

**CASE # CDR-18-10-352**

Commission District: # 1

**GENERAL INFORMATION**

**APPLICANT** Kathy Hattaway, Poulos and Bennett, LLC

**OWNER** Columar Partnership Holding I, LLC and KHOV Winding Bay II, LLC

**PROJECT NAME** Spring Grove - Northeast Planned Development (PD)

**PARCEL ID NUMBER(S)** 20-24-27-0000-00-009 and 17-24-27-0000-00-012

**TRACT SIZE** 103.05 gross acres (overall PD)  
71.22 gross acres (affected parcel only)

**LOCATION** Generally located east of Avalon Road, west of State Road 429, and south of Water Spring Boulevard

**REQUEST** A PD substantial change to relocate the existing middle school site from Parcel 28 to the proposed Withers PD, decrease the number of dwelling units for Parcel 27 from 165 to 164, change the designation of Parcel 28 from School to Village Home District, and increase the number of dwelling units for Parcel 28 from 0 units to 107 units (an overall increase of 106 dwelling units).

*The request also includes the following waivers from Orange County Code:*

1. A waiver from 34-152(c) to allow lots to front a mews, park, open space, etc. and have access via a tract or easement in lieu of the requirement that each lot shall have a minimum access width of twenty (20) feet to a dedicated public paved street.

***Applicant Justification:*** *Orange County Code Section 38-1382(h)(6) provides for the incorporation of mews in project design where residential units have only rear access. Legal access to these lots will be through an ingress/egress easement shown on the plat.*

2. A waiver from Section 38-1382(h)(4) to allow alleys to be designed as a tract in lieu of the requirement that they shall be designed as a private easement.
3. A waiver from Section 38-1384(g)(1) to allow garage access to be setback from an alley tract in lieu of an easement.

4. A waiver from Section 38-1384(g)(2) to allow detached garages without access to a rear alley tract, including garages with an accessory dwelling unit, shall be located a minimum of five (5) feet from side and rear property lines, and shall be no closer than ten (10) feet to any other detached structure on the same lot in lieu of detached garages without access to a rear alley easement, including garages with an accessory dwelling unit, shall be located a minimum of five (5) feet from side and rear property lines, and shall be no closer than ten (10) feet to any other detached structure on the same lot.
5. A waiver from Section 38-1384(i)(2) to allow vehicular access to garages or other off-street parking to be from a rear alley tract in lieu of an easement.

***Applicant Justification for Waivers 2-5:*** *The alleys are to be owned and maintained by the Home Owners Association (HOA). Placing them in a fee simple tract without underlying individual ownership allows for a clearer separation of ownership and maintenance responsibilities.*

**PUBLIC NOTIFICATION** A notification area extending beyond one thousand five-hundred (1,500) feet was used for this application [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. Eight (8) notices were mailed to those property owners in the notification buffer area. A community meeting was not required for this application.

## **IMPACT ANALYSIS**

### **Special Information**

The Spring Grove - Northeast PD was originally approved on July 19, 2016 and currently has a development program of 221 single-family dwelling units and provisions for an OCPS Middle School site.

Through this PD substantial change, the applicant is seeking to relocate the existing middle school site from Parcel 28 to the proposed Withers PD, decrease the number of dwelling units for Parcel 27 from 165 to 164, change the designation of Parcel 28 from School to Village Home District, and increase the number of dwelling units for Parcel 28 from 0 units to 107 units (an overall increase of 106 dwelling units).

Additionally, five (5) restated, previously approved waivers from Orange County Code are being requested in order to apply these waivers to PD Parcel 28. These waivers relate to lots facing mews, parks, and open spaces; alleys as tracts or easements in lieu of a dedicated public street; alleys to be designed as tracts instead of easements; garage access to be setback from an alley tract instead of an easement; and setbacks for garages that are located on tracts instead of easements.

As the school site was previously counted towards the required APF acreage that was required to be dedicated as part of this amendment, and the school site is now

considered developable, the APF acreage calculations are also being updated with this request. This PD now requires

Approximately 7.82 acres of Adequate Public Facilities (APF) lands, with 5.56 acres being provided to the County through a dedication of 3.52 acres of right-of-way for Avalon Road and a 2.0 acre Orange County Utility site located off-site, are being provided with this request, leaving a 2.26 acre APF deficit. To cover this deficit, 2.26 acres of APF credits are being transferred to this PD from the proposed Withers PD. The APF and Right of Way Agreement (#RAG-19-05-019) was approved by the Road Agreement Committee on June 5, 2019 and will run concurrently with this request to the Board of County Commissioners.

**Land Use Compatibility**

The PD substantial change would not adversely impact any adjacent properties.

**Comprehensive Plan (CP) Amendment**

The subject property has an underlying Future Land Use Map (FLUM) designation of Village (V), as well as the proposed Village I Special Planning Area (SPA) land use designation of Village Home District (VHD). The proposed PD substantial change is consistent with the designation and all applicable CP provisions; therefore, a CP amendment is not necessary.

**Community Meeting Summary**

A community meeting was not required for this request.

**Rural Settlement**

The subject property is not located within a Rural Settlement.

**Joint Planning Area (JPA)**

The subject property is not located within a JPA.

**Overlay District Ordinance**

The subject property is not located within an Overlay District.

**Environmental**

Environmental Protection Division (EPD) staff has reviewed the proposed request, but did not identify any issues or concerns.

**Transportation / Concurrency**

The Roadway Agreement Committee has reviewed a Second Amendment to Adequate Public Facilities and Right of Way Agreement for Village I, Spring Grove – Northeast Planned Development. The Second Amendment provides for the conveyance of 3.56 acres of APF Road Right-of-Way for County Road 545 (Avalon Road) and 2.0 acres for a utility tract, which has already been, conveyed which combine for a total of 5.56 acres of APF dedication. This leaves a deficit of 2.26 acres of Adequate Public Facilities, which will be satisfied with APF Acreage Credits.

On November 13, 2018 the Board of County Commissioners accepted a Term Sheet for Village I. The Roadway Network Agreement being negotiated currently is based on the terms of the term sheet. Per the County's Comprehensive Plan Policy FLU4.3.10, the

Roadway Network Agreement, which must substantially conform with the Term Sheet, must be signed by the owners of a majority of the undeveloped acreage in Village I and approved by the BCC prior to approval of the first Preliminary Subdivision Plan and/or Development Plan in Village I, with the exception of any project that has a Capacity Encumbrance Letter issued prior to November 13, 2018.

**Schools**

The second amendment to the Spring Grove – Northeast Capacity Enhancement Agreement (CEA OC-15-008 A2) for the additional 106 dwelling units proposed under this CDR was approved by OCPS on September 24, 2019.

**Parks**

Orange County Parks and Recreation staff reviewed the Change Determination Request but did not identify any issues or concerns.

**Specific Project Expenditure Report and Relationship Disclosure Forms**

The original Specific Project Expenditure Report and Relationship Disclosure Form are currently on file with the Planning Division.

**ACTION REQUESTED**

**Development Review Committee (DRC) Recommendation – (August 14, 2019)**

**Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Spring Grove-Northeast Planned Development / Land Use Plan (PD/LUP), dated “June 3, 2019”, subject to the following conditions:**

1. Development shall conform to the Spring Grove - Northeast Planned Development (PD) dated "Received June 3, 2019," and shall comply with all applicable federal, state, and county laws, ordinances, and regulations, except to the extent that any applicable county laws, ordinances, or regulations are expressly waived or modified by any of these conditions. Accordingly, the PD may be developed in accordance with the uses, densities, and intensities described in such Land Use Plan, subject to those uses, densities, and intensities conforming with the restrictions and requirements found in the conditions of approval and complying with all applicable federal, state, and county laws, ordinances, and regulations, except to the extent that any applicable county laws, ordinances, or regulations are expressly waived or modified by any of these conditions. If the development is unable to achieve or obtain desired uses, densities, or intensities, the County is not under any obligation to grant any waivers or modifications to enable the developer to achieve or obtain those desired uses, densities, or intensities. In the event of a conflict or inconsistency between a condition of approval and the land use plan dated "Received June 3, 2019," the condition of approval shall control to the extent of such conflict or inconsistency.
  
2. This project shall comply with, adhere to, and not deviate from or otherwise conflict with any verbal or written promise or representation made by the applicant (or authorized agent) to the Board of County Commissioners ("Board") at the public hearing where this development received final approval, where such promise or

representation, whether oral or written, was relied upon by the Board in approving the development, could have reasonably been expected to have been relied upon by the Board in approving the development, or could have reasonably induced or otherwise influenced the Board to approve the development. In the event any such promise or representation is not complied with or adhered to, or the project deviates from or otherwise conflicts with such promise or representation, the County may withhold (or postpone issuance of) development permits and / or postpone the recording of (or refuse to record) the plat for the project. For purposes of this condition, a "promise" or "representation" shall be deemed to have been made to the Board by the applicant (or authorized agent) if it was expressly made to the Board at a public hearing where the development was considered and approved.

3. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
4. Developer / Applicant has a continuing obligation and responsibility from the date of approval of this land use plan to promptly disclose to the County any changes in ownership, encumbrances, or other matters of record affecting the property that is subject to the plan, and to resolve any issues that may be identified by the County as a result of any such changes. Developer / Applicant acknowledges and understands that any such changes are solely the Developer's / Applicant's obligation and responsibility to disclose and resolve, and that the Developer's / Applicant's failure to disclose and resolve any such changes to the satisfaction of the County may result in the County not issuing (or delaying issuance of) development permits, not recording (or delaying recording of) a plat for the property, or both.
5. Property that is required to be dedicated or otherwise conveyed to Orange County (by plat or other means) shall be free and clear of all encumbrances, except as may be acceptable to County and consistent with the anticipated use. Owner / Developer shall provide, at no cost to County, any and all easements required for approval of a project or necessary for relocation of existing easements, including any existing facilities, and shall be responsible for the full costs of any such relocation prior to Orange County's acceptance of the conveyance. Any encumbrances that are discovered after approval of a PD Land Use Plan shall be the responsibility of Owner / Developer to release and relocate, at no cost to County, prior to County's acceptance of conveyance. As part of the review process for construction plan approval(s), any required off-site easements identified by County must be conveyed to County prior to any such approval, or at a later date as determined by County. Any failure to comply with this condition may result in the withholding of development permits and plat approval(s).

6. The project shall comply with the terms and conditions of that certain Adequate Public Facilities Right-of-Way Agreement for Village I, Spring Grove, recorded at Official Records Document #20160390723, Public Records of Orange County, Florida, as may be amended.
7. Unless the property is otherwise vested or exempt, the applicant must apply for and obtain a Capacity Encumbrance Letter (CEL) prior to construction plan submittal and must apply for and obtain a Capacity Reservation Certificate (CRC) prior to approval of the plat. Nothing in this condition, and nothing in the decision to approve this land use plan, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a CEL or a CRC.
8. Construction plans within this PD shall be consistent with an approved and up-to-date Master Utility Plan (MUP). MUP updates shall be submitted to Orange County Utilities at least thirty (30) days prior to the corresponding construction plan submittal. The updated MUP must be approved prior to construction plan approval.
9. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated November 13, 2018 shall apply:
  - a. The following Education Condition of Approval shall apply:
    - 1) Developer shall comply with all provisions of the Capacity Enhancement Agreement entered into with the Orange County School Board as of May 5, 2016, and as amended on October 9, 2018, and as amended on October 4, 2019.
    - 2) Upon the County's receipt of written notice from Orange County Public Schools that the developer is in default or breach of the Capacity Enhancement Agreement, the County shall immediately cease issuing building permits for any residential units in excess of the 5 residential units allowed under the zoning existing prior to the approval of the PD zoning. The County may again begin issuing building permits upon Orange County Public Schools' written notice to the County that the developer is no longer in breach or default of the Capacity Enhancement Agreement. The developer and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, shall indemnify and hold the County harmless from any third party claims, suits, or actions arising as a result of the act of ceasing the County's issuance of residential building permits.
    - 3) Developer, and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, agrees that it shall not claim in any future litigation that the County's enforcement of any of these conditions are illegal, improper, unconstitutional, or a violation of developer's rights.
    - 4) Orange County shall be held harmless by the developer and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, in any dispute between the developer and Orange County

Public Schools over any interpretation or provision of the Capacity Enhancement Agreement.

- 5) Prior to or concurrently with the County's approval of the plat, documentation shall be provided from Orange County Public Schools that this project is in compliance with the Capacity Enhancement Agreement.
- b. The lot grading plan for 32-foot wide single-family detached lots (and similar narrow lots) shall include design features to ensure positive drainage from the side yard to the front roadway or rear alley. These design features may include: (a) A/C units on the same side of homes so that the A/C units are not located adjacent to each other; (b) A/C units on the same side placed at the high elevation point of the side yard so that drainage flows away from the A/C units to the front roadway and rear alley; (c) A/C units located behind the home when the garage is detached from the home with courtyard; and/or (d) other lot grading plan features approved by the County Engineer.
- c. A current Phase One Environmental Site Assessment (ESA) and current title opinion shall be submitted to the County for review as part of any Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) submittal.
- d. A waiver from Orange County Code Section 34-152(c) is granted to allow lots to front a mews, park, open space, etc. and have access via a tract or easement in lieu of the requirement that each lot shall have a minimum access width of twenty (20) feet to a dedicated public paved street.
- e. A waiver from Orange County Code Section 38-1382(h)(4) is granted to allow alleys to be designed as a tract in lieu of the requirement that they shall be designed as a private easement.
- f. A waiver from Orange County Code Section 38-1384(g)(1) is granted to allow garage access to be setback from an alley tract in lieu of an easement.
- g. A waiver from Orange County Code Section 38-1384(g)(2) is granted to allow detached garages without access to a rear alley tract, including garages with an accessory dwelling unit, shall be located a minimum of five (5) feet from side and rear property lines, and shall be no closer than ten (10) feet to any other detached structure on the same lot in lieu of detached garages without access to a rear alley easement, including garages with an accessory dwelling unit, shall be located a minimum of five (5) feet from side and rear property lines, and shall be no closer than ten (10) feet to any other detached structure on the same lot.
- h. A waiver from Orange County Code Section 38-1384(i)(2) is granted to allow vehicular access to garages or other off-street parking to be from a rear alley tract in lieu of an easement.
- i. A waiver from Orange County Code Section 30-714(c) is granted to allow the project to proceed beyond 5% of the approved PD entitlements, which 5%

threshold is identified in the APF Agreement as 24 single-family residential units (attached or detached), subject to the following conditions: (1) a minimum 2.07 acres of APF Lands shall be conveyed to the County prior to the said 5% threshold being reached; and (2) the plat for phase 2 (as shown on the PSP) shall not be recorded until at least 8.39 acres of APF Lands, in the aggregate, have been conveyed to the County from the project. Provided, however, as approved by Orange County, the foregoing condition (2) shall not apply if, prior to the recording of the plat for Phase 2 of the project (as shown on the PSP), the property owner and Orange County Public Schools have identified in writing an alternate location for the school site shown on this Land Use Plan and such alternate location is zoned for a school site or is the subject of a rezoning application to allow for such alternate school site and the rezoning application has met the County's minimum standards for sufficiency; the foregoing is in lieu of the requirement that a minimum 8.39 acres of APF Lands be conveyed prior to the 5% threshold being reached.

10. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated July 19, 2016 shall apply:
- a) All acreages identified as conservation areas and wetland buffers are considered approximate until finalized by a Conservation Area Determination (CAD) and a Conservation Area Impact (CAI) Permit. Approval of this plan does not authorize any direct or indirect conservation area impacts.
  - b) Pole signs and billboards shall be prohibited. Ground and fascia signs shall comply with Chapter 31.5 of the Orange County Code.
  - c) Tree removal / earthwork shall not occur unless and until construction plans for the first Preliminary Subdivision Plan and/or Development Plan with a tree removal and mitigation plan have been approved by Orange County.
  - d) The developer shall be responsible for building master utilities transmission and collection infrastructure adequate to serve the project to accommodate the ultimate flows for the entire Village (SAP). Utilities infrastructure shall be built connecting to the build-out points of connection approved in the Master Utilities Plan (MUP).
  - e) Prior to approval of the first PSP in Village I, the developer shall submit a Village-wide MUP including water, wastewater and reclaimed water transmission main layouts, sizing, and supporting hydraulic calculations.
  - f) At least thirty (30) days prior to construction plan submittal, the applicant shall submit a Master Utility Plan (MUP) for the PSP, including hydraulically dependent parcels outside the PSP boundaries; such MUP shall include supporting calculations showing that the PSP-level MUP is consistent with the approved MUP for the Village, or shall include an update to the Village MUP to incorporate any revisions. The MUP(s) must be approved prior to construction plan approval.
  - g) A two acre APF tract with a thirty foot (30') wide access to a county right-of-way for a water facility within Village I near Village I's southern boundary shall

be identified prior to the approval of the first PSP within Village I and dedicated to the County prior to approval of the first construction plan set within Village I. The tract shall have a minimum width of 150 feet, have an elevation above the 100 year flood plain, be located outside of wetlands and no more than 1,000 feet from Avalon Road.

- h) The developer shall obtain water, wastewater and reclaimed water service from Orange County Utilities.
- i) Prior to construction plan approval, all property owners within the Village I, excluding public entities, shall be required to sign an agreement between the parties addressing their proportionate share of funds for the costs of the offsite and onsite master utilities sized to Village requirements. Property owners may elect to use alternate financing in lieu of the private proportionate cost share agreement provided master utilities sized for Village requirements are constructed.
- j) ~~On July 28, 2015, the Board of County Commissioners transmitted an amendment to Comprehensive Plan Policy FLU4.3.10 (the "Policy"). Such Policy, among other things, contemplated that any project that has submitted an application for a Planned Development prior to November 10, 2015, may proceed with development without entering into a Road Network Agreement pursuant to a Global Road Network Term Sheet for Village I; provided, however, that such development shall be required to obtain at least one development permit for vertical construction other than a model home within thirty (30) months from the date of approval of the Planned Development. It is currently anticipated that the Policy will be considered for adoption by the Board in November of 2015; this project shall be subject to the Policy, including any time limitations on permitting, as it is adopted by the board, whenever such adoption may occur.~~

This project shall comply with Comprehensive Plan Policy FLU4.3.10.

**PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION (November 13, 2018)**

Upon a motion by Commissioner VanderLey, seconded by Commissioner Clarke, and carried by all present members, the Board made a finding of consistency with the Comprehensive Plan and further approved the substantial change request by Kathy Hattaway to change the designation for PD Parcel 26 from Apartment District (APT) to Village Home District (VHD), reduce the number of units from 353 to 221 (an overall reduction of 132 units), modify the Adequate Public Facilities (APF) acreage contributions of each parcel (no overall change in APF acreage), and request waivers, subject to conditions.