

CASE # CDR-17-05-144

Commission District: # 1

GENERAL INFORMATION

APPLICANT	Marc Stehli, Poulos & Bennett, LLC
OWNERS	Carter-Orange 45 SR 429 Land Trust; Avalon Woods Corporation; and Daryl M. Carter Tr.
PROJECT NAME	New Independence Planned Development / Unified Neighborhood Plan (PD / UNP)
PARCEL ID NUMBER	20-23-27-0000-00-017; 20-23-27-0000-00-018; 17-23-27-0000-00-013; 20-23-27-0000-00-009; 20-23-27-0000-00-001 (portion of)
TRACT SIZE	61.45 gross acres (overall PD)
LOCATION	Generally north of New Independence Parkway and west of S.R. 429.
REQUEST	<p>A PD substantial change to request the following four (4) waivers from Orange County Code:</p> <ol style="list-style-type: none">1) <i>A waiver from Section 38-1390.33(c) to allow a maximum block length along the primary block face of 715-feet for streets G, I, and J, and 800 feet for street K, in lieu of the maximum block length of 600 feet.</i>2) <i>A waiver from Section 31.5-73(c) to allow a ground sign at two (2) locations along New Independence Parkway, in lieu of the requirement that the primary sign shall be located only at the main entrance.</i>3) <i>A waiver from Section 34-152(c) to allow lots 57-64, 95-101, and 122-128, to front a meadow, park, open space, etc, in lieu of the required 20-foot access to a dedicated public paved streets. Legal access to these lots will be through an ingress/egress easements.</i>4) <i>A waiver from Section 34-209 to allow a 4-foot 6-inch high split rail wood fence along park tract P-3 where facing New Independence Parkway, in lieu of the required 6-foot masonry wall to separate residential subdivisions from all adjacent roadways.</i>

PUBLIC NOTIFICATION

A notification area extending beyond one thousand five hundred (1500) feet was used for this application [*Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet*]. Thirty-four (34) 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 New Independence PD / UNP contains 61.45 gross acres, was originally approved by the Board of County Commissioners (BCC) on October 6, 2015, and currently provides for a development program consisting of 285 residential dwelling units (single-family detached and attached).

Through this PD substantial change, the applicant is seeking to incorporate four (4) waivers from the Town Center Code and corresponding with the New Independence PSP (PSP-17-02-058). The waiver requests are to increase the maximum block length, provide an alternative sign location, provide alternative access, and to construct a split-rail fence along Park Tract P-3 along New Independence Parkway.

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) within the Town Center Special Planning Area designation of Urban Residential District (UR-3). The New Independence PD / UNP was approved in 2015 and includes urban residential uses. The proposed Change Determination Request (CDR) is consistent with the UR-3 designation. The proposed PD substantial change is consistent with this 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 proposed request but did not identify any issues or concerns.

Transportation / Concurrency

Hamlin West PD: A Road Network Agreement for New Independence Parkway and C.R. 545/Avalon Road ("Agreement") among Hamlin Retail Partners West, LLC; Carter-Orange 45 SR 429 Land Trust; Beth A. Wincey, individually; and Beth A. Wincey and N. Ann D. Wincey and M. Bea Deariso, as Co-Alternative Successor Trustees of the Milton W. Deariso Trust dated November 30, 1988 (collectively "Owners") and Orange County was approved by the BCC on 6/30/2016 and was recorded at Document #20160338700. Owners agree to design, engineer, permit and construct road improvements and convey any necessary right-of-way for the four-laning of New Independence Parkway from S.R. 429 to Avalon Road/C.R. 545. Owners further agrees to conduct all or a portion of a Preliminary Design Study for the four-laning of Avalon Road/C.R. 545 from McKinney Road to Schofield Road up to their proportionate share contribution which totals \$2,908,445.59. County agrees to provide a vested trip allocation in the amount of 2,315 trips in return for the improvements along with road impact fee credits for the amount of the proportionate share payment. Should the Owners elect to construct additional improvements the parties shall re-negotiate or enter into a new Road Network Agreement.

An increase in dwelling units is not proposed with this request, so no impacts on the trip generation calculations within the Road Network Agreement are anticipated.

Community Meeting Summary

A community meeting was not required for this request.

Schools

Orange County Public Schools (OCPS) reviewed the request and determined that it will not impact public school capacity as the residential density is not changing.

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 – (August 9, 2017)

Make a finding of consistency with the Comprehensive Plan (CP) and approve the substantial change to the New Independence Planned Development / Unified Neighborhood (PD/UNP) dated "Received August 11, 2017", subject to the following conditions:

1. Development shall conform to the New Independence PD / UNP Land Use Plan (LUP) dated "Received August 11, 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 and the land use plan dated "Received August 11, 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 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 waivers from Orange County Code are granted:
 - a. A waiver from Section 38-1390.33(c) to allow a maximum block length along the primary block face of 715-feet for streets G, I, and J, and 800 feet for street K, in lieu of the maximum block length of 600 feet.
 - b. A waiver from Section 31.5-73(c) to allow a ground sign at two (2) locations along New Independence Parkway, in lieu of the requirement that the primary sign shall be located only at the main entrance. The primary sign shall be located at the NW corner of New Independence Parkway and SR 429. The secondary sign shall be located at the main community entrance near McKinney Road. Both signs shall maintain a maximum height of eight (8) feet. The proposed copy area shall follow Section 31.5-73(d).
 - c. A waiver from Section 34-152(c) to allow lots 57-64, 95-101, and 122-128 to front a mew, park, open space, etc., in lieu of the required 20 foot access to a dedicated public paved street. Legal access to these lots will be through an ingress / egress easement.
 - d. A waiver from Section 34-209 to allow a 4-foot 6-inch high split rail wood fence along park tract P-3 where facing New Independence Parkway, in lieu of the required 6-foot masonry wall to separate residential subdivisions from all adjacent roadways.
7. Unless otherwise waived, signage shall comply with the Horizon West Village Center standards.
8. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated May 10, 2016 shall apply:

- a. A current Level One Environmental Site Assessment (ESA) and current title opinion shall be submitted to the County for review and approval as part of any Preliminary Subdivision Plan (PSP) and /or Development Plan (DP) submittal.
- b. The following Education Condition of Approval shall apply:
 - 1) Developer shall comply with all provisions of the Capacity Enhancement Agreement entered into with the Orange County School Board as of June 8, 2015.
 - 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 7 residential units allowed under the zoning existing prior to the approval of the PD zoning. The County may again begin issuing building permits upon Orange County Public Schools' written notice to the County that the developer is no longer in breach or default of the Capacity Enhancement Agreement. The developer and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, shall indemnify and hold the County harmless from any third party claims, suits, or actions arising as a result of the act of ceasing the County's issuance of residential building permits.
 - 3) Developer, and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, agrees that it shall not claim in any future litigation that the County's enforcement of any of these conditions are illegal, improper, unconstitutional, or a violation of developer's rights.
 - 4) Orange County shall be held harmless by the developer and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, in any dispute between the developer and Orange County Public Schools over any interpretation or provision of the Capacity Enhancement Agreement.
 - 5) Prior to or concurrently with the County's approval of the plat, documentation shall be provided from Orange County Public Schools that this project is in compliance with the Capacity Enhancement Agreement.
- c. Prior to or concurrently with County's approval of the plat, a dedicated right of way/ public access will be provided to the Avalon Property (Parcel ID 20-23-27-0000-00-001).
- 9. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated October 6, 2015, shall apply:
 - a. 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.

- b. Based on the Concurrency Management System database dated 02-18-15, capacity is available to be encumbered for this project. This information is dated and is subject to change.
- c. 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).
- d. No activity will be permitted on the site that may disturb, influence, or otherwise interfere with: areas of soil or groundwater contamination, or any remediation activities, or within the hydrological zone of influence of any contaminated area, unless prior approval has been obtained through the Florida Department of Environmental Protection (FDEP) and such approval has been provided to the Environmental Protection Division of Orange County. An owner/operator who exacerbates any 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.
- e. The developer shall obtain water, wastewater and reclaimed water service from Orange County Utilities.
- f. The developer shall be responsible for building master utilities transmission and collection infrastructure adequate to serve the project to accommodate the ultimate flows for the entire Town Center Village (SAP). Utilities infrastructure shall be built connecting to the build-out points of connection approved in the Master Utilities Plan (MUP).
- g. At least thirty (30) days prior to construction plan submittal, the applicant shall submit a Master Utility Plan (MUP) for the PSP, including hydraulically dependent parcels outside the PSP boundaries; such MUP shall include supporting calculations showing that the PSP-level MUP is consistent with the approved MUP for the Village, or shall include an update to the Village MUP to incorporate any revisions. The MUP(s) must be approved prior to construction plan approval.
- h. Prior to construction plan approval, all property owners within the Town Center Village, excluding public entities, shall be required to sign an agreement between the parties addressing their proportionate share of funds for the costs of the offsite and onsite master utilities sized to Village requirements. Property owners may elect to use alternate financing in lieu of the private proportionate cost share agreement provided master utilities sized for Village requirements are constructed.
- i. The following Education Condition of Approval shall apply:
 - 1) Developer shall comply with all provisions of the Capacity Enhancement Agreement entered into with the Orange County School Board on June 8, 2015.

- 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 seven (7) residential units allowed under the zoning existing prior to the approval of the PD zoning. The County may again begin issuing building permits upon Orange County Public Schools' written notice to the County that the developer is no longer in breach or default of the Capacity Enhancement Agreement. The developer and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, shall indemnify and hold the County harmless from any third party claims, suits, or actions arising as a result of the act of ceasing the County's issuance of residential building permits.
- 3) Developer, and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, agrees that it shall not claim in any future litigation that the County's enforcement of any of these conditions are illegal, improper, unconstitutional, or a violation of developer's rights.
- 4) Orange County shall be held harmless by the developer and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, in any dispute between the developer and Orange County Public Schools over any interpretation or provision of the Capacity Enhancement Agreement.
- 5) Prior to or concurrently with the County's approval of the plat, documentation shall be provided from Orange County Public Schools that this project is in compliance with the Capacity Enhancement Agreement.
- j. The proposed development is adjacent to an existing and permitted City of Orlando / Orange County Water Conserv II Rapid Infiltration Basin (RIB) site. The design and permitting (stormwater, etc.) for the proposed development shall take into account the groundwater mounding produced by the adjacent RIBs when loaded at full permitted capacity and during wet weather conditions. At the time of construction plan submittal, provide calculations and documentation certifying that the design complies with this condition.
- k. A Level One (1) Environmental Site Assessment (ESA) and current title opinion shall be submitted to the County for review and approval as part of any Preliminary Subdivision Plan (PSP) and / or Development Plan (DP) submittal.
- l. Unless the property is otherwise vested or exempt, the applicant must apply for and obtain a Capacity Encumbrance Letter (CEL) prior to construction plan submittal and must apply for and obtain a Capacity Reservation Certificate (CRC) prior to approval of the plat. Nothing in this condition, and nothing in the decision to approve this PD/UNP, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a CEL or a CRC.
- m. A Road Network Agreement shall be in place prior to PSP / DP approval for the New Independence PD pursuant to the BCC-approved Town Center West Term Sheet.

PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION *(May 10, 2016)*

Upon a motion by Commissioner Boyd, seconded by Commissioner Clarke, 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 Daryl M. Carter, New Independence Planned Development (PD), Case #LUPA-16-01-005 to aggregate and rezone a portion of one (1) adjacent parcel comprising 0.37 acre into the existing New Independence PD, on the described property, subject to conditions.