

CASE # CDR-18-10-329

Commission District: # 1

GENERAL INFORMATION

APPLICANT Norberto Duarte, Norberto Rodrigues Duarte Trust

OWNER Lake Buena Vista North, LLC

PROJECT NAME Buena Vista Cay Planned Development

PARCEL ID NUMBER(S) 15-24-28-6212-00-010, 15-24-28-6212-00-001

TRACT SIZE 2.06 gross acres

LOCATION 11753 Ruby Lake Road; or generally located at the southeast corner of the intersection of Ruby Lake Road and 8th Street.

REQUEST A PD substantial change to amend the existing December 15, 2015 BCC Condition of Approval #11 to allow for a minimum stay of six (6) days instead of two (2) weeks and to modify the previously approved set back from fifteen (15) feet to twelve (12) feet. In addition, the applicant has requested two (2) waivers from Orange County Code:

1. A waiver from Section 38-1394.1(a) to allow a minimum width of building base green space for two (2) story structures of zero (0) feet for buildings that are attached and/or separated by ten (10) feet or less, in lieu of a minimum width of thirteen (13) feet.

Applicant Justification: The current requirement is for larger multi-unit buildings and is too restrictive for this development with proposed development of multiple smaller buildings.

2. A waiver from Section 38-1394.1(a)(2) to allow tree planting requirements within the building base landscape area to require one (1) canopy tree and one (1) understory tree for each six hundred (600) square feet of green space, in lieu of one (1) canopy tree per one hundred (100) square feet of green space.

Applicant Justification: The current requirement of one (1) tree per 100 square feet would require a canopy tree every 7.7 feet around the perimeter of the buildings. Large oaks will not survive when located this close to each other. Also, the number of tree required if planted with a twenty (20) foot

separation would require more acreage than this site in its entirety without any development.

PUBLIC NOTIFICATION A notification area extending beyond one thousand three hundred (1,300) feet was used for this application [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. Ninety-nine (99) notices were mailed to those property owners in the notification buffer area. A community meeting was held on January 10, 2019 at Sand Lake Elementary School as summarized in this report below.

IMPACT ANALYSIS

Special Information

The Buena Vista Cay PD was originally approved December 15, 2015 and includes entitlements for fourteen (14) timeshare units.

Through this PD substantial change, the applicant is seeking to amend the existing December 15, 2015 BCC Condition of Approval #11 to allow for a minimum stay of six (6) days instead of two (2) weeks and modify the previously approved set back from fifteen (15) feet to twelve (12) feet. In addition, two (2) waivers from Orange County Code are requested to decrease the minimum width of building green space and to reduce the required number of trees required within the building base landscape area.

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 Activity Center Mixed Use (ACMU). The Buena Vista Cay PD was approved in 2015 and includes timeshare uses. 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 located within the Buena Vista North 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

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).

This property is wooded and located in close proximity to Lake Ruby. An Orange County Conservation Area Determination (CAD) must be completed before PSP or DP submittal, as outlined in Chapter 15, Article X Wetland Conservation Areas.

Transportation Concurrency

Based on the Concurrency Management System database dated October 31, 2018, there is one failing roadway within the project impact area. Vineland Avenue is currently operating at Level of Service "F" from Winter Garden-Vineland Road to International Drive and there is no available capacity. A traffic study will be required prior to obtaining an approved Capacity Encumbrance Letter.

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 land use plan, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a CEL or a CRC.

Community Meeting Summary

A community meeting was held on January 10, 2019 at Sand Lake Elementary School. Ten (10) residents were in attendance and expressed concerns pertaining to the number of units, the occupant capacity of the units, traffic, height, access, and their preference to remain a non-transient community.

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 – (June 12, 2019)

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

1. Development shall conform to the Buena Vista Cay Land Use Plan (LUP) dated "Received May 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 May 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. 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).
7. 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.
8. The developer shall obtain water, wastewater, and reclaimed water service from Orange County Utilities subject to County rate resolutions and ordinances.
9. A Master Utility Plan (MUP) for the PD shall be submitted to Orange County Utilities at least thirty (30) days prior to submittal of the first set of construction plans. The MUP must be approved prior to Construction Plan approval.
10. Construction plans within this PD shall be consistent with an approved and up-to-date Master Utility Plan (MUP). MUP updates shall be submitted to Orange County Utilities at least thirty (30) days prior to the corresponding construction plan submittal. The updated MUP must be approved prior to construction plan approval.
11. Billboards and pole signs are prohibited. Ground and fascia signs shall comply with Orange County Chapter 31.5 Buena Vista North Overlay standards.
12. Length of stay shall be a minimum of six consecutive days and shall not exceed 179 consecutive days.
13. The following waivers from Orange County Code are granted:

- a. A waiver from Section 38-1394.1(a) in order to allow a minimum width of building base green space for two story structures of zero (0) feet for buildings that are attached and/or separated by ten (10) feet or less, in lieu of a minimum width of thirteen (13) feet.
 - b. A waiver from Section 38-1394.1(a)(2) in order to allow tree planting requirements within the building base landscape area to require one (1) canopy tree and one (1) understory tree for each six hundred (600) square feet of green space, in lieu of one (1) canopy tree per one hundred (100) square feet of green space.
14. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated December 15, 2015 shall apply:
- a. 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 the approval of the plat. Nothing in this condition and nothing in the decision to approve this Land Use 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. The subject property is located within the Buena Vista North (BVN) Overlay District, and with the exception of any waivers explicitly granted by the BCC, shall comply with all applicable development standards addressed under Chapter 31.5 and/or Chapter 38-1391.
 - c. Outdoor sales, storage, and display shall be prohibited.
 - d. 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.
 - e. The following waivers from the Buena Vista North (BVN) Overlay District Standards of Orange County Code are granted:
 - 1. A waiver from Section 38-1392 to allow a minimum lot size of 2.06 acres, in lieu of a minimum lot size of 4.5 acres; and
 - 2. A waiver from Section 38-1394 to eliminate the streetscape landscaping requirement along adjacent and unopened Commercial Street right-of-way.

PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION *(December 15, 2015)*

Upon a motion by Commissioner Boyd, seconded by Commissioner Nelson, and carried by all members present voting AYE, the Board made a finding of consistency with the Comprehensive Plan; further, approved the request by Darcy Unroe, Unroe Engineering, Inc., Buena Vista Cay PD/LUP - Case # LUP-14-05-122 to rezone two (2) parcels containing 2.06 acres from R-CE (Country Estate District) to PD (Planned Development District) for purposes of constructing up to fourteen (14) timeshare units (without lockout unit capabilities); and grant the following waivers from the Buena Vista North (BVN) District Standards of Orange County Code: 1) A waiver from Section 38-1392 to allow a minimum lot size of 2.06 acres, in lieu of a minimum lot size of 4.5 acres; and 2) A waiver from Section 38-1394 to eliminate the streetscape landscaping requirements along the adjacent and unopened Commercial Street right-of-way; subject to conditions.