



Chatham County, NC

Legislation Text

File #: 21-4047, **Version:** 2

Vote on a legislative request to approve by the Chatham County Board of Commissioners to consider amendments to the Chatham County Subdivision Regulations; specifically, Sections 1.13, Variances; 2.3, Meaning of Specific Words and Terms; 6.4, Final Plat, subsection B, Features; 5.2B Concept Plan; and 7.7 Conservation Subdivision - Alternative Standards for Development; and to the Chatham County Conservation Subdivision Guidelines for Conservation Space Selection to include an appeals process of staff decisions, remove the option allowing off-site septic systems for subdivision lots, require environmental impact assessments be reviewed by the Environmental Review Advisory Committee, and revise conservation subdivision development standards and guidelines.

Action Requested:

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Introduction & Background:

The conservation subdivision option was adopted in 2008 and provides a 10-15% density bonus for the preservation of a minimum of 40% of the site as conservation space. The first conservation subdivisions were approved in 2014 (The Retreat at Haw River and US Steel) and one of those subdivisions has been constructed. Four additional conservation subdivisions (Ryan's Crossing, Firmage, Morgan Ridge Phase 2 and McBane) have been approved since 2014. One of those (Firmage) was an administrative approval which is allowed for conservation subdivisions of 15 or fewer lots. Currently, two conservation subdivision applications have been submitted to the county and are under review (Savannah Ridge and The Conservancy at Jordan Lake) and staff is working with applicants on 4 more conservation subdivisions (Pyewacket, Tripp property, Hamlets Chapel property, and 15-501 property). A public hearing on the amendments was held during the November 18, 2021 Commissioners meeting. Planning staff presented the request and one person provided comments.

Discussion & Analysis:

There was a six-year gap between adoption of the conservation subdivision option and approval of the first subdivisions under this provision in 2014 and it has been used more frequently since then. As

a result of the increased use of this option, the Planning Board and Environmental Review Advisory Committee have identified sections of the regulations they think need to be amended. Staff has also identified parts of the standards that need to be re-evaluated and those are specifically focused on the procedure for preparing the fragmentation and on-site inventory maps and that these maps are prepared and approved prior to site plan layout.

The following is a brief overview of the proposed amendments:

Subdivision Regulations

- Section 1.13, Variances and Appeals: technical correction to add an appeal process for applicants.
- Section 2.3, Meaning of Specific Words and Terms: amend the definition for Lot Area (Useable) to remove “non-contiguous area” from the useable portion of a new subdivision lot. This is intended to prohibit off-site septic systems.
- Section 5.2(B)(1), Concept Plan: additional clarification to distinguish between conventional and conservation subdivisions.
- Section 5.2(C)(2)(b) Environmental Impact Assessment Review Process: Include the Environmental Review Advisory Committee in the review process for environmental impact assessments, in addition to the third-party peer review requirement.
- Section 7.7 Conservation Subdivision - Alternative Standards for Development: Clarify that the conservation space must be identified and On-Site Inventory and Fragmentation Maps must be prepared and approved before the applicant starts to design the subdivision layout; prohibit riparian buffers and floodplain from counting towards the 40% conservation space set aside; modify what is allowed or prohibited in conservation space; eliminate the agricultural preservation 5% density bonus; and add a 50’ perimeter buffer to the entire project boundary.

Conservation Subdivision Guidelines for Conservation Space Selection

- Include detailed steps for identifying conservation space, on-site and fragmentation map preparation and approval, site design, and submission requirements; clarify that the NC Natural Heritage Program must conduct a field survey to determine if any natural heritage program priority areas are contained within the site; and update conservation space criteria.

The Environmental Review Advisory Committee reviewed the proposed amendments during their regular meeting on August 12, 2021, and the Planning Board on September 7, 2021.

The amendments are generally divided into 4 categories: appeals, lot area (prohibit off-site septic), environmental impact assessment review, and conservation subdivision option.

Appeals:

This is a staff recommended change and is considered a technical amendment to clarify that customers have a right to appeal staff interpretations or decisions.

Lot Area (prohibit off-site septic systems):

Amendments to several sections of the Subdivision Regulations to prohibit off-site septic systems. The Planning Board and Commissioners have had discussions about off-site septic systems that been on identified on several major subdivision applications. Concerns that have been expressed are the property owner may not be aware of the location of their septic system, multiple force mains being installed in the same trench and concern about these lines being cut due to the installation of other utilities, etc., large areas of the development being used for multiple septic systems and who is maintaining those areas and keeping track of their location; proximity of large septic areas adjacent to riparian buffers; and multiple sewer lines crossing riparian buffers for installation and maintenance.

Several Commissioners commented that there's a trade-off that must be considered between prohibiting off-site septic systems and whether developers might choose to avoid conservation subdivision or other innovative layouts. There was also a request for the Planning Board to provide the specific concerns about off-site septic systems. Staff is also evaluating whether off-site septic systems can be prohibited in conventional subdivision layouts but continue to be allowed in minor and conservation subdivisions.

Environmental Impact Assessment Review:

This amendment will provide for Environmental Review Advisory Committee (ERAC) review of the environmental impact assessments. This is in addition to the peer review process that is currently in place. The proposed amendment provides for ERAC review after the peer review has been completed. During the hearing Mark Ashness commented that if ERAC is included in the process that it would be better for them to review the EIA prior to submittal to the peer review consultant to avoid an on-going feedback loop between the consultant preparing the EIA, peer review consultant, and ERAC.

Conservation Subdivision Option:

There are several amendments proposed to the conservation subdivision process in the Subdivision Regulations and Conservation Subdivision Guidelines for Conservation Space Selection. The amendments include:

- Outlining specific steps for preparing the on-site inventory and fragmentation maps prior to designing the site and having those maps approved by the Watershed Protection Director.
- Remove floodplain and riparian buffers as being eligible to count as part of the required conservation space.

- Removing the allowance to reduce the 80% requirement for Natural Space.
- Removing silvicultural activities from conservation space, clarify that stormwater management is only allowed in open space, remove off-site septic systems from conservation space, and adding community gardens as an option in open space.
- Remove the 5% density bonus for on-going farm activities. The activity can continue, but there is no density bonus.
- Add a 50' buffer around the project boundary and allow for the area to count towards the density bonus calculation.

Public comment included that more flexibility and incentives for density bonuses should be evaluated and encouraged; that traditional zoning with 1-acre minimum lots is not inclusionary; and that other jurisdictions in the nation are grappling with this issue to expand the variety of housing options.

The Planning Board reviewed the request during their November 2nd, 2021 meeting and discussion included that the public comment to require the ERAC review of the environmental impact assessment prior to submitting it to the peer review consultant would make the process more efficient than what presented at the public hearing; a total prohibition on off-site septic systems could result in oddly shaped lots and be a disincentive for developers to pursue the conservation subdivision option; and support for removing off-site septic systems from natural space within conservation subdivisions. There was also concern from one member about removing the provision allowing for conservation space to include riparian buffers and floodplain. The member explained that the Compact Communities Ordinance allows a developer to receive up to 2 dwelling units per acre for riparian buffers and floodplain and the proposed amendment creates an inconsistency between development options. Other members commented that CCOs are only allowed within a defined area of the county whereas conservation subdivisions are an option anywhere.

Staff also requested that the County Attorney review the recommended changes and he provided a memo that is available online. His comments addressed the EIA review by the ERAC and included a legal assessment of possible issues that could occur and wasn't recommending against the change, but to exercise caution. The second item addressed was the prohibition on off-site septic systems and whether it could apply to conventional subdivision but not conservation and/or major subdivisions but not minor subdivisions and that there is justification for treating them differently if that is the desire of the boards.

The Planning Board by unanimous vote (7-0 with members absent) recommend adoption of the amendments Subdivision Regulations and Chatham County Conservation Subdivision Guidelines for Conservation Space Selection with the following changes 1) change Section 5.2 C(2)(b) to move the Environmental Review Advisory Committee review before the environmental impact assessment is submitted to the peer review consultant instead of after the peer review is complete, 2) delete amendments to prohibit off-site septic systems except within natural areas in conservation

subdivisions, and 3) Section 7.7 (A) delete the following wording “and must be deducted from the gross acreage”. The recommended changes have been incorporated into an updated redlined draft that is available online.

How does this relate to the Comprehensive Plan:

Goal 1. Preserve the rural character and lifestyle of Chatham County, Goal 5. Conserve Natural Resources and Goal 6. Provide recreational opportunities and access to open space

Recommendation:

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