

**Town of Cary, North Carolina
Rezoning - Staff Report
13-REZ-01 Ellis Property at Pittard Sears Road
Town Council Meeting
July 25, 2013**

REQUEST

To amend the Town of Cary Official Zoning Map by establishing initial Town of Cary zoning on approximately 31.63 acres located southwest of the intersection of O’Kelly Chapel Road and Pittard Sears Road in Chatham County. The current zoning is Chatham County R-1. The applicant has proposed a Cary zoning designation of Transitional Residential Conditional use (TR-CU). Conditions proposed by the applicant would limit the use to single-family-detached, age-restricted housing and set a density limit of 2.9 dwelling units per acre.

Annexation into Cary’s corporate limits is required before base zoning may be established on the property. The property owner has submitted a voluntary Annexation Petition, number **13-A-05**, in association with this rezoning request.

If annexed into the Town of Cary, the subject property would also be subject to the Watershed Protection District (Jordan Lake sub-district).

NOTE: The purpose of the rezoning is to determine whether or not the land uses and densities allowed in the proposed zoning district are appropriate for the site. Technical design standards of the Land Development Ordinance are addressed during review of the site or subdivision plan and can be found at <http://www.amlegal.com/library/nc/cary.shtml>.

SUBJECT PARCELS

Property Owner(s)	County Parcel Number(s) (10-digit)	Real Estate ID(s)	Deeded Acreage
Peggy Ellis Buckingham, Scott Wheeler Ellis and Coussit Pennie Ellis Et AL. 1120 Cheryl Lane Wilmington, NC 28405	Portion 0726327074	Portion 19946	31.63 ±
Total Area			31.63 ±

BACKGROUND INFORMATION

Applicant	Peggy Ellis Buckingham, Scott Wheeler Ellis and Coussit Pennie Ellis Et AL.
Applicant’s Representative	Glenda Toppe Glenda S. Toppe & Associates 4139 Gardenlake Drive Raleigh, NC 27612
Acreage	31.63 ±
General Location	2100 block of O’Kelly Chapel Road; Southwest of the intersection of O’Kelly Chapel Road and Pittard Sears Road.

Schedule	Town Council Public Hearing	Planning & Zoning Board	Town Council Meeting
	May 23, 2013	June 17, 2013	July 25, 2013
Land Use Plan Designation	Medium Density Residential (MDR) Land Use Plan Note: <i>Up to 4 du/ac</i>		
Existing Zoning District(s)	Chatham County R-1		
Existing Zoning Conditions	None		
Proposed Zoning District(s)	Transitional Residential Conditional Use (TR-CU) Watershed Protection Overlay District (Jordan Lake sub-district)		
Proposed Zoning Conditions	<ol style="list-style-type: none"> The use shall be limited to single-family, age-restricted housing. Prior to The Town of Cary approving the first subdivision plat for recordation within the proposed development the property owner shall provide certification from an attorney licensed in the state of North Carolina that restrictive covenants are recorded with the Chatham County Register of Deeds subjecting the whole of the development to an age restriction requirement such that at least eighty percent (80%) of all occupied units shall have as a resident at least one person age 55 or older. Such restrictive covenants shall comply with all federal and state laws including the Fair Housing Act. Density shall be limited to 2.9 dwelling units per acre. 		
Town Limits	The subject property is located outside the corporate limits and the Town of Cary ETJ. A voluntary annexation petition, 13-A-05 , was submitted by the property owners in conjunction with this rezoning request.		
Protest Petition	Per NC General Statutes, protest petitions are not applicable to a map amendment (rezoning) that initially zones property that is being added to the Town's jurisdiction by annexation.		
Staff Contact	Debra Grannan Debra.grannan@townofcary.org 919 460-4980		

SITE CHARACTERISTICS

Streams: According to Town of Cary GIS maps, a small portion of the subject property is impacted by a stream buffer. Field determination of such features is required at the time of site plan review.

Floodplain and Wetlands: According to Town of Cary GIS maps, there are no floodplain or wetland areas on the subject property. Field verification of such features is required at the time of site plan review.

Topography: Cary's GIS maps show the high-point of the subject property, with an elevation of approximately 338 feet, at the northeast corner near O'Kelly Chapel Road. There is a gradual decline in the topography, to an elevation of approximately 282 feet, in the vicinity of stream buffers identified on the subject property near the southwest corner.

Current Use

The subject property is currently vacant and wooded. The application does not include a small portion of the subject property, approximately 0.15 acres, located on the northern side of O'Kelly Chapel Road

Adjacent uses and zoning:

North – Opposite side of O'Kelly Chapel Road, Single-Family-Detached Residential; Hills of Rosemont Subdivision (Chatham County R1)

South – Single-Family-Detached Residential and Agricultural (Chatham County R2)

East -- Opposite side of Pittard Sears Road, Single-Family-Detached; Carolina Preserve (Amberly PDD Major)

West – Single-Family-Detached Residential (Chatham County R1)

CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE

Density and Dimensional Standards

	Existing Zoning District Chatham County R1	Proposed Zoning District Transitional Residential Conditional Use (TR-CU)
Max. Gross Density Du/ac	1.089	2.9*
Min. Lot Size Sq. Ft.	40,000 (If developed with well and septic, minimum lot size is 1.5 acres) 80,000 for a two-family dwelling	6,000
Minimum Lot Width Ft.	100 (110 for two-family dwelling)	60
Roadway Setback Ft.	40	From thoroughfare: 50 From collector: 30 From other streets: no less than 18 feet when parking is provided between the dwelling and the roadway, or 10 feet when parking is not provided between the dwelling and the roadway.
Side Yard Setback Ft.	25	3 minimum 16 aggregate
Rear Yard Setback Ft.	25	The width of the roadway and rear yard setbacks shall equal at least 40 feet and any individual rear yard setbacks shall be at least three feet.
Maximum Building Height Ft.	60	35 **
*Per the LDO, the maximum gross density for a Transitional Residential (TR) district is 6 du/ac; the applicant has proposed a zoning condition that would limit density to of 2.9 du/ac. ** Height may be increased one foot for every foot provided in addition to the minimum setbacks		

Landscape Buffer: In accordance with Chapter 7 of Cary's LDO, a 30-foot-wide Type B (semi-opaque) buffer would be required between the subject property and adjacent single-family lots.

Streetscape: In accordance with Chapter 7 of Cary's LDO, a 50-foot-wide Type A (opaque) streetscape would be required along any frontage on O'Kelly Chapel Road. Pittard Sears Road is classified as a local road; therefore, no streetscape is required.

Traffic: The proposed zoning condition that limits density to 2.9 dwelling units per acre on 31.63 acres would allow up to 92 single-family units. Using Land Code 230 for Single-Family Homes in the 8th edition of the ITE Trip Generation Manual, a conservative estimate predicts 92 single-family homes would generate 75 am and 98 pm peak hour trips. Since no traffic study is required for rezoning requests that generate less than 100 peak hour trips, no traffic study has been completed in conjunction with this proposal.

Stormwater: At the time of site plan review, the future plan must meet all stormwater management and detention requirements. Peak flow from the one-, two-, five- and 10-year storm events must be

determined and must be attenuated back to pre-development conditions from the discharge point leaving the development.

SUMMARY OF PROCESS AND ACTIONS TO DATE

Notification

On May 8, 2013 the Planning Department mailed notification of a public hearing on the request to property owners within 400 feet of the subject property. Notification consistent with General Statutes was published in the Cary News on May 8 and 15, 2013. Notice of the public hearing was posted on the property on May 9, 2013.

In compliance with the Chatham-Cary Joint Land Use Plan requirements, written notification of the proposed zoning and annexation was provided to the Chatham County Planning Department.

Neighborhood Meeting

According to the applicant, a neighborhood meeting for the proposed rezoning was held on Thursday, February 21, 2013. According to the information submitted by the applicant, four (4) neighboring property owners attended the meeting. According to the meeting minutes submitted by the applicant, resident questions and concerns focused on traffic and streetscape buffer requirements.

Town Council Public Hearing (May 23, 2013)

Staff presented an overview of the case. The applicant provided additional information about the proposed development. There were no other speakers during the public hearing.

The council asked if the portion of the property north of O'Kelly Chapel Road was included in the request. Staff verified that, although it was part of the same parcel of land, it was not included in the request for annexation or rezoning. The council also asked if the proposed development was part of the nearby Carolina Preserve Community. Staff verified that it was not.

Changes Since the Town Council Public Hearing

Language for the proposed zoning condition regarding age-restricted housing was clarified to ensure enforceability.

Planning and Zoning Board Meeting (June 17, 2013)

Staff presented an overview of the case and described the zoning conditions offered by the applicant to limit the use to single-family, detached, age-restricted homes with a density limit of 2.9 dwelling units per acre. The applicant's representative noted that the request did not exceed the density cap of four (4) dwelling units per acre established by the Chatham-Cary Joint Land Use Plan.

The board verified that the language regarding age-restricted housing was acceptable. Staff confirmed that the condition had been vetted and was enforceable. Several board members noted that the proposed use provided good transitions.

The Planning and Zoning Board forwarded the case to Town Council with a recommendation for approval by a vote of 9-0.

CRITERIA FOR CONSIDERATION IN REVIEWING REZONINGS

Section 3.4.1(E) of the Land Development Ordinance sets forth the following criteria that should be considered in reviewing rezonings:

1. The proposed rezoning corrects an error or meets the challenge of some changing condition, trend or fact;
2. The proposed rezoning is consistent with the Comprehensive Plan set forth in Section 1.3 (LDO);
3. The Town and other service providers will be able to provide sufficient public safety, educational, recreational, transportation and utility facilities and services to the subject property while maintaining sufficient levels of service to existing development;
4. The proposed rezoning is unlikely to have significant adverse impacts on the natural environment,

including air, water, noise, stormwater management, wildlife and vegetation;

5. The proposed rezoning will not have significant adverse impacts on property in the vicinity of the subject tract;

6. The proposed zoning classification is suitable for the subject property.

APPLICABLE COMPREHENSIVE OR AREA PLAN REQUIREMENTS

Land Use Plan

Future Land Use Recommendations. The governing land use element of the Comprehensive Plan for the subject parcel is the Chatham-Cary Joint Land Use Plan, adopted in June 2012. The Joint Plan recommends that the subject parcel be developed as Medium Density Residential (MDR). The Joint Plan defines MDR as including residential development at up to four dwellings per acre. Appropriate housing types include single-family-detached, duplex, patio home, semi-detached/attached dwelling, and townhouses. Multi-family housing is not envisioned. The plan document also notes that “a variety of neighborhood-compatible and complimentary civic, institutional, and utility uses may also be considered within any MDR area, such as churches, parks, schools, libraries, daycare facilities, telecommunication towers, utility pump stations, and electric utilities.”

Planning History. Prior to adoption of the Joint Plan in June 2012, future land use recommendations for the subject parcel were provided by Cary’s Northwest Area Plan, adopted in 2002. At that time, the Northwest Plan recommended the parcel for Very Low Density Residential (VLDR) development, at no more than one dwelling per acre. Prior to the 2002 Northwest Area Plan, land use recommendations for the subject parcel were provided by Cary’s townwide Land Use Plan, adopted in 1996. The 1996 Plan recommended an acceptable range of “Very Low to Low Density Residential” (“VLDR to LDR”) uses, which covered an acceptable density range of up to three dwellings per acre.

Land Use Recommendations for Adjacent Parcels

1. **North:** The subject parcel is bordered to the north by O’Kelly Chapel Road, which is designated as a Major Thoroughfare in Cary’s Comprehensive Transportation Plan. O’Kelly Chapel Road is recommended to be a 4-lane median-divided facility. The area north of O’Kelly Chapel Road is designated as Very Low Density Residential (VLDR) in the Chatham-Cary Joint Plan, where residential densities should not exceed one dwelling per acre. This area is currently developed as the Hills of Rosemont subdivision (Chatham County jurisdiction), where lot sizes tend to average somewhat over five acres. This area is also outside of the plan’s Rural Buffer Boundary, and hence public wastewater utilities are not recommended north of the subject parcel.
2. **South:** The property south of the subject parcel shares the same MDR land use designation as the subject parcel.
3. **East:** The properties east of the subject parcel also share the same MDR land use designation as the subject parcel.
4. **West:** Part of the area adjacent to the western property boundary is recommended for Low Density Residential (LDR), and part for Very Low Density Residential (VLDR). This adjacent area includes the Chatham Glen subdivision (Chatham County). LDR is defined in the Joint Plan as single-family at no more than two dwellings per acre.

Growth Management Plan

The Growth Management Plan includes the following Guiding Principles which may be relevant to this case:

- Guiding Principle R1: Ensure that adequate infrastructure and services are available concurrently with new development.
- Guiding Principle L1: Concentrate growth near existing and planned employment centers and available and planned infrastructure to minimize costly service-area extensions.

- Guiding Principle L2: Ensure that future growth protects sensitive natural resources and protects open space.

Analysis: The proposed rezoning seems to satisfy the above principles, and is therefore generally consistent with the Growth Management Plan.

Affordable Housing Plan

Based on the proposed zoning, the Affordable Housing Plan is not applicable.

Comprehensive Transportation Plan

Pittard Sears Road is designated as a local road.

Existing Section: 2-lane undivided; approximately 43-foot ROW

Future Section: 2-lane undivided (unless turn lane needed); 50-foot ROW

Sidewalks: Required on at least one side

Bicycle Lanes: N/A

Transit: No existing or proposed transit routes at this time

Status of Planned Improvements: None planned by the Town

O’Kelly Chapel Road is designated as a Major Thoroughfare.

Existing Section: 2-lane undivided; approximately 60-foot ROW

Future Section: 4-lane with landscaped median; 100-foot ROW

Sidewalks: Required on both sides

Bicycle Lanes: 14-foot-wide outside lanes required

Transit: No existing or proposed transit routes at this time

Status of Planned Improvements: None planned by the Town

Parks, Recreation & Cultural Resources Facilities Master Plan

According to the Parks, Recreation and Cultural Resources Facilities Master Plan a street-side trail is proposed along the subject property’s frontage on O’Kelly Chapel Road.

A recreation fund payment will be required for residential development in accordance with the Land Development Ordinance.

Open Space Plan

According to the Open Space Plan, an area of approximately one acre with significant natural resources, consisting of mixed hardwood and conifer forest, was identified near the southwestern corner of the site.

Historic Preservation Master Plan

This site contains no known historic resources.

OTHER REFERENCE INFORMATION

Schools	Type	Projected Range of Additional Students*
<i>The subject property is located within the Chatham County School District.</i>	Elementary School	26 - 38
<i>The projections are based on multipliers provided by the Wake County Board of Education.</i>	Middle School	5 - 14
	High School	7-17
Total Projected range of additional students*		38 - 69

*The *Projected Range of Additional Students* is a rough approximation. The actual number of students will vary depending on variables, such as the number of bedrooms, dwelling size, and other factors. For example: a site with 92 three-bedroom homes could yield 38 additional students, while 92 homes with greater than three bedroom units could yield 69 students. At rezoning, student yield cannot be accurately determined due to unknown variables.

APPLICANT'S JUSTIFICATION STATEMENT

Attached are the applicant's responses to the justification questions contained in the application form. Please note that these statements are that of the applicant and do not necessarily represent the views or opinions of the Town of Cary.

ORDINANCE FOR CONSIDERATION

13-REZ-01 Ellis Property at Pittard Sears Road

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY TO CHANGE THE ZONING OF APPROXIMATELY 31.63 ACRES OWNED BY COUSSIT PENNIE ELLIS, ET AL., PEGGY ELLIS BUCKINGHAM AND SCOTT WHEELER ELLIS, BY REZONING FROM CHATHAM COUNTY R-1 TO TRANSITIONAL RESIDENTIAL CONDNTIONAL USE AND TO APPLY THE WATERSHED PROTECTION OVERLAY DISTRICT (JORDAN LAKE SUB-DISTRICT).

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CARY:

Section 1: The Official Zoning Map is hereby amended by rezoning the area described as follows:

Property Owner(s)	County Parcel Number(s) (10-digit)	Real Estate ID(s)	Deeded Acreage
Peggy Ellis Buckingham, Scott Wheeler Ellis and Coussit Pennie Ellis Et AL. 1120 Cheryl Lane Wilmington, NC 28405	Portion 0726327074	Portion 19946	31.63 ±
Total Area			31.63 ±

Section 2: That this Property is rezoned from Chatham County R-1 to Transitional Residential Conditional Use (TR-CU) and to the Watershed Protection Overlay District (Jordan Lake sub-district) subject to the individualized development conditions set forth herein, if any, and to all the requirements of the Cary Land Development Ordinance (LDO) and other applicable laws, standards, policies and guidelines, all of which shall constitute the zoning regulations for the approved district and are binding on the Property.

Section 3: That the conditions proposed by the applicant to address conformance of the development and use of the Property to ordinances and officially adopted plans, to address impacts reasonably expected to be generated by the rezoning, and to promote the public health, safety and general welfare, and accepted and approved by the Town are:

1. The use shall be limited to single-family age-restricted housing. Prior to The Town of Cary approving the first subdivision plat for recordation within the proposed development the property owner shall provide certification from an attorney licensed in the state of North Carolina that restrictive covenants are recorded with the Chatham County Register of Deeds subjecting the whole of the development to an age restriction requirement such that at least eighty percent (80%) of all occupied units shall have as a resident at least one person age 55 or older. Such restrictive covenants shall comply with all federal and state laws including the Fair Housing Act.
2. Density shall be limited to 2.9 dwelling units per acre.

Section 4: This ordinance shall be effective on the date of adoption.
Adopted and effective: July 25, 2013

Harold Weinbrecht, Jr.
Mayor

Date