

CASE # CDR-17-06-183

Commission District: # 4

GENERAL INFORMATION

APPLICANT	Miranda Fitzgerald - Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
OWNER	Dwell at Nona Place, LLC
PROJECT NAME	Lake Whippoorwill Landing Planned Development
PARCEL ID NUMBER	20-24-31-1690-02-000
TRACT SIZE	26.5 gross acres (<i>overall PD</i>)
LOCATION	East of Narcoossee Road, north of Tyson Road, and south of Kirby Smith Road.
REQUEST	A PD substantial change to amend June 19, 2012 BCC Conditions of Approval #14 and #18 in order to construct a temporary vehicular barrier at the southern terminus of a required access drive, and to extend the period for which the applicant must remove a portion of an existing wall along the northern property line to continue the required access point northward. Finally the applicant is seeking to delete June 19, 2012 BCC Condition of Approval #19 which included a requirement to commence construction of a cross access drive segment that has since been completed.
PUBLIC NOTIFICATION	A notification area extending beyond one thousand five hundred (1500) feet was used for this application [<i>Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet</i>]. Three hundred forty-one (341) 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 Lake Whippoorwill Landing PD was originally approved on June 19, 2012 and allows for 275 multi-family / townhouse dwelling units, up to 50,000 square feet of commercial / office, and a greenbelt. On September 22, 2015 an Interlocal Agreement between the City of Orlando and Orange County was approved which established a north-south connector street or cross-access corridor running roughly parallel to Narcoossee Road, connecting Kirby Smith Road and Tyson Road to accommodate vehicular and pedestrian traffic.

Through this PD substantial change, the applicant is seeking to amend June 19, 2012 BCC Conditions of Approval #14 and #18, and delete June 19, 2012 BCC Condition of Approval #19. More specifically, the applicant is seeking to modify June 19, 2012

Condition #14 in order to construct a temporary vehicular barrier at the southern terminus of a required cross-access drive contiguous to the adjacent Tyson's Corner development. The requested modification to June 19, 2012 Condition #18 would extend the period for which the applicant must remove a portion of an existing wall along the northern property boundary that provides visual and sound abatement to an adjacent single family parcel from 45 to 90 days upon receipt of written notification by the County that a portion of the wall must be removed.

Finally, the applicant is seeking to delete June 19, 2012 Condition #19, which required the Klein Company or its successors or assigns to commence construction of the segment of a cross access drive, on or before issuance of the first certificate of occupancy for the multifamily residential portion of PD Parcel 1, with construction completed within two years from the date of commencement. This condition has been satisfied and is no longer needed.

The proposed condition modifications would only temporarily prevent cross-access between the subject property and adjacent properties via a north-south corridor that extends through the subject property. Consistent with the existing Interlocal Agreement between the City of Orlando and Orange County, the modified conditions would require any vehicular barrier or wall that prevents cross-access to be removed or opened by the current property owner, its successors or assigns ("Owner"), following both (i) receipt of the County's Notice directing full or partial removal of the existing 8-foot wall on the northern boundary of the PD as set forth in June 19, 2012 Condition #18; and (ii) extension of the Cross-Access Drive by the owner of the adjoining property to the north such that it connects with Weller Boulevard.

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 / Office / Medium Density Residential / Townhomes / Rural Settlement 1/2 (PD-C/O/MDR/TH/RS 1/2). The Lake Whippoorwill Landing PD was approved on June 19, 2012 and includes uses such as multi-family residential, commercial, and office; therefore the project is consistent with the CP.

Overlay District Ordinance

The subject property is located within the Narcoossee Road Corridor Overlay District.

Rural Settlement

The subject property is located within the Lake Hart/Lake Whippoorwill Rural Settlement.

Joint Planning Area (JPA)

The subject property is not located with any existing JPA; however, is subject to an existing Interlocal Agreement between the City of Orlando and Orange County that requires the establishment of a north-south connector street or cross-access corridor running roughly parallel to Narcoossee Road, connecting Kirby Smith Road and Tyson Road.

Environmental

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

Transportation / Concurrency

Per Policy T3.2.1 of the Transportation Element of the Comprehensive Plan, the County shall require developments to provide cross-access easements or public right-of-way stubouts to adjacent parcels when such connections will improve connectivity and enhance access to surrounding land use. Provisions for future connections shall be provided in all directions, except where abutting land is undevelopable.

Schools

With no proposed change to residential density, Orange County Public Schools (OCPS) did not provide any comments or express concerns.

Parks and Recreation

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 – (July 12, 2017)

Make a finding of consistency with the Comprehensive Plan (CP) and approve the substantial change to the Lake Whippoorwill Landing Planned Development / Land Use Plan (PD/LUP) dated “Received September 19, 2016”, subject to the following conditions:

1. Development shall conform to the Lake Whippoorwill Landing Planned Development / Land Use Plan (PD/LUP) dated "Received September 19, 2016," 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 September 19, 2016," 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. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated June 19, 2012 shall apply:
- a. 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 certificate of occupancy. Nothing in this condition and nothing in the decision to approve this development 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.
 - b. 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.
 - c. A Master Utility Plan (MUP) shall be submitted to Orange County Utilities prior to approval of the first PSP/DP (Preliminary Subdivision Plan/Development Plan). The MUP must be approved prior to Construction Plan approval.
 - d. The Developer shall obtain wastewater and reclaimed water service from Orange County Utilities.
 - e. Outdoor sales, storage and display shall be prohibited.
 - f. 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.
 - g. The following Education Condition of Approval shall apply:
 - 1) Developer shall comply with all provisions of Capacity Enhancement Agreement (CEA OC-11-005), approved by the Orange County School Board on December 13, 2011.
 - 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 1 single family and 24 multi-family residential units allowed under the zoning existing prior to the approval of the PD zoning. 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(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, or 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.

At the time of platting, documentation shall be provided from Orange County Public Schools that this project is in compliance with the Capacity Enhancement Agreement.

- h. In recognition of the urbanizing development trend along the east side of Narcoossee Road and in order to achieve an appropriate transition from the proposed commercial / multi-family uses to the east (towards the lake), the following waivers are granted in order to address the adjacent A-1 zoned property to the north and the approved Tyson's Corner PD to the south. In addition, other waivers shall be granted in order to achieve the proposed internal compact and mixed use nature of the project, as well as to accommodate more efficient onsite parking and vehicular circulation.
 - 1) A waiver from Section 24-5(a)(3) is granted to allow for a 10-foot wide buffer along the north and east property line of Parcel 2 in lieu of 15 feet and to eliminate the buffer along the south property line of Parcel 2 in lieu of a 15-foot wide, Type C buffer.
 - 2) A waiver from Section 38-830(13) is granted to allow for entrances and exits directing traffic between the commercial / office uses and the adjacent residential uses within the project (internal to Parcel 1 and Parcel 2).
 - 3) The following waivers from Section 38-1258 are granted to address multi-story residential apartment and townhome-style unit development in Parcel 1 adjacent to single family residential property:
 - A) A waiver from Section 38-1258(a) to allow multi-family residential building heights within a distance of between 50-100 feet from single family residential property, to be a maximum of 2 story / 35 feet and 3 story / 40 feet, in lieu of one story within 100 feet;
 - B) A waiver from Section 38-1258(b) to allow multi-family residential building heights within a distance of 100 feet and 150 feet from single family residential property to vary in height with a maximum of 75%, in lieu of 50%, of the buildings being 3 story / 40 feet and the remaining buildings 2 story / 35 feet;
 - C) A waiver from Section 38-1258(d) to allow a maximum multi-family residential building height of 4 story / 45 feet, in lieu of 3 story / 40 feet;

- D) A waiver from Section 38-1258(e) to allow parking and other paved areas for multifamily residential to be located 10 feet from the north property line of Parcel 1, in lieu of 25 feet;
 - E) A waiver from Section 38-1258(f) to allow (Poly Vinyl Chloride) PVC-type fencing for multi-family development located adjacent to single family residential property in lieu of a masonry or block wall and to exclude the fence requirement at cross access points, except as provided in Condition of Approval 18; and
 - F) A waiver from Section 38-1258(j) to allow for a minimum separation of 30 feet between 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 a 40-foot separation.
- 4) The following waivers from Section 38-1272 are granted to address multi-story commercial / office uses and the internal access drive separation from an arterial roadway in Parcel 2, where adjacent to single family residential property:
- A) A waiver from Section 38-1272(a)(3) to allow for a zero foot setback along the south property line of Parcel 2 (internal) in lieu of 25 feet where abutting a residential use; and
 - B) A waiver from Section 38-1272(a)(5) to allow for a maximum building height of 4-story / 45 feet in lieu of 35 feet when within a distance of 100 feet from residential property.
- i. There shall be no boat docks/ramps which would allow for direct boat access. No motorized watercraft shall be permitted on Lake Whippoorwill for this property. One (1) observation deck may be allowed subject to the issuance of a "Construction of Dock Ordinance" permit.
 - j. Parking shall be limited to one (1) row of parking and one (1) drive-aisle adjacent to Narcoossee Road for Parcel 2. For Parcel 1, Zone 1, if the proposed multi-family residential fronts the main entrance driveway, parking may be placed behind the building(s) subject to a knee wall buffering the parking.
 - k. One year after the Certificate of Occupancy for the commercial development within Parcel 2, the developer shall pay for a warrant study to be conducted. The developer shall pay a proportional share of the cost of the signalization based on this Planned Development's average daily trip distribution through the intersection.
 - l. No portion of the residential development shall be gated. Fencing or walls may be permitted so long as they are designed to create an edge/buffer to the adjacent properties or parcels. A temporary vehicular barrier shall be allowed at the southern terminus of the Cross-Access Drive contiguous to the Tyson's Corner development (the "Barrier"). The Barrier shall be removed by the current

property owner, Dwell at Nona Place, LLC, or its successors or assigns ("Owner"), following receipt of a notice from the County directing full or partial removal of the existing 8-foot wall on the northern boundary of the PD (the "Wall") as set forth in Condition 18 and removal of the Barrier (the "Notice"). The estimated cost of removal of the entire Wall and the Barrier is \$7,403.00 (the "Removal Cost"). The Owner has deposited in escrow with Lowndes, Drosdick, Doster, Kantor and Reed, in an interest-bearing money market account, the amount of \$8,254.00, representing the Removal Cost plus a fifteen percent (15%) contingency fee. The entire escrowed amount shall be available to the Owner for use in removing the Wall and the Barrier, or to the County in the event the Owner fails to remove the Wall and Barrier within ninety (90) days from receipt of the Notice from the County. The Owner shall pay any additional amounts that may be necessary for the complete removal of the Wall and Barrier to allow public travel on the Cross-Access Drive between Tyson Road and Weller Boulevard. In addition, the Owner shall, within ten (10) days after final approval of CDR 17-06-183, enter into and record in the Public Records of Orange County, Florida, at Owner's expense, a Hold Harmless and Indemnification Agreement indemnifying the County for any liability or expenses incurred related in any way to the Wall or Barrier, the removal thereof, or any Code Enforcement proceedings related thereto.

- m. In order to minimize the potential visual impact on properties across Lake Whipoorwill, not less than 50% of the buildings shall be oriented such that the narrower end of the building will be facing directly or tangentially toward the lake.
- n. The following uses shall be prohibited:
 - Warehousing (indoor storage of products)
 - Lumber yard
 - Portable foods and drink vendors (including hot dog stands)
 - Coin-operated laundries
 - Disinfecting and pest control
 - Automobile parking as a principal use
 - Auto, exhaust repair shops
 - Automotive services, exhaust repair shops
 - Bowling centers
 - Coin-operated amusement centers
 - Auto driving instruction
 - Auto supply stores
 - Parking rental, sales, and leasing
 - Gasoline stations
 - Convenience stores with associated gasoline sales
 - Automotive shops
 - Truck stops
 - Tattoo shops
 - Body piercing
 - Same-day payday loans
 - Strip commercial
 - Boarding, lodging, and rooming houses

- Single-family unit in conjunction with a commercial use
- General warehousing and storage (self-storage)
- Airports, flying fields, and services
- Pipelines (except natural gas)
- Radio telephone communications
- Radio broadcasting stations (lattice, guyed, and monopole)
- Substations, telephone switch stations, and water plants
- Electric, gas, and sanitary services
- Drinking places (cocktail lounges / bars) not directly associated with a sit-down restaurant
- Used merchandise stores (pawn shops / thrift stores)
- Fuel dealers (oil / propane)
- Cemetery, sub-dividers, and developers (cemetery)
- Power laundries
- Funeral service, crematories, embalming
- Miscellaneous personal services (escort services)
- Equipment rental and leasing
- Motion picture theaters
- Theatrical producers (TV studios)
- Sports clubs (franchise / non-franchise sports, stadiums)
- Golf courses
- Membership sports and recreation clubs (indoor and outdoor uses)
- Amusement and recreation (indoor and outdoor uses)
- Elementary, middle, and charter schools
- Colleges, universities, and high schools
- Residential care (juvenile delinquent center)
- Civic, social, and fraternal associations (fraternity houses)
- Tobacco stores
- Lounges and packaged sales of alcoholic beverages that are subject to 4COP (Consumption on Premises) licensing (per Section 38-1414)
- Big Box developments
- Drive-through restaurants
- Employment and day labor agencies
- Hotels / motels

o. Hardware stores shall be permitted. However, outdoor storage, display, and sales shall be prohibited.

p. In order to provide a visual and sound buffer for the existing single-family residence on the adjoining property to the north, the Owner has constructed an 8-foot high block wall with stucco finish (the "Wall") along that portion of the northern PD boundary that is parallel to the existing single-family residence and any existing ancillary structures. At such time as the owner of the adjoining property to the north proceeds with redevelopment of his property, the County shall determine whether the wall can remain in place or whether all or a portion of it must be removed to promote cross access between the two properties. If the County determines that all or a portion of the Wall must be removed, the Owner shall have 90 days following receipt of written Notice from the County in

which to remove, without cost to the County, the entire Wall or such portion of it that is described in the Notice.

PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION *(June 19, 2012)*

Upon a motion by Commissioner Thompson, seconded by Commissioner Martinez, and carried by all members present voting AYE by voice vote, the Board made a finding of consistency with the Comprehensive Plan; and further, approved the request by Scott Stuart, KCG, Inc. For Multiple Owners, Lake Whippoorwill Landing to rezone from C-1 (Retail Commercial District), C-2 (General Commercial District), & A-2 (Farmland Rural District) to PD (Planned Development), with associated waivers, on the described property, subject to conditions.