

**CASE # CDR-19-08-278**

Commission District: # 1

**GENERAL INFORMATION**

**APPLICANT** Jennifer Stickler, Kimley-Horn and Associates, Inc.

**OWNER** Carmel by the Lake, LLC

**PROJECT NAME** Hubbard Place Planned Development

**PARCEL ID NUMBER(S)** 28-23-28-0000-00-002, 28-23-28-000-00-019,  
28-23-28-0000-00-020, and 28-23-28-0000-00-022

**TRACT SIZE** 16.59 gross acres (*overall PD*)

**LOCATION** 8997-9100 Hubbard Place; or generally located west of Hubbard Place, south of Lady Bet Drive, and east of Lake Tibet Butler

**REQUEST** A PD substantial change to reduce the number of lots from 13 to 11. In addition, the applicant has requested the following waivers from Orange County Code:

1. A waiver from Section 38-79(114)(E) to allow for detached accessory structures to be located in the front of the primary dwelling unit, in lieu of locating them in the rear one-half (1/2) of the lot.

***Applicant Justification:*** *To allow for enhanced architectural design elements and customized home designs.*

2. A waiver from Section 38-79(114)(G) for lots equal to or greater than 1.5 acres in size to allow accessory structures to have a cumulative maximum square footage of 6,875 square feet or 40% of the living area of the principal residence, whichever is less, and for lots equal to or greater than one (1) acre and less than 1.5 acres in size to allow accessory structures to have a cumulative maximum square footage of 3,000 square feet or 25% of the living area of the principal residence, whichever is less, in lieu of a maximum of 500 square feet or twenty-five percent (25%) of the living area of the principal residence, whichever is greater up to a maximum of 1,000 square feet. This waiver does not permit the classification of the accessory structures as an Accessory Dwelling Unit. This waiver applies to guest houses.
3. A waiver from Section 38-79(114)(H) to allow accessory structures to have a maximum building height of 35 feet / 2 stories, in lieu of a maximum height of 15 feet / one (1) story.

***Applicant Justification for Waivers 2-3:** To allow for enhanced architectural design elements and customized home designs. There is a potential for larger than typical lot sizes and large homes within this development, therefore accessory structures with similar scale and massing is anticipated.*

**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 ninety-four (294) 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 Hubbard Place PD was originally approved on November 13, 2018 and allows for the development of up to 13 single-family detached dwellings.

Through this PD substantial change, the applicant is seeking to reduce the number of lots from 13 to 11. Additionally, three (3) waivers from Orange County Code are requested to allow accessory structures to be located in the front of the primary structure and allow the accessory structures to be up to 35 feet in height, and be up to 6,875 square feet in size.

### **Land Use Compatibility**

The PD substantial change would not adversely impact any adjacent properties.

### **Comprehensive Plan (CP) Amendment**

The subject property has an underlying Future Land Use Map (FLUM) designation of Low Density Residential (LDR). The proposed PD substantial change is consistent with the designation and all applicable CP provisions; therefore, a CP amendment is not necessary.

### **Community Meeting Summary**

A community meeting was not required for this request.

### **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.

### **Overlay District Ordinance**

The subject property is not located within an Overlay District.

**Environmental**

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

**Transportation / Concurrency**

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.

**Schools**

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

**Parks**

Orange County Parks and Recreation staff reviewed the PD substantial change 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 – (September 25, 2019)**

**Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Hubbard Place Planned Development / Land Use Plan (PD/LUP), dated "September 16, 2019", subject to the following conditions:**

1. Development shall conform to the Hubbard Place Planned Development Plan (PD) dated "Received September 16, 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 September 16, 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, or any other development order, 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. 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.
7. 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.
8. 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.
9. Tree mitigation, in compliance with Orange County Code, is required prior to the approval of the plat.
10. Pole signs and billboards shall be prohibited. Ground and fascia signs shall comply with Chapter 31.5 of the Orange County Code.
11. Short term/transient rental is prohibited. Length of stay shall be for 180 consecutive days or greater.
12. 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.
13. The following waivers from Orange County Code are granted:
  - a. A waiver from Section 38-79(114)(E) to allow for detached accessory structures to be located in the front of the primary dwelling unit, in lieu of locating them in the rear one-half (1/2) of the lot.
  - b. A waiver from Section 38-79(114)(G) for lots equal to or greater than 1.5 acres in size to allow accessory structures to have a cumulative maximum square footage of 6,875 square feet or 40% of the living area of the principal residence, whichever is less, and for lots equal to or greater than one (1) acre and less than 1.5 acres in size to allow accessory structures to have a cumulative maximum square footage of 3,000 square feet or 25% of the living area of the principal residence, whichever is less, in lieu of a maximum of 500 square feet or twenty-five percent (25%) of the living area of the principal residence, whichever is greater up to a maximum of 1,000 square feet.

- c. A waiver from Section 38-79(114)(H) to allow accessory structures to have a maximum building height of 35 feet / 2 stories, in lieu of a maximum height of 15 feet / one (1) story.
14. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated November 13, 2018 shall apply:
- a. 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 [and Orange County] as of May 22, 2018.
    - 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 four (4) 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.
  - b. Lake Tibet Butler has an established Municipal Service Taxing Unit for the purpose of funding lake management services. This project shall be required to be a participant.
  - c. 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.

- d. Approval of this plan does not constitute approval of a permit for the construction of a boat dock, boardwalk, observation pier, fishing pier, community pier or other similar permanently fixed or floating structures. Any person desiring to construct any of these structures shall apply to the Orange County Environmental Protection Division, as specified in Orange County Code Chapter 15 Environmental Control, Article IX Dock Construction, prior to installation, for an Orange County Dock Construction Permit, as well as to any other Orange County Division(s) for any other applicable permits.
- e. Approval of this plan does not constitute approval of a permit for the construction of a boat ramp. Any person desiring to construct a boat ramp shall apply to the Orange County Environmental Protection Division as specified in Orange County Code Chapter 15 Environmental Control, Article XV Boat Ramps, prior to installation, for an Orange County Boat Ramp Facility Permit, as well as to any other Orange County Division(s) for any other applicable permits.
- f. The applicant shall comply with the Florida Department of Environmental Protection rule 62-302.700 Special Protection, Outstanding Florida Waters, Outstanding Natural Resource Waters. No degradation of water quality, other than that allowed in Rule 62-4.242(2) and (3), F.A.C., is to be permitted in Outstanding Florida Waters and Outstanding national Resource Waters, respectively, notwithstanding any other Department rules that allow water quality lowering.
- g. 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).
- h. 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.
- i. A waiver from Section 38-1501 is granted to utilize R-1AA building and site setbacks in lieu of R-CE building and site setbacks for lots greater than or equal to one acre in size.
- j. A waiver from Section 38-1501 is granted to allow a rear building setback of fifteen (15) feet in lieu of thirty (30) feet for the northeast corner of the property adjacent to Lady Bet Drive.
- k. In a letter dated November 5, 2018 (the "Letter"), a copy of which is on file with the Planning Division, the Florida Department of State, Division of Historical

Resources agreed that the boundary of the Macey Mound mitigation area is as shown in the attachment to the Letter and identified as the "Mitigation Area Boundary" (hereinafter, the "Macey Mound Mitigation Area"). No development permit that authorizes ground disturbance within the Macey Mound Mitigation Area shall be issued until such time as all mitigation activities have been completed in accordance with Chapter 872, Florida Statutes, and such completion has been confirmed by the State. The Macey Mound Mitigation Area must be clearly depicted on the PSP and on any other development permit application that proposes ground disturbance within five feet (5') of the same. Further, the Macey Mound Mitigation Area, until mitigated, must be protected by fencing. Development activities on all areas outside of the Macey Mound Mitigation Area and the surrounding five foot (5') buffer may proceed in normal course without further restriction.

- I. Developer shall maintain, on a consulting basis, an archaeologist for the project, as defined in Section 872.05, Florida Statutes, and with experience identifying human remains. Said archaeologist shall educate all site work contractors for the project regarding ground disturbance activities upon the site. In the event any human remains are found outside the Macey Mound Mitigation Area during ground disturbing activities on the property, except in areas substantially filled with the pond dredge spoil, all work shall stop immediately in the vicinity of the discovery and the proper authorities shall be notified in accordance with Section 872.05, Florida Statutes
- m. The developer shall obtain wastewater service from Orange County Utilities subject to County rate resolutions and ordinances.
- n. 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.
- o. All existing structures shall be removed prior to plat approval.
- p. A Development Plan, in conformance with the CH. 34-131(20) Group type provided with the PSP is required for the park / recreation tract(s) within this Preliminary Subdivision Plan (PSP). The park / recreation area tract(s) shall be constructed as part of the subdivision infrastructure and completed prior to issuance of the Certificate of Completion (C of C) for the infrastructure. ~~Temporary addressing must be provided for permits and the C of C must be issued prior to approval and recording of a plat. All required inspections shall be complete and approved prior to issuance of a Certificate of Occupancy.~~

**PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION (November 13, 2018)**

Upon a motion by Commissioner VanderLey, seconded by Commissioner Love, and carried by all present members, the Board made a finding of consistency with the Comprehensive Plan and approved the rezoning request Case LUP-17-12-373 Hubbard Place Planned Development / Land Use Plan (PD/LUP), to rezone from R-1AA (Single-Family Dwelling District) to PD (Planned Development District) (Hubbard Place PD), subject to conditions.