

**CASE # CDR-16-11-381**

Commission District: # 1

**GENERAL INFORMATION**

<b>APPLICANT</b>	Christopher P. Roper, Akerman, LLP
<b>OWNER</b>	Standard Pacific of Florida
<b>PROJECT NAME</b>	Windermere Gardens Planned Development (PD)
<b>PARCEL ID NUMBER</b>	Multiple Parcels
<b>TRACT SIZE</b>	25.82 gross acres ( <i>overall PD</i> ) 11.66 gross acres ( <i>affected lots only</i> )
<b>LOCATION</b>	Generally north of Overstreet Road and west of Winter Garden Vineland Road.
<b>REQUEST</b>	A PD substantial change to incorporate the following waiver from Orange County Code:  <ol style="list-style-type: none"><li>1. <i>A waiver from Sections 38.1384(i) and 38.1385.5(b)(8) of the "Old" Village Code to allow front-loaded garages to be set back a minimum of seven (7) feet behind the primary structure (excluding the front porch or bay), in lieu of ten (10) feet for all lots other than Lot 18 within the plat for Windstone recorded at PB 83, PG 140.</i></li></ol>

<b>PUBLIC NOTIFICATION</b>	A notification area extending beyond five hundred (500) feet was used for this application [ <i>Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet</i> ]. Three hundred twenty-eight (328) 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 Windermere Gardens PD was originally approved August 19, 2008 and allows for the development of 63 single-family detached residential homes on 25.82 gross acres.

Through this PD substantial change, the applicant is seeking to incorporate a waiver from Orange County Code to apply the front-loaded garage setbacks of the current Village PD Code [Section 38-1384(g)(2)] to all lots other than Lot 18 of the Windstone Plat, Recorded at PB 83, PG 140 only; in lieu of the otherwise applicable front-loaded garage setbacks of the original Village PD Code [Sections 38-1384(i) and 38-1385.5].

The specific front-loaded garage setback standards as permitted by current Code

Section 38-1384(g)(2) are as follows:

*“Garage doors of front-loaded lots shall be recessed a minimum of ten (10) feet behind the nearest adjacent plane of the primary structure. However, when a porch is provided in front of the forward-most plane of the structure, which meets the minimum standards of Section 38-1384(d), the garage door setback behind the nearest adjacent plane of the primary structure may be decreased to seven (7) feet. In no case shall a front-loaded garage door be setback less than twenty (20) feet from the front property line. 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.”*

In contrast, the front-loaded garage setback standards found in the original Village PD Code, and which otherwise apply to the project, only require garage doors to be located a minimum of ten (10) feet behind the primary building entry, unless it is a side entry garage with windows facing the street.

**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 Village (V), and is further located within Lakeside Village of the Horizon West Special Planning Area. From a land use perspective, the Windermere Gardens PD is designated Estate Home District (EHD) on the PD, which requires a density of three (3) dwelling units per acre, unless otherwise increased or decreased through the use of Transferable Development Rights (TDR). The proposed PD substantial change is consistent with the EHD designation and all applicable CP provisions; therefore, the request is consistent with the Comprehensive Plan.

**Overlay District 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 request, but did not identify any issues or concerns.

**Transportation / Concurrency**

Transportation staff has reviewed the proposed request, but did not identify any issues or concerns.

**Schools**

Orange County Public Schools (OCPS) did not comment on this case, as it does not involve an increase in residential units or density.

**Parks and Recreation**

Orange County Parks and Recreation staff reviewed the 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 – (February 22, 2017)**

**Make a finding of consistency with the Comprehensive Plan (CP) and approve the substantial change to the Windermere Gardens Planned Development / Land Use Plan (PD/LUP) dated “Received February 28, 2017”, subject to the following conditions:**

1. Development shall conform to the Windermere Gardens Planned Development / Land Use Plan (PD/LUP) dated "Received February 28, 2017," 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 of this land use plan and the land use plan dated "Received February 27, 2017," 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/LUP 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. A waiver from Orange County Code Sections 38-1384(i) and 38-1385.5(b)(8) of the "Old" Village code is granted to allow front-loaded garages to be set back a minimum of seven (7) feet behind the primary structure (excluding the front porch or bay) in lieu of ten (10) feet, for all lots other than Lot 18 within the plat for

Windstone recorded in Plat Book 83, Page 140, public records of Orange County, Florida.

7. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated August 19, 2008, shall apply:
- a. All acreages regarding 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. The developer shall obtain water, wastewater and reclaimed water service from Orange County Utilities.
  - c. Tree removal 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.
  - d. This project shall comply with the Windermere Gardens Adequate Public Facilities (APF) Agreement as recorded in OR Book 9755/ Page 4224, public records of Orange County, Florida.
  - e. The following Education Condition of Approval shall apply as it relates to Transfer of Capacity Credits per Capacity Enhancement Agreement #06-011-13: The project contains 67 unvested units that are subject to the County's school capacity policy (a/k/a the "Martinez Initiative".) The developer has contracted with Metropolitan Estates, LLC (Metropolitan) to acquire school rights/credits established under the Capacity Enhancement Agreement by and between Metropolitan and the School Board dated November 14, 2006 ("CEA # 06-011-13"). The number of school rights / credits equals or exceeds the number of Unvested Units. The developer shall comply with all provisions of the Capacity Enhancement Agreement. Upon the County's receipt of written notice from OCPS that the developer is in default or breach of the Capacity Enhancement Agreement, the County shall immediately cease issuing building permits for any unvested units. The County shall 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 or assign 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. Clerk's Note: Orange County Public Schools (OCPS) Developer, or its successor or assign under the Capacity Enhancement Agreement, agrees that is 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 property rights.

**PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION** *(August 19, 2008)*

Upon a motion by Commissioner Jacobs, seconded by Commissioner Fernandez, and carried with all present members voting AYE by voice vote; the Board made a finding of consistency with the Comprehensive Plan and approved the request by Marion Skilling for Windermere Gardens Planned Development (PD) Land Use Plan (LUP), to rezone from R-CE-C (Country Estate District-Cluster) to PD (Planned Development), subject to conditions.