



Chatham County, NC

Legislation Text

File #: 21-3909, **Version:** 3

Vote on a legislative Conditional District Compact Community rezoning request to approve by Herndon Farms One, LLC for an active-adult (55 and older) compact community with 161 residential units, congregate care facility, one-story office/daycare, community gardens, and barn for events on approximately 97.86 (previously 96.86 acres) acres being Parcels 93852, 2752, 18750, 18897, 18896, and 18909, located on US 15-501 N split by Williams and Baldwin townships.

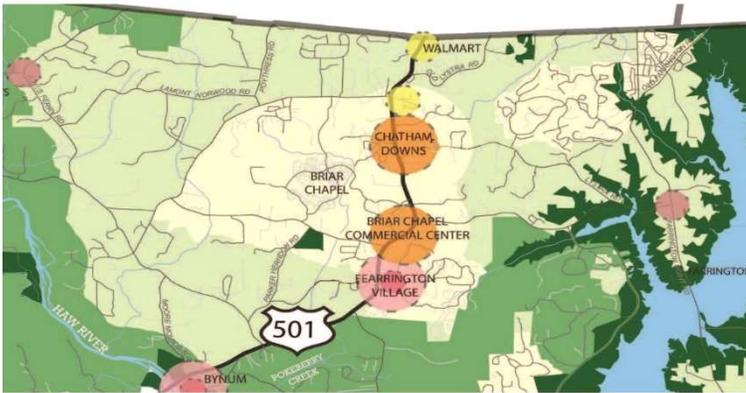
Action Requested:

Vote on a legislative Conditional District Compact Community rezoning request to approve by Herndon Farms One, LLC for an active-adult (55 and older) compact community with 161 residential units, congregate care facility, one-story office/daycare, community gardens, and barn for events on approximately 97.86 (previously 96.86 acres) acres being Parcels 93852, 2752, 18750, 18897, 18896, and 18909, located on US 15-501 N split by Williams and Baldwin townships.

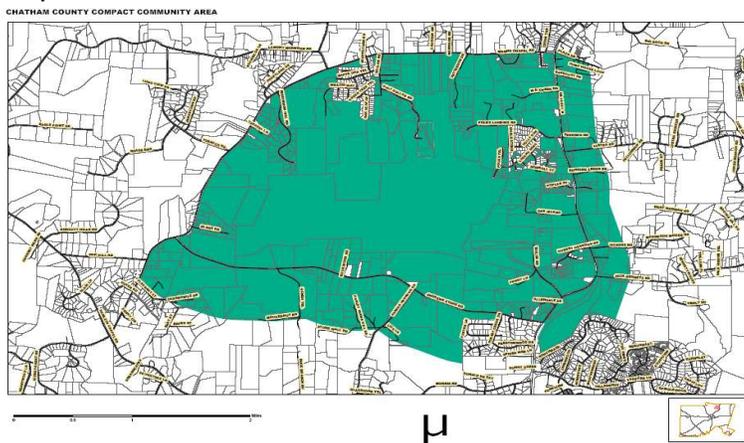
Introduction & Background:

A public hearing was held on June 21, 2021, several issues discussed, and the applicant was requested to review those items and be prepared to provide the Board with revisions to the application. The Board of Commissioners continued the public hearing to allow the applicant time to make corrections, modifications, and clarify various aspects of the design. A second public hearing was held during the September 20, 2021, Commissioner's meeting.

One change that has occurred since the June 21 meeting is withdrawal of the General Use Light Industrial rezoning application to rezone one acre that is to be located on Parcel 2752 for a wastewater treatment plant that was intended to serve areas outside the development. That parcel is located on the opposite side of US 15-501 from the proposed housing portion of the compact community. The applicant withdrew that request and absorbed that parcel into the conditional district compact community rezoning application so that wastewater system service will be limited to the Herndon Farms Compact Community.



Map above: Future Land Use and Conservation Plan Map from Plan Chatham



Map above: Compact Community Map in the Compact Communities Ordinance (Note: the map does not show the recent addition of property added for Vickers Village)

The Compact Communities Ordinance (CCO) was adopted in 2004 to address Briar Chapel and certain sections are outdated based on other regulations that have been adopted in the intervening years. For example, the stormwater and riparian buffer provisions of the CCO are no longer applicable because of other ordinances that have been adopted or amended since 2004 that apply countywide. The CCO was also designed for projects with a larger footprint and developers who are now submitting applications for smaller projects under the CCO are requesting waivers of the standards because of site constraints and limitations. The CCO provides a mechanism for applicants to request a modifications, reductions, or waivers of provisions of the CCO. If the board agrees with the waiver requests, they can be incorporated into the conditions of approval.

Discussion & Analysis:

Application details -

Current zoning: R1, Residential

Proposed zoning: Conditional District Compact Community 55 and older

Water: Chatham County

Sewer: Private wastewater treatment system with spray and drip irrigation

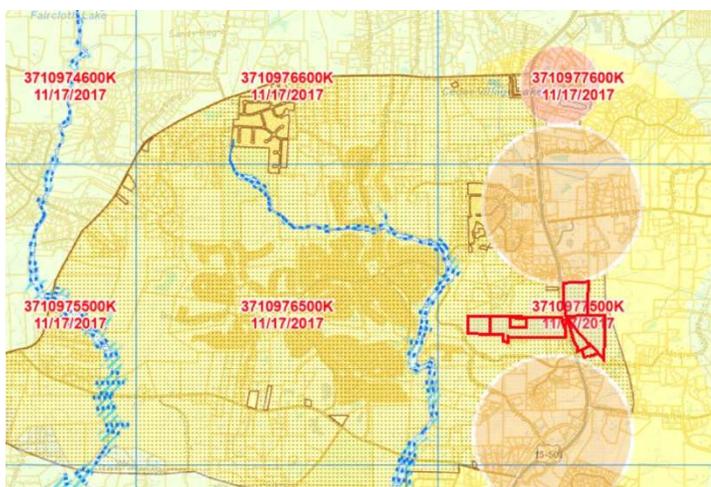
Acreage: approximately 97.86 acres

Proposed dwelling units: 161

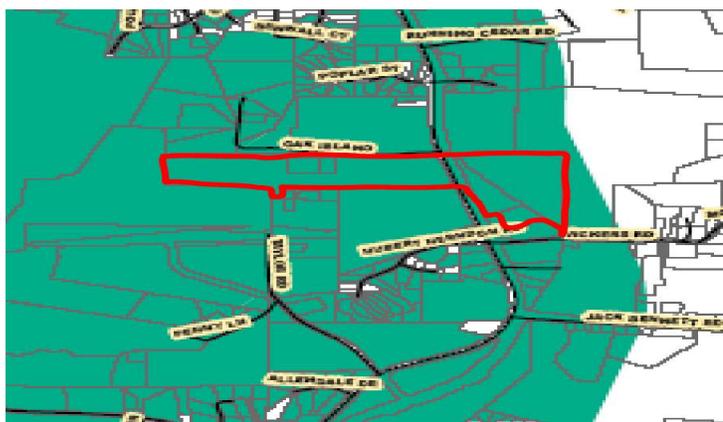
Proposed non-residential square footage: 150,000 square feet (10,000 sq. ft. daycare and 140,000 sq. ft. congregate care facility), as well as a 2300 sq. ft. office/community center, a small barn, and a covered pavilion community event space.

WAIVER NO. 1: Section 12.1 - Performance Standards - Commercial Component - applicant requests to not be limited to the 10,000 sq. ft. maximum in order to construct the 140,000 congregate care facility.

To consider a rezoning to Conditional District Compact Community the standards and requirements for the Zoning Ordinance and Compact Communities Ordinance must be met. Additionally, the rezoning application should include support from the goals, guiding principles, and strategies of Plan Chatham.



The above map shows all of the parcels proposed for rezoning within the Compact Community Residential node area (shaded yellow) and within the existing Compact Community Ordinance map boundary (area with dots).



The above map from the CCO shows all of the parcels proposed for rezoning are within the current map boundary area for Compact Communities.

The applicant met with the Chatham County Appearance Commission on July 24, 2019. There were concerns about the eastern portion of the property stating one plan showed an undisturbed buffer

and another showed grading lines in the buffer zone. It was agreed upon by the commission and the applicant to terrace a portion leaving a 25-foot natural area, install a 6-foot retaining wall and plant the remaining 25 feet to provide adequate screening. There was also concern about leaving the existing vegetation along US 15 501. The applicant stated it is a priority to leave existing vegetation in the buffer zone and it would be noted on the plan revision to reflect this change. The commission approved the overall plant list and plans with the revisions noted. There are three waivers relating to buffers:

WAIVER NO. 2: Section 9.3 - Viewshed Buffer - the applicant requests a 50% reduction for approximately 200 feet along US 15-501 adjacent to the residential section of the project. The buffer in front of the commercial area is to remain at 100 feet.

WAIVER NO 3: Section 9.2 - Perimeter Buffer - the applicant requests a 50% reduction around the entire community except for the area noted as Side E on Exhibit W.3.B which is proposed to be zero as allowed by the CCO Section 9.2.

There has been opposition by adjacent landowners adjoining Side A, B, and D requesting the 100-foot buffer be required to remain. If the 100' buffer remains, the applicant will be required to resubmit a new site plan and configuration for the project for the rezoning and the subdivision submittal.

This waiver No. 3 will be modified based on submitted revised site plans to only allow a 100% reduction in the buffer adjacent to the commercial property for the veterinary hospital. All other perimeter buffers will remain at 100 feet.

WAIVER NO. 4: Section 9.3 - Viewshed Buffer - the applicant requests authorization to impact the viewshed buffer for required utility crossing which will involve the removal of existing vegetation and some grading for those lines.

A community meeting was held March 7, 2019. Approximately 26 citizens attended, several concerns were addressed, and changes made prior to the application being submitted. Those questions and comments can be reviewed in the application Exhibit K. There are two main issues that residents in the community have expressed and those are concerns about the reduction in the perimeter buffer along Sides A, B, and C and the wastewater treatment plant on the east side of US 15-501 with access off Oak Island Road.

Property may be rezoned to a conditional zoning district only in response to and consistent with an application submitted in compliance with Section 5 of the Chatham County Zoning Ordinance. The findings are as follows:

- 1. The alleged error in this Ordinance, if any, which would be remedied by the proposed amendment with a detailed explanation of such error in the Ordinance and detailed reason how the proposed amendment will correct the same.** The applicant is claiming no error in the Ordinance. The proposed use of Compact Community is allowed under Section 10.11 of the zoning ordinance. Additionally, the property is located within the Compact Community Ordinance boundary allowing for compact community rezoning applications to be submitted.

Planning staff thinks this standard has been supported.

- 2. The changed or changing conditions, if any, of the area or in the County generally, which make the proposed amendment reasonably necessary to the promotion of the public health, safety, and general welfare.** In November 2017, the Board of Commissioners adopted Plan Chatham. This plan provides a road map to guide development to areas best suited for various types and mixes of uses. A Market Analysis was provided as Exhibit C. The report specifically cites Recommendation 10, pg. 91 of the Comprehensive Land Use Plan, HL Policy 16, Strategy 16.1 to 16.5 which encourages the development of housing and services for the aging population, specifically the 55 and older. The community will consist of independent single family living units, townhomes, duplexes, and units within the congregate care facility.

The proposed community will yield approximately 49 full time jobs within the commercial area and is expected to increase the real property tax base by about \$78.2 million. A Fiscal Impact Analysis was conducted and can be reviewed under Exhibit D.

The community will offer an “aging-in-place” atmosphere where active adults can own their homes, participate in community gardens and events, as well as transition into other assisted care as needed.

This community is stated to provide affordable housing to active adults. The applicant has chosen the payment in lieu option of \$500/per 161 units = \$80,500. The CCO states that a minimum of 5% of the housing shall be dedicated to the affordable housing component. This would be eight (8) units of which the applicant is only providing approximately \$10,000 for each required affordable dwelling unit. This is significantly less than prior compact community developers have contributed. The applicant does state however, they intend to also offer 19 townhome units at a lower price point than other residential units in the community.

An agreement with the developer and the County has been reached. The reduction in units to 151 has been submitted and the developer agrees to pay \$45,000 per affordable housing unit. This has been conditioned below.

Planning staff thinks this standard is supported

- 3. The manner in which the proposed amendment will carry out the intent and purpose of any adopted plans or part thereof.** The county’s comprehensive plan, Plan Chatham, was adopted in November 2017. A future land use and conservation map was also included, and it identifies areas of the county where more intensive development may be supported under certain circumstances. This proposal is located within the area noted for mixed use and compact communities as shown on the map included in the Introduction & Background and as part of Recommendation 02, Strategy 5.2, Pg 66, Compact Communities.

In Plan Chatham, Pg. 41, Goals and Objectives, lists several development objectives. The applicant has addressed these in the application materials. A few noted here are:

- Objective #1: Preserving the rural character - by incorporating a community farm, community gardens, and a Koi Pond that the development will center around. The farm is anticipated to produce food and materials (eggs, honey, goat milk) to be used by the

residents The commercial area has remained outside of the 100 foot viewshed buffer which aids in keeping with the rural character.

- Objective #5 and #6: Conserve Natural Resources - the WWTP system will generate Type 2 effluent clean enough to be used for irrigation, some food crops and in water features proposed for the development. By concentrating the development to one side of the total property area, close to 40 acres of the site will remain in open space, largely undisturbed, and working to connect trails to other developments. The proposed daycare can also benefit from the recreation on the farm.
- Objective #7 - provide infrastructure to support desired development and support economic and environmental objectives. With the compactness of the development, low impervious surface, and large open spaces creates more environmental efficiency. By meeting the EPAs Water Sense program, the project will achieve a more than 50% reduction of water and wastewater design loads.

Planning staff thinks this standard has been supported.

4. The requested amendment is either essential or desirable for the public convenience or welfare.

An environmental impact assessment was provided and peer reviewed by Johnson, Mirmiran & Thompson, Inc. There are some stream features and wetlands that require buffering and have been identified on the site plan. There is an area to the rear of Parcel 2752, labeled Bennett Mountain SMHA, that is to remain forested and become part of a trail system and open area. The only structure for this parcel will be the wastewater treatment plant (to be operated by Aqua America) and is to be located on the highway side of the parcel. The applicant states the plant is to serve this development only.

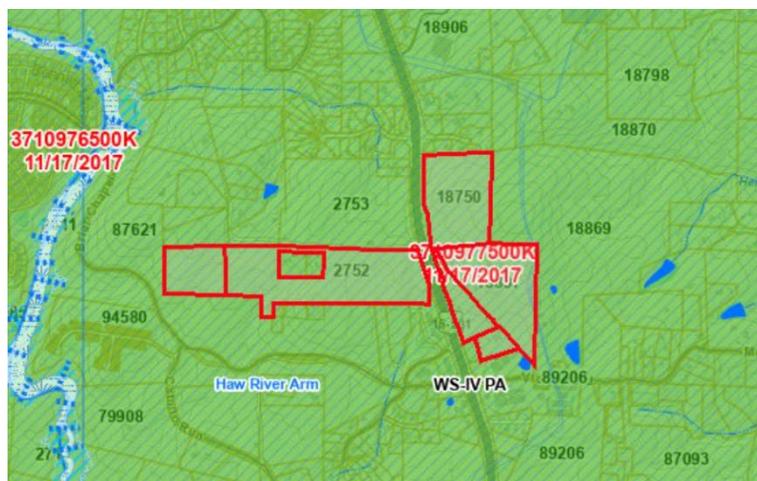
A Traffic Impact Analysis was performed by Kimley-Horn and peer reviewed by Gannett Fleming. Minor improvements to US 15-501 will be required for the entries into the community. This will go through the NCDOT review and approval process. Two entries off US 15-501 N are proposed. One at the commercial area and one into the residential area. This is supported by Land Use Policy 6, Strategy 6.4, Pg 67 of Plan Chatham.

The development will also have a transit stop within the community as shown on Exhibit B.3 as well as sidewalks for connectivity which are encouraged or required in the Compact Community Ordinance.

The aging in place perspective allows for residents to live, work, and recreate in the same area. Being near other commercial uses to this development for eating, shopping, and medical needs, will assist in keeping more revenue within the county. This is a focus of the Economic Development Plan as well.

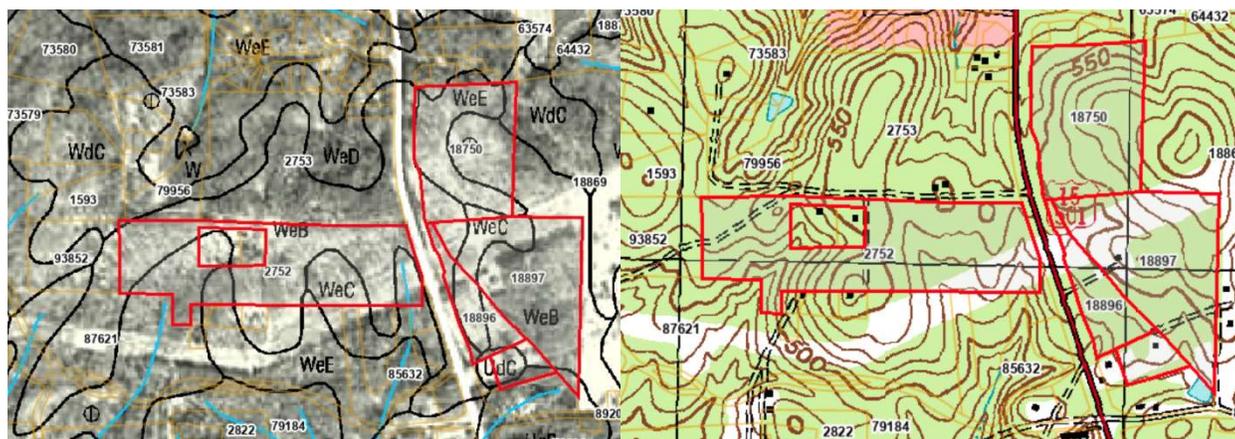
Planning staff thinks this standard has been supported.

5. All other circumstances, factors, and reason which the applicant offers in support of the proposed amendment.



The above map displays the properties within the WSIV-Protective Area Watershed of the Jordan Lake Buffer Rules area. Although the designation would allow up to 36% BUA without curb and gutter, the project is limited to 24% under the Compact Communities Ordinance.

The CCO requires a minimum of 30% open space to be maintained in a development. This project will have approximately 40%. **Revised site plans for the reduction in the number of units and increased buffers now shows approximately 42% open space is being provided.**



The above Natural Resources Conservation Service and USGS maps show some stream and possible wetland areas that have been delineated per the Watershed Protection Ordinance requirements. Riparian buffers have been shown on the site plans.

Please note that sections 8, Stormwater and 9.1, Riparian Buffers, are now superseded by the Chatham County Stormwater Ordinance and the riparian buffer standards in the Watershed Protection Ordinance.

The project will be served by Chatham County water system and a private wastewater treatment system. A non-discharge permit will be required from NC Department of Water Quality. The membrane bioreactor system proposed will use an aerobic treatment technology which is said to be more efficient than a typical anaerobic treatment. The system is to produce little odor and noise. Please note that the county cannot regulate the type of wastewater treatment system for a

development because that approval is under the purview of the NC Department of Environmental Quality.

Irrigation lines will be used for the gardens, farming areas, and water features from the effluent of the wastewater which will be treated on-site.

The applicant proposed a balanced site grading process where the earth and rock moving from the higher elevations will be placed in lower elevations and when completed, the remaining will be used on site for berms and landscaping. Chatham County Stormwater regulations shall be followed for the 1 year, 24 hour storm event.

Access to Parcel 2752 for the WWTP location is not currently aligned as it was required per the Attachment C survey and deed information. A condition has been included for review to correct the alignment.

Planning staff thinks this standard is supported.

Planning staff supports approval of the request in conjunction with the below stated conditions.

Planning Board review was conducted on November 2, 2021. Due to the amount of discussion, the applicant was advised to review the board's comments and adjust the site plan. The applicant was not able to provide revised information in sufficient time to allow staff to review all the changes, so the requested a month extension for the item to be scheduled for additional review by the Planning Board.

Attachment B includes the concerns and discussion points by the Planning Board and staff and Attachment C includes the proposed revisions by the applicant.

The Planning Board resumed discussion on this item during their meeting on January 4, 2022 following a requested one month postponement by the applicant in order to gather additional information asked for by the Board.

There were still traffic concerns noted by residents as well as access to the WWTP site and density overall.

The Board noted the following:

- Buffers to remain untouched per the applicant. Drip system will help large trees that remain to survive.
- Drip system shown in the storm water pond and Koi Pond which needs correcting.
- Rock from the site is to be used on the roadbeds.
- Board would like a radius study for Vickers and Hidden Oaks Road U-turn.
- The applicant provided an alternate access drive for the WWTP and NCDOT to review.
- Overall, the Board was supportive of the changes the applicant brought.
- Attachment C notes the agreed upon updates by the applicant and conditions as modified below.

How does this relate to the Comprehensive Plan:

A Traffic Impact Analysis was performed by Kimley-Horn and peer reviewed by Gannett Fleming. Minor improvements to US 15-501 will be required for the entries into the community. This will go through the NCDOT review and approval process. Two entries off US 15-501 N are proposed. One at the commercial area and one into the residential area. This is supported by Land Use Policy 6, Strategy 6.4, Pg 67 of Plan Chatham.

The development will also have a transit stop within the community as shown on Exhibit B.3 as well as sidewalks for connectivity which are encouraged or required in the Compact Community Ordinance.

The aging in place perspective allows for residents to live, work, and recreate in the same area. Being near other commercial uses to this development for eating, shopping, and medical needs, will assist in keeping more revenue within the county. This is a focus of the Economic Development Plan as well.

Recommendation:

The Planning Board voted 10-1 to recommends adoption of the following consistency statement:

The requested conditional district rezoning meets the intent and spirit of Plan Chatham by (a) being located within an area identified by the Board as acceptable for further development of compact communities and (b) has supported the goals and objectives of the Plan and the Compact Communities Ordinance.

The Planning Board by a vote of 11-0 recommends adoption of an ordinance amending the Zoning Ordinance approving a legislative request by Herndon Farms One, LLC for an active-adult (55 and older) compact community with 161 residential units, congregate care facility, one-story office/daycare, community gardens, and barn for events on approximately 97.86 (previously 96.86 acres) acres being Parcels 93852, 2752, 18750, 18897, 18896, and 18909, located on US 15-501 N split by Williams and Baldwin townships with the following conditions.

The following conditions are hereby incorporated into the approval:

Site Specific Conditions

1. The Master Plan, attached as Exhibit A, shall be the guide for all phases of the development. Any modifications, changes, alterations not allowed by administrative approval, must be resubmitted as a CD-CCO Revision and all submittal requirements followed.

Total project area = 97.86 acres

Maximum Impervious Surface = 24%

Total Number of Dwelling Units = 151

2. The site plan/s for the commercial areas must be reviewed by the Chatham County Appearance Commission.
3. Landscaping/Screening. All required screening and buffers shall be in place prior to issuance of a certificate of occupancy or next optimal planting season after issuance of a certificate of occupancy. Existing vegetation may be used to fully or partially 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 certificate of zoning compliance. It is strongly recommended that existing native vegetation be preserved where practical. Grading within buffers will be done in compliance with approved erosion control plans and as approved by the Planning Department prior to disturbance.
4. All required permits and/or authorizations from local, state, and federal agencies shall be submitted as part of the platting process and prior to any land disturbing activities covered under current ordinance, law, or regulation and before any such zoning determinations are approved. This includes but is not limited to Zoning, Planning, Building Inspections, Environmental Health, Fire Marshal, NC Department of Environmental Quality, NC Utilities Commission, Watershed Protection, NC Department of Transportation, Utilities, etc.
5. Phasing - Phasing is permitted with this approval. The development schedule states the following and shall be followed unless a new phasing schedule is approved. It is:
 - 8/1/2022 - Submit for Construction Plans
 - 1/1/2023 - Submit for Final Plans
 - 3/1/2023 - Site Work Begins
 - 3/1/2024 - Residential and Commercial Construction Begins
 - 9/1/2025 - Some Residential and Daycare Completed
 - 2/1/2026 - Congregate Care Facility Construction Begins
 - 6/1/2027 - Congregate Care Facility Completed
 - 3/1/2028 - Residential Completed
6. Sidewalks will be provided along both sides of all streets, but not alleys, with residences or other buildings fronting them. Sidewalks will be provided along one side of all other streets, but not alleys, that provide connections within the community but do not serve as building frontage. Street trees, either planted or preserved, will be provided along all streets.

7. Solid Waste Management. Solid residential waste is managed and shall continue to be managed by residential curbside recycling and solid waste pick-up. With regard to construction debris and non-residential solid waste removal, Applicant shall continue to contract with builders and contractors to dispose of the same appropriately.
8. Commercial Uses. The commercial component of the development shall be limited to locations shown on the Master Plan and the uses allowed within the development shall be all those uses now allowed or later added as allowed in the December 2008 Zoning Ordinance under Section 10.13 Table 1: Zoning Table of Permitted Uses under the Zoning Districts denoted as "O/I," and "NB." Irrespective of whether such uses are shown as permitted or as requiring a conditional use permit, all such uses shall be deemed allowed as of right within the Herndon Farms development. Building signage for the commercial uses shall comply with the Chatham County Zoning Ordinance in effect of the original approval date. Monument signs shall be allowed as shown on Site Details sheet provided with the application labeled Exhibit B.4 Conceptual Landscape Plan. Commercial components of the Herndon Farms development shall be accessible via public sidewalks, greenways, paths, or trails.
9. Lighting Plan Approval. All area lighting shall meet County standards and not adversely affect adjoining residential areas.
10. Permits. Any required State or Federal permits or encroachment agreements, including a commercial driveway permit(s) from NCDOT shall be obtained and copies submitted to the County prior to approval of a preliminary plat for each phase.
11. The recorded 60-foot-wide easement identified as Oak Island Road, shall be verified for legal access and shall be moved to align with the recorded survey and deed information if required prior to any land disturbing activity. NCDOT shall review and approve this realignment. Once moved, the previous area shall be seeded and put back into a natural state. If an NCDOT commercial driveway permit is needed for the WWTP, that shall also be obtained prior to any realignment.
12. Improvements. Off-site improvements required by NCDOT of 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, if required.
13. The applicant must reach an agreement with the Chatham County Fire Marshal's Office and North Chatham Fire Department regarding emergency vehicle access, on street parking restrictions, and provision of adequate off-street parking within the development prior to preparing construction drawings for the Construction Plan under the Subdivision Regulations. Off-street parking shall be provided for in accordance with Section 14 of the Chatham County Zoning Ordinance.
14. The Applicant shall demonstrate availability of adequate water and wastewater supplies to

serve the property. Plans for provision of water supply shall be approved by the County prior to issuance of a Construction Plan for each phase. Such plans shall be in conformity with any County water policies then in effect and the Applicant shall pay all water fees and charges associated with the applicable phase, including then current water fees, review, and inspection charges, prior to submittal of the Construction Plan for each phase. The entire cost of extending public utility services if desired or required under County regulations shall be borne by the Applicant.

15. Adequate wastewater treatment service for the entire project area shall be designed and approved by the appropriate regulatory agency prior to issuance of a preliminary plat for each phase 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.
16. Equipment such as pumps and blowers will be appropriately insulated or buffered for noise reduction. Wastewater treatment plant blowers will be enclosed. All motor noise from the wastewater treatment plant will be subject to the provisions and restrictions of the Chatham County Noise Ordinance.
17. 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 do the following: An agreed upon dollar amount via a contract with Chatham County supporting the payment in lieu option. The developer proposes \$45,000 for per affordable housing unit (151 x 5% as required by the CCO = 7.55 units). The developer shall enter into a contract with the County upon approval.
18. A detailed tracking process shall be developed by the applicant and agreed to by county staff (Planning and Watershed Protection Departments) prior to any land disturbing activity occurring on the property. The tracking mechanism must ensure that the built upon area for the project is tracked for each subdivision or commercial lot and include any areas with impervious surface. The tracking mechanism must also include a process for reconciling the final built upon area for each lot and include a linkage to the sizing of the stormwater devices. The tracking mechanism and all supporting documentation must be supplied to the county as part of any site plan or final plat submittal. Additionally, all documents must be provided to the county at the completion of the project and transferred to the Homeowner's Association. Upon completion of the project, the Homeowner's Association shall assume responsibility for tracking any additional built upon area allocations within the development. A detailed report of Built Upon Area calculations shall be provided by the developer to the County for each phase of the project to ensure the maximum 24% allowance is maintained.
19. A building permit shall be issued and remain valid at all times within three (3) years from the

date of this approval becomes final and non-appealable or from the date any court order entered in an appeal regarding this approval becomes final and non-approvable, whichever is later. Failure to comply will void this approval and any site plans approved thereof and the project will be void.

20. The development may not be turned over to a Homeowner's Association until the county or other state regulatory agency has confirmed compliance with any required permitting.
21. The following waivers are approved as included in the application:

WAIVER NO. 1: Section 12.1 - Performance Standards - Commercial Component - applicant requests to not be limited to the 10,000 sq. ft. maximum in order to construct the 140,000 congregate care facility.

WAIVER NO. 2: Section 9.3 - Viewshed Buffer - the applicant requests a 50% reduction for approximately 200 feet along US 15-501 adjacent to the residential section of the project. The buffer in front of the commercial area is to remain at 100 feet.

WAIVER NO. 3: Section 9.2 - Perimeter Buffer - the applicant requests a 50% reduction around the entire community with the exception of the area noted as Side E on Exhibit W.3.B which is proposed to be zero as allowed by the CCO Section 9.2.

WAIVER NO. 4: Section 9.3 - Viewshed Buffer - the applicant requests authorization to impact the viewshed buffer for required utility crossing which will involve the removal of existing vegetation and some grading for those lines.

Standard Administrative Conditions

22. 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.
23. Continued Validity. The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditions listed above.
24. Non-Severability. If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
25. 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.
26. 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 to or variations from any

requirements of this permit must be approved through the Planning Department or other approving board before any such changes can take place.