

**CASE # CDR-18-10-351**

Commission District: # 1

**GENERAL INFORMATION**

<b>APPLICANT</b>	Eric Warren, Poulos & Bennett, LLC
<b>OWNER</b>	Avalon Properties, LTD
<b>PROJECT NAME</b>	Springhill Planned Development (PD)
<b>PARCEL ID NUMBER</b>	08-24-27-0000-00-005 (affected parcel only)
<b>TRACT SIZE</b>	551.77 gross acres ( <i>overall PD</i> ) 29.28 gross acres ( <i>affected parcel only</i> )
<b>LOCATION</b>	Generally located north of Water Springs Boulevard and west of Avalon Road
<b>REQUEST</b>	<p>A PD substantial change to reallocate thirty-four (34) units from PD Parcel 15 to PD Parcel 35. In addition, the applicant has requested the following three (3) waivers from Orange County Code for PD Parcel 35 only:</p> <ol style="list-style-type: none"><li>1. A waiver from Section 38-1258(a), for Parcel 35, to allow multi-family residential buildings located within ten (10) feet of single-family zoned property along the west parcel line and one hundred (100) feet along the south parcel line to be constructed up to five-stories and 65 feet in height, in lieu of the requirement that multi-family buildings within one hundred (100) feet of a single-family zoned property be restricted to a single-story in height.</li><li>2. A waiver from Section 38-1258(b), for Parcel 35, to allow multi-family buildings located between one hundred plus (100+) feet to one hundred and fifty (150) feet of single-family zoned property to be constructed up to five-stories and 65 feet in height, in lieu of the requirement that multi-family buildings located between one hundred plus (100+) feet to one hundred and fifty (150) feet of single-family zoned property shall vary in building height with a maximum of fifty (50) percent of the buildings being three (3) stories (not to exceed forty (40) feet) in height with the remaining buildings being one (1) story or two (2) stories in height.</li></ol>

3. A waiver from Section 38-1258(c), for Parcel 35, to allow multi-family buildings located within ten (10) feet of single-family zoned property along the west parcel line and one hundred (100) feet along the south parcel line to be constructed up to five-stories and 65 feet in height, in lieu of the requirement that multi-family buildings located within one hundred and fifty (150) feet of single-family zoned property shall not exceed three (3) stories (forty (40) feet) in height.

***Applicant Justification for Waivers 1-3: The Village H specific area plan principles promote compact pedestrian-oriented environments by creating a mixed-use character through the integration of uses. The separation of residential multi-family buildings is contrary to the principles of walkable neighborhoods. Section 38-1258, Orange County Code is intended to provide compatibility between multi-family and single-family developments on a countywide basis. These requirements are not consistent with the integrated, mixed use development in the approved village h specific area plan. By allowing taller multi-family buildings, adjacent to single-family zoned property, development will be more consistent and compatible with Village H principles.***

**PUBLIC NOTIFICATION** A notification area extending beyond eight hundred (800) feet was used for this application [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. Two hundred thirty-seven (237) 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 Springhill PD was originally approved on April 9, 2013 and is located within the Village H Special Planning Area boundary of Horizon West in southwest Orange County. Consistent with the underlying Village H SPA land use map, the overall PD includes areas designated Village Center District, Neighborhood Center District, Apartment District, Townhome District, Village Home District, Estate District, and Garden Home District. The PD provides for 1,334 residential dwelling units, and 112,391 square feet of non-residential uses. In addition, the PD provides numerous Adequate Public Facilities (APF) including an elementary school, neighborhood park, fire station, utility tract, and other rights-of-way and multi-purpose paths.

Through this PD Change Determination Request (CDR), the applicant is seeking to reallocate thirty-four (34) units from Parcel 15 to Parcel 35 and is requesting three (3) waivers related to multi-family height and 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 Village (V). The subject parcel located in Village H and is designated as Apartment District (Parcel 35) and Village Center (Parcel 15). The proposed Change Determination Request (CDR) 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**

The applicant shall use caution to prevent erosion during construction along the boundary of the property, into wetlands and buffers, and into all drainage facilities and ditches. Construction will require Best Management Practices (BMPs) for erosion control. Minimize the extent of area exposed at one time, apply perimeter controls where necessary, and perform maintenance checks every seven (7) days and after every 1/2 inch rain. The construction entry area shall be designed to prevent trucks from tracking soil onto local roads and the affected storm drainage system shall be protected as indicated in 34-250(g). This may require periodic street sweeping.

This project site has a prior land use that may have resulted in petroleum spills, agricultural related contamination (including cattle operations), and fertilizer, pesticide or herbicide spillage. Prior to any preliminary subdivision plan or development plan (PSP/DP) submittal, the Orange County EPD will require a completed Phase I Environmental Site Assessment (ESA). If a site is determined to have soil or groundwater contamination, then the applicant must provide documentation to assure compliance with the Florida Department of Environmental Protection (FDEP) regulation 62-777 Contaminant Cleanup Target Levels. Depending upon the Phase I results, sampling of soils and/or groundwater may also be required prior to approvals. If a Phase I ESA is not submitted at the requested time, then additional conditions of approval including required covenants, conditions, and restrictions (CCRs), will be necessary on the PSP/DP regarding the contamination potential. If a Phase I or II ESA has been completed for parcel 35 submit a copy for EPD to review.

**Transportation Concurrency**

Avalon Road (CR 545): A Village H Horizon West Road Network Agreement for C.R. 545 among Orange County and D.R. Horton, Inc. (DRHI); Avalon Properties, Ltd. (Avalon); Horizon West Properties (HWP); HAP, Inc. (HAP); Titan Western Beltway, LLC (Titan); Hanover Hickory Nut, LLC, (Hanover); Zanzibar Properties, LLC (Zanzibar); and Seidel West I, LLC (Seidel). DRHI, Avalon, HWP, HAP, Titan, Hanover, Zanzibar, and

Seidel are collectively referred to herein as "Signatory Owners" was approved by the Board of County Commissioners on 2/12/2013 and recorded at OR Book/Page 10525/6172. The Village H Horizon West Road Network Agreement provides for the dedication of right-of-way, design, engineering, permitting, mitigation and construction of C.R. 545 to four lanes in four phases according to specific trip allocations and performance thresholds. Concurrency Vesting shall be provided pursuant to Table 1 based on achieved thresholds of the road improvements. Conveyance shall be by general warranty deed at no cost to the County prior to each phase of roadway construction. The Signatory Owners will receive Road Impact Fee Credits in Road Impact Fee Zone 4 for the lesser of (a) 95% of the actual, reasonable unreimbursed sums incurred by Signatory Owners for permitting, design, mitigation, inspection and construction expense exclusive of enhanced landscaping and street lighting or (b) 60% of the countywide average total cost of road construction per lane mile. This agreement was negotiated based on the approved Horizon West Global Road Term Sheet.

As proof of satisfaction of the project's transportation concurrency obligations, and in compliance with that certain Village H Road Network Agreement recorded at O.R. Book 10525, Page 6172, Public Records of Orange County, Florida, the developer must provide a valid Assignment of Vested Trips document together with the applicable Confirmation Letter issued by Orange County, concurrently with or prior to Preliminary Subdivision Plan/Development Plan submittal. In addition, the Preliminary Subdivision Plan and each subsequent Development Plan must show a legend with trip allocations by parcel identification number and phase of the development.

**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.

**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 – (April 24, 2019)**

**Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Springhill Planned Development / Land Use Plan (PD/LUP), dated "March 8, 2019", subject to the following conditions:**

1. Development shall conform to the Springhill PD Land Use Plan (LUP) dated "Received March 8, 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 March 8, 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 Applicant shall coordinate with the County's Roadway Agreement Committee and comply with the terms and conditions of that certain Village H Horizon West Road Network Agreement approved on 2/12/2013 and recorded at Official Records Book 10525, page 6172, Public Records of Orange County, Florida, as may be amended.
7. 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. Unless the property is otherwise vested or exempt, the applicant shall be subject to school concurrency and required to go through the review process prior to platting.
8. 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).
9. The following waivers from Orange County Code are granted for PD Parcel 35 only:
  - a. A waiver from Section 38-1258(a), for parcel 35, to allow multi-family residential buildings located within ten (10) feet of single-family zoned property along the west parcel line and one hundred (100) feet along the south parcel line to be constructed up to five-stories and 65 feet in height in lieu of the requirement that multi-family buildings within one hundred (100) feet of a single-family zoned property be restricted to a single-story height.
  - b. A waiver from Section 38-1258(b), for parcel 35, to allow multi-family buildings located between one hundred plus (100+) feet to one hundred and fifty (150) feet of single-family zoned property to be constructed up to five-stories and 65 feet in height, in lieu of the requirement that multi-family buildings located

between one hundred plus (100+) feet to one hundred and fifty (150) feet of single-family zoned property shall vary in building height with a maximum of fifty (50) percent of the buildings being three (3) stories (not to exceed forty (40) feet) in height with the remaining buildings being one (1) story or two (2) stories in height.

- c. A waiver from Section 38-1258(c), for parcel 35, to allow multi-family buildings located within ten (10) feet of single-family zoned property along the west parcel line and one hundred (100) feet along the south parcel line to be constructed up to five-stories and 65 feet in height, in lieu of the requirement that multi-family buildings located within one hundred and fifty (150) feet of single-family zoned property shall not exceed three (3) stories (forty (40) feet) in height.
10. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated April 10, 2018 shall apply:
- a. 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.
  - b. 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.
  - c. Construction plans for residential and commercial development within this PD, submitted after January 31, 2020, shall not be approved until the APF Utility tract(s) (water and wastewater) and 50-foot access & utility easement are conveyed to Orange County Utilities.
11. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated December 13, 2016 shall apply:
- a. The owner must comply with the terms of the Springfield PD Adequate Public Facilities and Impact Fee Credit Agreement (Village H) OR Book 10577 / Page 2017.
  - b. At least thirty (30) days prior to construction plan submittal, the applicant shall submit a Master Utility Plan (MUP) for the PD, including hydraulically dependent parcels outside the PD boundaries; such MUP shall include supporting calculations showing that the PD-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.
  - c. The following waivers from Orange County Code Section 38-1385 are granted for PD Parcels 38, 44a, and 44b only (Estate District):

- 1) A waiver from Section 38-1385(B)(4) to allow for a minimum lot width of seventy (70) feet, in lieu of the required minimum lot width of eighty-five (85) feet.
  - 2) A waiver from Section 38-1385(B)(2) to allow for a minimum average lot size of 8,400 square feet, in lieu of the required minimum average lot size of 10,000 square feet.
  - 3) A waiver from Section 38-1385(B)(9) to allow for minimum front porch setback of 15 feet, in lieu of the required minimum front porch setback of 20 feet.
- d. The following waivers from Orange County Code are granted for PD Parcels 35, 40, 41 and / or 44a only (Estate District, Village Home District, Townhome District, and Apartment District):
- 1) Waivers from Section 31.5-67(b) and Section 31.5-73(c) to allow a ground sign with architectural features (such as an entry tower, corner turret, archway, etc.) at two (2) primary project entrances along County Road 545 with a maximum height of eight (8) feet. These features shall be exclusive of lightning protection and may include signage; however, the features shall be consistent with the locations shown on the Spring Hill PD – Phase 1 with no signage exceeding the allowable square footage for a primary entry sign. Copy area will remain below eight (8) feet in height.
  - 2) A waiver from Section 38-79(114)(h) to allow accessory structures in the form of entry features with architectural components (such as an entry column, corner turret, archway, etc.) at two (2) primary project entrances along County Road 545, within PD Parcel 35, 40, 41 and / or 44a, with a maximum height of twenty (20) feet. These features shall be exclusive of lightning protection, with an additional two (2) feet allowed for lightning protection. The features may include signage; however, the features shall be consistent with the locations shown on Springhill PD – Phase 1 with no signage exceeding the allowable square footage for a primary entry sign.
- e. The project contains 702 unvested units that are subject to the County's school capacity policy (a/k/a the "Martinez Doctrine".) The developer acquired school capacity credits established under the Capacity Enhancement Agreement by and between DR Horton, Inc. and the School Board dated August 18, 2006 (CEA #05-030) as amended. The number of school capacity credits equals or exceeds the number of unvested units. The Developer shall comply with all provisions of CEA #05-030.

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 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 cessation of the County's issuance of residential building permits resulting from such notification from OCPS. 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. 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 OCPS 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.

- f. 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 August 30, 2016.
  - 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.

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.

12. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated September 13, 2016, shall apply:
  - a. The developer must provide a valid Assignment of Vested Trips document together with the applicable Confirmation Letter issued by Orange County, concurrently with or prior to Preliminary Subdivision Plan / Development Plan submittal. In addition, the Preliminary Subdivision Plan and each subsequent Development Plan must show a legend with trip allocations by parcel identification number and phase of the development.
  - b. All home designs and types proposed with any subsequent Preliminary Subdivision Plan (PSP) shall be submitted to the County for setback and architectural review a minimum of 90 days prior to model home requests and/or permitting.
13. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated January 14, 2014:
  - a. A waiver from Orange County Code Section 38-1385.8(b)(9)(a) is granted to allow for a minimum front porch setback of seven (7) feet in the Garden Home Mixed Use District, in lieu of the required minimum front porch setback ten (10) feet.
  - b. A waiver from Orange County Code Section 38-1387.1(a)(7) is granted to allow the minimum 30% open space of each townhouse development to be distributed throughout the respective Preliminary Subdivision Plan (PSP), in lieu of having to provide the 30% open space within the townhouse development only. In no case, shall a deficit of required park and open space acreage occur collectively within the PSP land use districts.
14. All previous applicable BCC Conditions of Approval, dated April 9, 2013, 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.
  - b. A Master Utility Plan (MUP) consistent with Village H 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.
  - c. The Developer shall obtain water, wastewater and reclaimed water service from Orange County Utilities.
  - d. The developer shall be responsible for building master utilities transmission and collection infrastructure adequate to serve the PO and to accommodate the ultimate flows for the entire Village (SAP). Utilities infrastructure shall be built connection to the build-out points of connection approved in the Village H Master Utilities Plan (MUP).

- e. Prior to construction plan approval, all property owners within Village H, 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 H 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.
- f. Payment of 500 ERUs (wastewater) and 500 ERCs (water) are due prior to construction plan approval for the first construction plan set within Village H unless previously satisfied by another Village H Parcel. Alternatively, property owners may elect to enter into an agreement with Orange County to construct, with the first set of construction plans, the utility improvements beyond what is required by the Village H Master Utility Plan.
- g. Waivers from Orange County Code:
  - 1) A waiver is granted from Section 38-1253(c) to allow for on-street parking for recreational areas in lieu of off-street parking.
  - 2) A waiver is granted from Section 38-1384(f)(1) to eliminate the requirement of each block face having at least two (2) distinct lot sizes excluding the end units.
  - 3) A waiver is granted from Section 38-1385.7(b)(2) within the Garden Home Mixed Use District to allow an average lot size of three thousand eight hundred and forty (3,840) feet in lieu of six thousand (6,000) feet.
  - 4) A waiver is granted from Section 38-1385.7(b)(4) within the Garden Home Mixed Use District to allow a minimum lot width of thirty-two (32) feet in lieu of forty (40) feet.
  - 5) A waiver is granted from Section 38-1385.7(b)(9)(b) within the Garden Home Mixed Use District to allow a four (4) foot side yard setback in lieu of five (5) feet.
  - 6) A waiver is granted from Section 38-1386(b)(2) within the Village Home District to allow an average lot size of three thousand eight hundred and forty (3,840) feet in lieu of four thousand two hundred (4,200) feet.
  - 7) A waiver is granted from Section 38-1386(b)(4) within the Village Home District to allow a minimum lot width of thirty-two (32) feet in lieu of thirty-five (35) feet.
  - 8) A waiver is granted from Section 38-1386(b)(10)(a) within the Village Home District to allow a seven (7) foot front porch setback in lieu of ten (10) feet.

- 9) A waiver is granted from Section 38-1386(b)(10)(b) within the Village Home District to allow a four (4) foot side yard setback in lieu of five (5) feet.
- 10) A waiver is granted from Section 38-1387.1(9)(a) within the Townhouse District to allow a seven (7) foot front porch setback in lieu of ten (10) feet.
- h. At the time of approval of a plan for a single-family detached residential unit project, the developer shall have prepared and submitted for review a document containing covenants, conditions, and restrictions (CC&Rs) for the property being platted.

The CC&Rs, which shall be recorded simultaneous with the recording of the plat, shall include a provision incorporating, verbatim, the following requirements:

- 1) The same front facade for single-family residential units may not be repeated more than 5 times within 1 block length for both sides of any street, and shall be separated by at least 2 units with different facades.
- 2) House front facades shall be varied and articulated to provide visual interest to pedestrians along the street frontage. The front facade of the main body of the house shall not exceed 40 feet in length, except for wings of "L"s which are setback from the front facade. In no case shall more than 50 percent of the front facade of a house consist of an unobstructed block wall or garage door.
- 3) At least 50 percent of all single-family residential units 75' in width or less shall have a front porch. A front porch shall be a minimum of 7 feet in depth; 8 feet in width and cover a minimum 10 feet in width or 1/3 of the front facade, whichever is greater.
- 4) Flat roofs shall be prohibited.
- 5) Unless otherwise prohibited by the CC&Rs, fencing in the front yard shall be located within 3 feet of the sidewalk to define the separation of public and private spaces. Such fences shall be no higher than 3 feet, 6 inches, and be limited to decorative wrought iron or wood picket style. The provisions of the CC&Rs incorporating the above referenced requirements shall not be amended, removed, or superseded without the prior approval of the Board of County Commissioners, which approval may be withheld in the Board's sole discretion, and the CC&Rs shall contain a statement to that effect. Furthermore, the CC&Rs shall provide that the homeowner's association and any person owning property in the development have the right to enforce these requirements in the event they are violated. Finally, the CC&Rs shall also state that Orange County shall have the right, but not the duty, to enforce these requirements in the same manner as it enforces other Orange County ordinances and regulations.

- 6) 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.
- i. 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 platting. Nothing in this condition, and nothing in the decision to approve this plan, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a CEL or a CRC.
- j. The following public education-related Conditions 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 08/16/06, and amended on 4/29/08 and 06/24/08, and all future amendments.
  - 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 199 residential units allowed under the zoning existing prior to the approval of the PO zoning. The County shall 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.
  - 5) 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.
  - 6) An APF agreement shall be scheduled simultaneously with this Land Use Plan.

**PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION** *(April 10, 2018)*

Upon a motion by Commissioner VanderLey, seconded by Commissioner Thompson, and carried by 7-0 vote, the substantial change request to relocate a one-acre Adequate Public Facilities (APF) Utility Tract within PD Parcel 15 to the Waterleigh PD; remove a note which referenced a .83 acre APF Park within Parcel 42a; add 2.01 acres of the APF stormwater for County Road 545 (Parcels 15 and 35); and update the County Road 545 right-of-way expansion limits was approved.