

CASE # CDR-18-12-412

Commission District: # 4

GENERAL INFORMATION

APPLICANT Erika Hughes, VHB, Inc.

OWNER Boggy Creek Retail Development LLC

PROJECT NAME Boggy Creek Crossings Planned Development (PD)

PARCEL ID NUMBER(S) 33-24-30-0000-00-015

TRACT SIZE 16.74 gross acres

LOCATION 5757 Simpson Road, or generally located at the northwest corner of Simpson Road and Boggy Creek Road

REQUEST A PD substantial change to convert 124,250 square feet of commercial uses to 336 multi-family dwelling units. In addition, the applicant has requested the following ten (10) waivers from Orange County Code:

1. A waiver from Section 38-79(114)e to allow detached accessory buildings be located in front of principal buildings, in lieu of no detached accessory building being located in front of principal buildings.

Applicant Justification: *The principal buildings are designed to front an amenitized stormwater pond with parking located along the perimeter. The proposed five (5) detached accessory buildings will include windows and are proposed to be located along the perimeter providing building massing along the Boggy Creek and Simpson Road frontages.*

2. A waiver from Section 38-1254(1) to allow two-story accessory buildings and two-story multi-family buildings provide a minimum ten (10) foot setback along all boundaries of the PD, in lieu of a minimum twenty-five (25) foot setback from all boundaries of the PD with increased setbacks for structures in excess of two-stories to reflect the additional structural height.

Applicant Justification: *There are five (5) proposed two-story detached accessory buildings and two (2) two-story multi-family buildings located along the perimeter of the PD. Each accessory building is proposed to include windows and will provide building massing along the Boggy Creek Road*

and Simpson Road frontages, in addition to the typical landscaping and fencing. The approved Tyson Ranch PD shows a large stormwater pond that directly abuts the subject property's north boundary line; the storm pond will provide significant buffer for the proposed multi-family buildings. The reduced setback is only for two-story buildings. The proposed setbacks are compatible to the surrounding area projects.

3. A waiver from Section 38-1254(2)(b) to allow a minimum setback of ten (10) feet for two-story accessory buildings along the southern boundary of the PD, in lieu of thirty-five (35) feet.

Applicant Justification: *There are five (5) proposed detached accessory buildings located along the perimeter of the PD. Each accessory building is proposed to include windows and will provide building massing along Simpson Road in addition to the typical landscaping and fencing. The reduced setback is only for the two-story buildings. The proposed setbacks are compatible to the surrounding area projects.*

4. A waiver from Section 38-1254(2)(c) to allow a minimum setback of ten (10) feet for two-story accessory buildings along the east boundary of the PD, in lieu of fifty (50) feet.

Applicant Justification: *There are five (5) proposed detached accessory buildings located along the perimeter of the PD. Each accessory building is proposed to include windows and will provide building massing along Boggy Creek Road in addition to the typical landscaping and fencing. The reduced setback is only for the two-story buildings. The proposed setbacks are compatible to the surrounding area projects.*

5. A waiver from Section 38-1258(a) to allow for all boundaries of the PD to allow multi-family buildings located ten (10) feet from single-family zoned property have a maximum building height of two-stories, in lieu of being restricted to a single-story in height.

Applicant Justification: *Although the subject property is not adjacent to single-family zoned property, single-family development can occur along all boundaries of the subject property. The PD to the north is approved with a maximum multi-family building height of forty-five (45) feet and a hotel building height of seventy-five (75) feet. The proposed building height for this multi-family development is compatible to the surrounding area projects.*

6. A waiver from Section 38-1258(b) to allow for all boundaries of the PD to allow all multi-family buildings located one hundred and two (102) feet from single-family zoned property have a maximum building height of four-stories / sixty (60) feet in lieu of varying building heights with a maximum of fifty (50) percent of the buildings being three-stories (not to exceed forty (40) feet) in height and the remaining buildings being one-story or two-stories in height.

Applicant Justification: *Although the subject property is not adjacent to single-family zoned property, single-family development can occur along all boundaries of the PD. The PD to the north is approved with a maximum building height of seventy-five (75) feet for non-residential buildings on the parcel abutting the northern boundary of the subject property. The proposed building height will be compatible to the surrounding area projects.*

7. A waiver from Section 38-1258(c) to allow for all boundaries of the PD to allow multi-family buildings located one hundred and two (102) feet of single family zoned property to have a maximum building height of four-stories / sixty (60) feet in height, in lieu of not allowing to exceed three-stories (forty (40) feet) in height within 150 feet of single-family zoned property.

Applicant Justification: *Although the subject property is not adjacent to single-family zoned property, single-family development can occur along all boundaries of the PD. The PD to the north is approved with a maximum building height of seventy-five (75) feet for non-residential buildings on the parcel abutting the northern boundary of the subject property. The proposed building height will be compatible to the surrounding area projects.*

8. A waiver from Section 38-1258(d) to allow for multi-family buildings to be four-stories or sixty (60) feet in height, in lieu of three-stories or forty (40) feet.

Applicant Justification: *The previous PD approval had a maximum building height of fifty (50) feet and this request is for a nominal increase to the height. Additionally, the adjacent Tyson Ranch PD was approved with waivers for a maximum building height seventy-five (75) feet. The 60-foot max building height is compatible with the surrounding PD approvals.*

9. A waiver from Section 38-1258(e) to allow for parking and other paved areas for multi-family development be located at

least ten (10) feet from any single-family zoned property with no landscape buffer, in lieu of twenty-five (25) feet and Type C landscape buffer.

***Applicant Justification:** Five (5) two-story accessory buildings and two (2) two-story multi-family buildings are proposed within ten (10) feet of the PD boundary.*

10. A waiver from Section 38-1258(j) to allow for a minimum building separation of twenty (20) feet between all multi-family buildings where doors, windows or other openings in the wall of a living unit back up to a wall of another building with doors, windows or other openings, in lieu of providing thirty (30) feet for two-story buildings and forty (40) feet for three-story buildings.

***Applicant Justification:** Detached accessory buildings are being proposed in certain areas of the development that may contain windows for aesthetic purposes, and may be located closer than thirty (30) feet to other buildings.*

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]. One hundred seventy-two (172) 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 Boggy Creek PD was originally approved May 13, 2014. It currently has existing entitlements for 170,000 square feet of Retail Commercial (C-1) uses. On May 21, 2019, the Board of County Commissioners (BCC) adopted Comprehensive Plan Amendment 2019-1-A-4-3, which changed the Future Land Use of the subject property to Planned Development – Commercial / Medium Density Residential (PD-C/MDR). This amendment is effective as of July 18, 2019.

Through this PD substantial change, the applicant is seeking to convert 124,250 square feet of commercial uses to 336 multi-family dwelling units. Additionally, ten (10) waivers are being requested related to accessory building setbacks and location, PD perimeter setbacks, building height, pavement setbacks, buffering requirements, and building separation requirements.

Land Use Compatibility

The proposed PD substantial change would not adversely impact any adjacent properties or result in an incompatible land use pattern.

Comprehensive Plan (CP) Consistency

The subject property has an underlying Future Land Use Map (FLUM) designation of Planned Development – Commercial/Medium Density Residential (PD-C/MDR). The proposed PD substantial change is consistent with the designation and all applicable CP provisions; therefore, a CP amendment is not necessary.

Overlay Ordinance

The subject property is not located within an Overlay District.

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.

Environmental

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

Transportation Concurrency

A Capacity Encumbrance Letter (CEL) will be required for this project. Capacity is available to be encumbered within the impacted area.

Community Meeting Summary

A community meeting was not required for this request.

Schools

Capacity Enhancement Agreement (CEA) OC-18-043 was approved by Orange County Public Schools (OCPS) on February 12, 2019.

Parks and Recreation

Orange County Parks and Recreation staff reviewed the PD substantial change 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 – (September 11, 2019)

Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Boggy Creek Crossings Planned Development / Land Use Plan (PD/LUP), dated “August 12, 2019”, subject to the following conditions:

1. Development shall conform to the Boggy Creek Crossings PD Land Use Plan (LUP) dated "Received August 12, 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 August 12, 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 February 12, 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 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.

 - e. 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. 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).
8. 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.
9. Short term/transient rental is prohibited. Length of stay shall be for 180 consecutive days or greater for residential use.
10. A current Phase I 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 PSP and /or DP approval for any streets or tracts anticipated to be dedicated to the County or to the perpetual use of the public.
11. Unless the property is otherwise vested or exempt, the applicant must apply for and obtain a capacity encumbrance letter prior to construction plan submittal and must apply for and obtain a capacity reservation certificate prior to approval of the plat. Nothing in this condition, and nothing in the decision to approve this land use plan / preliminary subdivision plan, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a capacity encumbrance letter or a capacity reservation certificate.
12. A Master Utility Plan (MUP) for the PD shall be submitted to Orange County Utilities at least thirty (30) days prior to submittal of the first set of construction plans. The MUP must be approved prior to Construction Plan approval.
13. 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.
14. Developer shall construct a minimum two lane roadway extending from Simpson Road to the north PD boundary connecting to the Tyson Ranch PD.
15. The following waivers from Orange County Code are granted:
 - a. A waiver from Section 38-79(114)e to allow detached accessory buildings be located in front of principal buildings, in lieu of no detached accessory building being located in front of principal buildings.
 - b. A waiver from Section 38-1254(1) to allow two-story accessory buildings and two-story multi-family buildings provide a minimum ten (10) foot setback along all boundaries of the PD, in lieu of a minimum twenty-five (25) foot setback from

- all boundaries of the PD with increased setbacks for structures in excess of two-stories to reflect the additional structural height.
- c. A waiver from Section 38-1254(2)(b) to allow a minimum setback of ten (10) feet for two-story accessory buildings along the southern boundary of the PD, in lieu of thirty-five (35) feet.
 - d. A waiver from Section 38-1254(2)(c) to allow a minimum setback of ten (10) feet for two-story accessory buildings along the east boundary of the PD, in lieu of fifty (50) feet.
 - e. A waiver from Section 38-1258(a) to allow for all boundaries of the PD to allow multi-family buildings located ten (10) feet from single-family zoned property have a maximum building height of two-stories, in lieu of being restricted to single-story in height.
 - f. A waiver from Section 38-1258(b) to allow for all boundaries of the PD to allow all multi-family buildings located one hundred and two (102) feet from single-family zoned property have a maximum building height of four-stories / sixty (60) feet in lieu of varying building heights with a maximum of fifty (50) percent of the buildings being three-stories (not to exceed forty (40) feet) in height and the remaining buildings being one-story or two-stories in height.
 - g. A waiver from Section 38-1258(c) to allow for all boundaries of the PD to allow multi-family buildings located one hundred and two (102) feet of single family zoned property to have a maximum building height of four-stories / sixty (60) feet in height, in lieu of not allowing to exceed three-stories (forty (40) feet) in height within 150 feet of single family zoned property.
 - h. A waiver from Section 38-1258(d) to allow for multi-family buildings to be four-stories or sixty (60) feet in height in lieu of three-stories or forty (40) feet.
 - i. A waiver from Section 38-1258(e) to allow for parking and other paved areas for multi-family development be located at least ten (10) feet from any single-family zoned property with no landscape buffer, in lieu of twenty-five (25) feet and Type C landscape buffer.
 - j. A waiver from Section 38-1258(j) to allow for a minimum building separation of twenty (20) feet between all multi-family buildings where doors, windows or other openings in the wall of a living unit back up to a wall of another building with doors, windows or other openings, in lieu of providing thirty (30) feet for two-story buildings and forty (40) feet for buildings three-stories.
16. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated May 13, 2014 shall apply:
- 1. No activity will be permitted on the site that may disturb, influence or interfere with: areas of soil or groundwater contamination, any remediation activities, or within the hydrological zone of influence of the contaminated area, unless prior approval has been obtained through FDEP and such approval has been

provided to the Environmental Protection Division of Orange County. An owner / operator who exacerbates the existing contamination or does not properly dispose of any excavated contaminated media may become liable for some portion of the contamination pursuant to the provisions in section 376.308, F.S.

2. On properties where contamination has been documented, the covenants, conditions, and restrictions (CC&Rs) and lease agreements shall include notification that the property has been identified with soil and groundwater contamination and shall state the status of the resulting remediation.
3. The Developer shall obtain wastewater service from Orange County Utilities.
4. A Master Utility Plan (MUP) shall be submitted to Orange County Utilities prior to approval of the first PSP / DP. The MUP must be approved prior to Construction Plan approval.
5. Billboards and pole signs shall be prohibited. Ground and fascia signs shall comply with Ch. 31.5.
6. Outdoor sales, storage and display shall be prohibited.
7. Tree removal / Earthwork shall not occur unless and until construction plans for the first Preliminary Subdivision and / or Development Plan with a tree removal and mitigation plan have been approved by Orange County.
8. Access to Boggy Creek Road along the southern boundary shall require approval by both Orange County and Osceola County.

PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION (May 13, 2014)

Upon a motion by Commissioner Thompson, seconded by Commissioner Clarke, and carried by all present commissioners voting AYE by voice vote; the Board approved the request by Rick Merkel for Boggy Creek Crossings Planned Development to rezone 16.74 gross acres from A-2 (Farmland Rural District) to PD (Planned Development District), subject to conditions.