

GENERAL INFORMATION

APPLICANT Chris Dougherty, S&ME, Inc.

OWNERS Twinwise Properties, Ltd. , Ellen W. Lang, Steven A Wise, Trustee, Abe O. Wise, Trustee, Michael Z. Wise, Daniel Z. Wise, Deborah Wise Levin

PROJECT NAME Wise Colonial Planned Development (PD)

HEARING TYPE Planning and Zoning Commission

REQUEST **C-3** (Wholesale Commercial District) to **PD** (Planned Development District)

A request to rezone two (2) parcels containing 12.77 gross acres from C-3 to PD, in order to develop 280 multi-family dwelling units and 19,600 square feet of C-1 (Retail Commercial) uses. The request also includes the following waivers from Orange County Code:

1. A waiver from Section 38-1258(c) is requested to allow three-story buildings to be setback ninety (90) feet, in lieu of one hundred fifty (150) feet from single-family zoned property.

Applicant Justification: *Understanding that the adjacent property zoned A-1 is owned by Barry University and understanding that Barry University supports this request, the purpose of this waiver is to allow for a flexible building layout throughout the site so as to not require buildings closer to the western edge of the site adjacent to their campus.*

2. A waiver from Section 38-1258(d) is requested to allow a maximum building height of fifty-five (55) feet, in lieu of forty (40) feet, provided that the building is setback one hundred fifty (150) feet from single-family zoned property.

Applicant Justification: *The purpose of this waiver is to provide the requisite residential density needed to support the retail component of this mixed-use project.*

LOCATION	6525 and 6575 E. Colonial Drive; or generally located on the north side of E. Colonial Drive, approximately 1,400 feet west of N. Forsyth Road
PARCEL ID NUMBER	22-22-30-0000-00-001 and 22-22-30-0000-00-005
TRACT SIZE	12.77 gross acres
PUBLIC NOTIFICATION	The notification area for this public hearing was 1,300 feet [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. Two hundred forty-one (241) notices were mailed to those property owners in the mailing area. A community meeting was not required for this application.
PROPOSED USE	280 multi-family dwelling units and 19,600 square feet of C-1 (Retail Commercial) uses

STAFF RECOMMENDATION

Development Review Committee – (August 14, 2019)

Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Wise Colonial Planned Development / Land Use Plan (PD/LUP), dated “Received July 16, 2019”, subject to the following conditions:

1. Development shall conform to the Wise Colonial Land Use Plan (LUP) dated "Received July 16, 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 July 16, 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 following Education Condition of Approval shall apply:

- a) Developer shall comply with all provisions of the Capacity Enhancement Agreement entered into with the Orange County School Board as of April 23, 2019.
- b) 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 zero (0) 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.
- c) 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.
- d) 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.

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.

- 7. This project is located in the Alternative Mobility Area (AMA) and, therefore, shall be required to provide for alternative mobility strategies related to the development. The applicant must submit a Mobility Analysis to be reviewed and approved by the Transportation Planning Division prior to obtaining a building permit.
- 8. Site development activity shall comply with State recommended Best Management Practices to protect soils during clearing, earthwork and construction. Fugitive dust emissions shall not be allowed from any activity including: vehicular movement, transportation of materials, construction, alteration, loading, unloading, storing or handling; without taking reasonable precautions to prevent such emissions. Reasonable precautions include application of water, dust suppressants, and other measures defined in Orange County Code Chapter 15 Environmental Control, Article III Air Quality Control, Division 2 Rules, Section 15-89.1 Air Pollution Prohibited.
- 9. Prior to mass grading, clearing, grubbing or construction, the applicant is hereby noticed that this site must comply with habitat protection regulations of the U.S. Fish and Wildlife Service (USFWS) and the Florida Fish & Wildlife Conservation Commission (FWC).

10. The applicant / owner has an affirmative obligation to expressly notify potential purchasers, builders, and/or tenants of this development, through an appropriate mechanism, including a conspicuous note on the plat and/or a recorded restrictive covenant, as applicable, that the property on the northeast boundary that is not residential currently has a permit for a concrete crushing facility which has the potential to be the source of offsite dust and noise to adjacent properties.
11. Prior to construction plan approval, hydraulic calculations shall be submitted to Orange County Utilities demonstrating that proposed and existing wastewater systems have been designed to support all development within the PD.
12. The developer shall obtain wastewater service from Orange County Utilities subject to County rate resolutions and ordinances.
13. 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 and must be approved prior to Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) approval for any streets and/or tracts anticipated to be dedicated to the County and/or to the perpetual use of the public.
14. Short term rental within the residential portion of this PD shall be prohibited. Length of stay within the residential portion of the PD shall be for 180 consecutive days or greater. If a hotel/motel/timeshare or the like is proposed within the commercial portion of this PD then the length of stay shall not exceed 179 consecutive days.
15. 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.
16. Pole signs and billboards shall be prohibited. Ground and fascia signs shall comply with Chapter 31.5 of the Orange County Code.
17. This property is located within Airport Noise Zone "D". Development shall comply with Article XV, Chapter 9, Orange County Code (Airport Noise Impact Areas), as may be amended from time to time.
18. The following waivers from Orange County Code are granted:
 - a) A waiver from Section 38-1258(c) to allow three-story buildings to be setback ninety (90) feet, in lieu of one hundred fifty (150) feet from single-family zoned property.
 - b) A waiver from Section 38-1258(d) allow a maximum building height of fifty-five (55) feet, in lieu of forty (40) feet, provided that the building is setback one hundred fifty (150) feet from single-family zoned property.

IMPACT ANALYSIS

Land Use Compatibility

The proposed development program is compatible with existing development in the area, and would not adversely impact any adjacent properties.

Comprehensive Plan (CP) Consistency

Recently, a Future Land Use Map amendment (#2019-1-A-5-2) for the residential parcel from Commercial (C) to Medium-High Density Residential (MHDR) was approved by the Board of County Commissioners on May 21, 2019 and became effective on July 18, 2019.

Today, the subject property has an underlying Future Land Use Map (FLUM) designation of Commercial (C) and Medium High Density Residential (MHDR). The proposed PD zoning district and development program is consistent with C and MHDR FLUM designations and the following CP provisions:

FLU1.4.1 states Orange County shall promote a range of living environments and employment opportunities in order to achieve a stable and diversified population and community.

FLU1.4.2 states that Orange County shall ensure that land uses changes are compatible with and serve existing neighborhoods.

GOAL FLU2 states that Orange County will encourage urban strategies such as infill development, coordinated land use and transportation planning, and mixed-use development, which promote efficient use of infrastructure, compact development and an urban experience with a range of choices and living options.

FLU2.2.1 states that within the Urban Service Area, Orange County shall encourage a mixture of land uses within activity and mixed-use commercial centers. Office and residential land uses shall be part of the balanced land use mixture, in addition to the commercial component.

FLU8.1.1 states that the zoning and future land use correlation shall be used to determine consistency with the Future Land Use Map. Land use compatibility, the location, availability and capacity of services and facilities, market demand, and environmental features shall also be used in determining which specific zoning district is most appropriate. Density is restricted to the maximum and minimum allowed by the Future Land Use Map designation regardless of zoning.

OBJ FLU8.2 states that compatibility will continue to be the fundamental consideration in all land use and zoning decisions.

FLU8.2.1 states that land use changes shall be required to be compatible with existing development and development trend in the area. Performance restrictions and/or conditions may be placed on property through the appropriate development order to

ensure compatibility. No restrictions or conditions shall be placed on a Future Land Use Map change.

FLU8.2.11 states that compatibility may not necessarily be determined to be a land use that is identical to those uses that surround it. Other factors may be considered, such as the design attributes of the project, its urban form, the physical integration of a project and its function in the broader community, as well its contribution toward the Goals and Objectives in the CP. The CP shall specifically allow for such a balance of considerations to occur.

SITE DATA

Existing Use	Undeveloped Commercial, Warehousing
Adjacent Zoning	N: A-1 (Citrus Rural District) (1970) I-1/I-5 (Industrial District) (1973) E: C-3 (Wholesale Commercial District) (1980) W: C-3 (Wholesale Commercial District) (1957, 1972) S: C-3 (Wholesale Commercial District) (1957)
Adjacent Land Uses	N: Single Family Residential, Undeveloped Industrial E: Warehousing W: Barry University, Self-Storage S: Automobile Sales

APPLICABLE PD DEVELOPMENT STANDARDS

Multi-Family Tract

PD Perimeter Setback	25 feet
Open Space:	25%
Maximum Building Height:	55 feet
Minimum Living Area:	550 Square Feet (under HVAC)

Minimum Building Setbacks

Major Road Setback:	25 feet
Front Setback:	25 feet
Rear Setback:	25 feet, 90 feet for 3-stories adjacent to Single-Family
Side Setback:	25 feet

Commercial Tract

PD Perimeter Setback	25 feet
Maximum Building Height:	35 feet

Open Space: 20%
Impervious Surface Ratio: 70%

Minimum Building Setbacks

Front Setback: 40 feet
Rear Setback: 25 feet
Side Setback: 25 feet

SPECIAL INFORMATION

Subject Property Analysis

The applicant is seeking to rezone two (2) parcels containing 12.77 gross acres from C-3 (Wholesale Commercial District) to PD (Planned Development District), in order to develop 280 multi-family dwelling units and 19,600 square feet of C-1 retail commercial uses.

In addition, the applicant is requesting two waivers from Orange County Code. The first waiver would allow 3-story buildings to be setback 90 feet from single-family property and the second waiver would allow a maximum building height of 55 feet in lieu of the required 40 feet for buildings that are setback 150 feet from single-family zoned property.

The sole single-family zoned property is located at the northwest corner of the project and is owned by Barry University. After discussions between the University and the applicant team, an agreement was made to have the waivers still require some multi-family setback compatibility measures, while providing additional flexibility for site design of the multi-family development with reduced setbacks.

Comprehensive Plan (CP) Amendment

A CP amendment is not required for this application, as the requested zoning is consistent with the underlying Commercial (C) and Medium-High Density Residential (MHDR) Future Land Use Map (FLUM) designations.

State of Florida Notice

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.

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 located within the State Road 436 / State Road 50 Corridor Overlay District. This overlay district prohibits certain uses from operating within the corridor. The proposed uses are not prohibited within this overlay.

Airport Noise Zone

The subject property is located in Airport Noise Zone "D". Noise mitigation criteria may be applicable at the time of building permit review.

Environmental

Orange County EPD will not require a conservation area determination for this site. This comment does not apply to any other jurisdictional agencies.

Development of the subject property shall comply with all state and federal regulations regarding wildlife and plants listed as imperiled species (endangered, threatened, or species of special concern). The applicant is responsible to determine the presence of these concerns and to verify and obtain, if necessary, any required habitat permitting of the U.S. Fish and Wildlife Service (USFWS) and the Florida Fish & Wildlife Conservation Commission (FWC).

Preliminary Subdivision Plans, Development Plans and construction plans will have to comply with the following and will have to have a note of commitment on those plans stating: All storm drain inlets constructed as part of new development projects in Orange County shall have metal medallion inlet markers installed. Text on the marker shall be evenly spaced and read "No Dumping, Only Rain in the Drain". Markers must be commercial grade stainless steel, aluminum, brass or bronze and either stamped from sheet metal or cast. Metal marker color must be non-reflective blue or green. Aquatic creature or symbol shown on marker shall be consistent throughout the subdivision. Markers must be affixed to a clean, prepared surface with adhesives, fasteners, or heat as recommended by the manufacturer. Markers shall be aligned with the center of drainage inlets at the top of the curb. Lettering must be between 0.4 - 0.5 inches and the total diameter of the marker between 3.75 - 4.25 inches.

The applicant / owner has an affirmative obligation to expressly notify potential purchasers, builders, and/or tenants of this development, through an appropriate mechanism, including a conspicuous note on the plat and/or a recorded restrictive covenant, as applicable, that the property on the northeast boundary that is not residential currently has a permit for a concrete crushing facility which may be the source of offsite dust and noise to adjacent properties if it is not managed properly.

No person shall cause, let, suffer, allow, or permit the emissions of unconfined particulate matter from any activity, including vehicular movement; transportation of materials; construction, alteration, demolition or wrecking; or industrially related activities, such as loading, unloading, storing, or handling; without taking reasonable precautions to prevent such emissions including but not limited to application of water,

dust suppressants, planting of vegetation, point of activity controls (hoods, filters, etc) and other measures. Reference Orange County Code Chapter 15 Environmental Control, Article III Air Quality Control, Division 2 Rules, Section 15-89.1 Air Pollution Prohibited 15-89.1(b) Unconfined emissions of particulate matter and 15-89.1(b)(2) Reasonable Precautions and defined in the Florida Department of Environmental Protection 62-296.320(4)(c) for Unconfined Emissions of Particulate matter adopted by Orange County Code 15-90 Adoption of state and federal rules by reference.

Any miscellaneous garbage, hazardous waste, yard waste and construction or demolition debris shall be disposed of off-site according to the solid waste and hazardous waste regulations.

Transportation / Access

The Alternative Mobility Analysis will be required prior to obtaining a building permit.

Code Enforcement

There are no active code enforcement violations on the subject property.

Utilities

Water: Orlando Utilities Commission

Wastewater: Orange County Utilities

Reclaim Water: Orange County Utilities

Schools

A Capacity Enhancement Agreement (CEA) application, #OC-18-045, was approved by the Orange County School Board on April 23, 2019.

Parks and Recreation

Orange County Parks and Recreation reviewed this request, but did not provide any comments or identify any concerns.

Specific Project Expenditure Report and Relationship Disclosure Form

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

PLANNING AND ZONING COMMISSION (PZC) FINDINGS

The staff report was presented to the PZC with the recommendation that they make a finding of consistency with the Comprehensive Plan and recommend approval of Wise Colonial Planned Development (PD) Land Use Plan, subject to eighteen (18) conditions.

Staff indicated that two hundred forty-one (241) notices were mailed to surrounding property owners within a buffer of 1,300 feet from the subject property, with one (1) commentary received in support of the request and four (4) in opposition. The applicant was present for

the hearing and concurred with staff's recommendation. There was one member of the public present who spoke in favor of the request.

After a brief discussion, a motion was made by Commissioner Spears to find the request to be consistent with the Comprehensive Plan and recommend APPROVAL of the Wise Colonial PD Land Use Plan, subject to the eighteen (18) conditions listed under the DRC Recommendation. Commissioner Dunn seconded the motion, which then carried on a 8-0 vote.

Motion / Second	<i>Gordon Spears / Jimmy Dunn</i>
Voting in Favor	<i>Gordon Spears, Jimmy Dunn, Jose Cantero, JaJa Wade, Diane Velazquez, Yog Melwani, Eddie Fernandez, and Mohammed Abdallah</i>
Voting in Opposition	<i>None</i>
Absent	<i>Carlos Nazario</i>

PZC RECOMMENDED ACTION

Planning and Zoning Commission (PZC) Recommendation – (September 19, 2019)

Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Wise Colonial Planned Development / Land Use Plan (PD/LUP), dated "Received July 16, 2019", subject to the following conditions:

1. Development shall conform to the Wise Colonial Land Use Plan (LUP) dated "Received July 16, 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 July 16, 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 following Education Condition of Approval shall apply:
 - a) Developer shall comply with all provisions of the Capacity Enhancement Agreement entered into with the Orange County School Board as of April 23, 2019.
 - b) 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 zero (0) 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.
 - c) 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.
 - d) 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.

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.
7. This project is located in the Alternative Mobility Area (AMA) and, therefore, shall be required to provide for alternative mobility strategies related to the development. The applicant must submit a Mobility Analysis to be reviewed and approved by the Transportation Planning Division prior to obtaining a building permit.
8. Site development activity shall comply with State recommended Best Management Practices to protect soils during clearing, earthwork and construction. Fugitive dust emissions shall not be allowed from any activity including: vehicular movement, transportation of materials, construction, alteration, loading, unloading, storing or handling; without taking reasonable precautions to prevent such emissions. Reasonable precautions include application of water, dust suppressants, and other measures defined in Orange County Code Chapter 15 Environmental Control, Article III Air Quality Control, Division 2 Rules, Section 15-89.1 Air Pollution Prohibited.
9. Prior to mass grading, clearing, grubbing or construction, the applicant is hereby noticed that this site must comply with habitat protection regulations of the U.S. Fish

and Wildlife Service (USFWS) and the Florida Fish & Wildlife Conservation Commission (FWC).

10. The applicant / owner has an affirmative obligation to expressly notify potential purchasers, builders, and/or tenants of this development, through an appropriate mechanism, including a conspicuous note on the plat and/or a recorded restrictive covenant, as applicable, that the property on the northeast boundary that is not residential currently has a permit for a concrete crushing facility which has the potential to be the source of offsite dust and noise to adjacent properties.
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12. The developer shall obtain wastewater service from Orange County Utilities subject to County rate resolutions and ordinances.
13. 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 and must be approved prior to Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) approval for any streets and/or tracts anticipated to be dedicated to the County and/or to the perpetual use of the public.
14. Short term rental within the residential portion of this PD shall be prohibited. Length of stay within the residential portion of the PD shall be for 180 consecutive days or greater. If a hotel/motel/timeshare or the like is proposed within the commercial portion of this PD then the length of stay shall not exceed 179 consecutive days.
15. 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.
16. Pole signs and billboards shall be prohibited. Ground and fascia signs shall comply with Chapter 31.5 of the Orange County Code.
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 - a) A waiver from Section 38-1258(c) to allow three-story buildings to be setback ninety (90) feet, in lieu of one hundred fifty (150) feet from single-family zoned property.

- b) A waiver from Section 38-1258(d) allow a maximum building height of fifty-five (55) feet, in lieu of forty (40) feet, provided that the building is setback one hundred fifty (150) feet from single-family zoned property.