, Vinfast is unfortunately under the state's jurisdiction and no action is being taken on this company's violation of the Clear Water Act. In addition, Ms. Durso stated she wishes to raise the Board's awareness of concerns related to ecological impacts on wildlife and bird populations. This proposed conservation subdivision will divide land into smaller lots, in this case, lot sizes less than 10,000 sq ft with units of 2400-3200 sq ft, for development while setting aside certain areas for conservation. This results in the fragmentation of habitat, which negatively impacts wildlife by disrupting the movement and migration patterns of bird species, making it more challenging for them to find resources and establish breeding territories.

- Mr. Rick McHenry stated he lives near the last of 3 ponds (Forest Lake) that are located below the proposed subdivision. The area forms a bowl which drains into the Forest Lake area and ponds. The elevation of the Jordan Retreat parcel changes roughly 100 feet from Jordan Dam Rd to Forest Lake Estates in a little over 5000 feet. The parcel has ravines and gullies which channel water to the first of 3 ponds. The pictures in various documents supplied by the applicant show the steepness of the sight. The communities of Forest Lake Estates and the Hermitage have a triple threat regarding future development. Jordan Retreat is the first of three large parcels that surround us. Parcels 11267 & 11560 pose the same challenges with topography and hydrology. To examine this area and realize what will happen with future development is the goal/purpose of a 'Plan Moncure' and the UDO.
- Mr. Nelson Smith asked what year was Chatham County established? It was established in 1771 and in all that time nobody thought this piece of ground was worthy of development.

Planning Board members discussed the following:

- Sediment runoff - Mr. Lovelace stated there are water features through this site that are all buffered, and we do have stormwater management controls shown on the plat.
- One board member stated it is a beautiful piece of property and a lot of work has gone into this project and if the property is going to develop this looks like it's the best way possible with the conservation subdivision.
- Mr. Lovelace was asked to address the concerns of the adjacent property owners presented. Mr. Lovelace went down the list of all the adjacent property owner's concerns and addressed each.
- Mr. David Barcal, P.E. explained how the community septic system functions. Mr. Barcal stated this system is ideal because it does not have any moving parts except the pump which takes the water to small pipes that are 6" below the surface and preserves large trees with very little

disturbance. The county Environmental Health department will conduct inspections and the system will be operated by a private utility. There are required water samples and several inspections of the system per year. Mr. Barcal stated that this system is an engineered option which is allowable under state standards. The liability of the design is on the engineer, so it is their livelihood, and they will make sure it operates the best way possible. When installing the system, they will remove underbrush and some small trees, but the pipes are flexible and will be trenched down 6' at 2 feet apart. They try to keep the field as natural as possible. There are also root guards on the pipes to keep root out of the pipes. This type of system has been used for over 20 years and is a proven system.

- The applicant could have had over 50 lots, but chose only 33 lots with one stream crossing, and the lots are not close to an adjoining neighbor's property line.
- Encourage the applicant to look at the comments and suggestions from the Haw River Keeper because the applicant seems accommodating and wants to do their best to meet the concerns and needs of the adjacent property owners.
- Who enforces the conservation management program? HOA

How does this relate to the Comprehensive Plan:

Plan Chatham was adopted by the Board of Commissioners in November 2017 and is a comprehensive plan that provides strategic direction to address the most pressing needs in the county. These properties are in an area of the county identified as conservation on the Future Land Use and Conservation Plan Map (Strategy 5.2). The description for conservation includes single family detached lots and attached units with overall very low density, some tourism related uses allowed. Passive recreation areas, greenway trails, and a variety of valuable natural resource areas. Conservation subdivisions are encouraged to protect nature resources while not disrupting agricultural practices. The developer also contacted the NC Natural Heritage Program to review their database for any rare species, important natural communities, natural areas, or conservation/managed areas within the project boundary and some rare species were identified in their records. It should be noted that Plan Chatham is not intended to be used as a regulatory tool but is a policy document. When reviewing subdivision applications, the boards can use the plan as a tool to identify future regulatory changes.

Recommendation:

The Planning Department and Planning Board by vote of 7-1 recommends granting approval of the road names Jordan Retreat Court and Poe's Ridge Court and granting approval of subdivision First Plat for **Jordan Retreat** with the following conditions:

1. Prior to final plat recordation, the county attorney shall review and approve the form of the Management Plan, the Declaration of Covenants and Restrictions, and the deed for the

Conservation Space.

2. The county attorney shall review and approve the contract and performance guarantee prior to final plat recordation.
3. Developer shall provide Planning Dept. staff a copy of the private road agreement per Section 7.2(D)2
4. Approval of the First Plat shall be valid for a period of twelve (12) months following the date of approval by the Board of Commissioners and the Construction Plan approval shall be valid for a period of twenty-four (24) months from the date of approval by the Technical Review Committee or Board of Commissioners.