

**BOARD OF COUNTY COMMISSIONERS
POLK COUNTY, FLORIDA**

Applicant: John McVay

Property Owner: GGAJAM Investments LLC

Case Number: LDPD-2024-2 (Shepherd Rd Multi-Family)

ORDER DENYING LDPD-2024-2 WITHOUT PREJUDICE

THIS MATTER came before the Polk County Board of County Commissioners (“Board”) on November 19, 2024, at a public hearing held in accordance with the Polk County Land Development Code (“LDC”) and the Polk County Comprehensive Plan, pursuant to a De Novo application appealing the Planning Commission’s 5-2 denial of a Planned Development (“PD”) for Case Number LDPD-2024-2 (the “Application”). The Board fully incorporates herein the entire record for the public hearing of LDPD-2024-2, including the Planning Commission’s decision, the Development Review Committee’s Recommendation, and all testimony and evidence presented at the public hearing. The Board having been fully advised in the premises, makes the following findings of fact and rulings for this, its written order for LDPD-2024-2, in accordance with §125.022, Florida Statutes:

1. The Applicant, John McVay (“Applicant”), applied on behalf of the property owners, GGAJAM Investments LLC (“Property Owners”) for Planned Development (PD) approval to construct 200 multi-family units on the 14.58 +/- acre project area (“Subject Property”) of the 16.58 +/- acre parcel¹. PD Approval is required to increase the density from 10 dwelling units per acre (“du/ac”), by right, to 13.72 du/ac. The Subject Property is located south of Shepherd Road, north of Imperial Lakes Boulevard, west of State Road 37, north of the City of Mulberry and south of the City of Lakeland in Section 27, Township 29, Range 23.

2. The Subject Property is located within the Residential High (RH) land use district and the Urban Growth Area (UGA). Prior to earlier Board approval of an applicant-initiated Comprehensive Plan Future Land Use Map amendment, the Subject Property was located within multiple land use districts: 2.38 +/- acres of Community Activity Center (CAC), 10.5 +/- acres of Residential Medium (RM), and 1.7 +/- acres of Preservation (PRESV). However, following the Board’s approval of LDCPAS 2023-18 on November 21, 2023, the entire 14.58 +/- acre Subject Property was changed to the RH land use district to allow for future development of an apartment complex.

3. The Subject Property is currently undeveloped and vacant and bordered by three (3) multi-family developments, a shopping plaza, a four-lane divided roadway, and more non-

¹ Parcel ID # 232927-000000-011020 is comprised of approximately 16.58 acres and contains the Subject Property, as well as an approximate 2.07 acre commercial outparcel. Said commercial outparcel is not part of the Application.

residential uses. The land use districts surrounding the Subject Property include Residential Low-1 (RL-1), Institutional (INST-1) and CAC. The adjacent shopping plaza lines the entire eastern side of the Subject Property. The apartment complex on the western side of the Subject Property has a density of eighteen (18) dwelling units per acre within the RL-1 district. The development was approved in 1989 prior to the adoption of the Comprehensive Plan in 1991 and is by rule vested for density and intensity. The southern border of the Subject Property abuts a medium scale multi-family condominium complex developed at just under seven (7) dwelling units per acre.

4. Per Table 2.2 of the LDC, the by right density in the RH land use district is 10 du/ac. The PD process is a mechanism to increase densities up to 15 dwelling units per acre in the RH land use district, so long as the Applicant can demonstrate consistency with Comprehensive Plan and LDC policies and compatibility with surrounding uses and future land use districts. Without PD approval, the Applicant could develop 10 dwelling units per acre for a total of 145 dwelling units on the Subject Property. Instead, the Applicant seeks approval for 200 dwelling units, which equates to a higher density of 13.72 dwelling units per acre.

5. On June 5, 2024, the Planning Commission held an advertised public hearing for LDPD-2024-2. The site plan reviewed by the Planning Commission provided for the construction of a four-story, 200-unit multi-family development with a gross density of 13.72 dwelling units per acre. Ms. Malissa Celestine of the Polk County Land Development Division presented the case to the Planning Commission and testified that the Development Review Committee (DRC) recommended approval of the Application. The Applicant provided testimony to the Planning Commission in support of the Application. Neighboring residents in the area testified in opposition to the PD and expressed their concerns regarding the compatibility of denser development in the area. The Planning Commission also received written public comments opposing the Application. Following all presentations, testimony and discussion, the Planning Commission voted to deny the Application by a vote of 5-2.

6. The Applicant, John McVay, timely filed an application and paid the required fee for a De Novo hearing pursuant to LDC section 921. The original hearing date was scheduled for August 6, 2024, and was continued to November 19, 2024.

7. On November 19, 2024, the Board held a De Novo hearing for LDPD-2024-2. Mr. Erik Peterson of the Polk County Land Development Division provided the following documents to the Board, which are part of the record²: (1) staff report; (2) site plan; (3) area map; (4) impact assessment statement; (5) Application; (6) de novo application; (7) proposed final order; (8) Planning Commission and BoCC PowerPoint Presentations; and (9) written comments from neighbors in opposition of the Application. The Board accepted Mr. Peterson as an expert in the field of land use planning. Mr. Peterson presented a PowerPoint presentation to the Board that included aerial pictures of the Subject Property, a parcel map showing the densities of the adjacent residential properties, the land use map, the site plan, and an aerial of the site plan overlaid on the Subject Property. Mr. Peterson testified that the DRC recommended approval of the Application.

² Pursuant to Resolution 2022-090, all documents attached to the agenda item for de novo hearing shall be deemed part of the record unless removed from the record by motion of the Board. All PowerPoint presentations given to the Board during the de novo hearing shall be deemed part of the record unless removed from the record by motion of the Board.

8. The Applicant gave a presentation to the Board with an overview of the Application, the history of the project site, applicable comprehensive plan policies, and proposed resolutions to citizen objections. Specifically, the Applicant agreed to add three conditions of approval to address concerns of the opposition: (1) reducing the design of the proposed development from four stories to three stories, (2) providing for two parking spaces per dwelling unit, and (3) committing to a 100-year storm design.

9. Following the Applicant's presentation, the Board received public comment. Six neighbors provided testimony to the Board. Several residents shared a collective concern that approving the increased density request would impact stormwater runoff, exacerbating flooding in the area and creating an additional burden on existing commercial and residential drainage facilities. Neighbors also expressed concerns related to the proposed emergency access to the Subject Property and increased traffic on Imperial Lakes Boulevard. Their testimony also described the PD's aesthetic impacts, the absence of any other four-story building in the vicinity, and the general incompatibility with the surrounding area.

10. After the residents testified, Mr. McVay presented rebuttal argument in response to the public comments. Specifically, Mr. McVay noted the County is already undertaking drainage improvements in the area, the emergency entrance will not be available to residents but only for emergency vehicles, and that there are operational public and private lift stations near the subject Property. Finally, Mr. McVay reiterated that the Applicant would agree to three additional conditions of approval, as specified in Paragraph 8 above. At the end of the public hearing, the Board members discussed the Application and ultimately determined that the Application's proposed density is incompatible with the existing nature of the surrounding area. The Board voted 5-0 to deny LDPD-2024-2 without prejudice.

11. As further discussed below, the Application is not compatible with the surrounding land use and general character of the area surrounding the Subject Property. Although the Applicant has agreed to reduce the proposed development from four stories to three stories, provide for additional parking per dwelling unit, and commit to a more stringent storm design, the proposed increase in density from 10 du/ac to 13.72 du/ac is significantly denser than the adjacent RL-1 land use districts, save for the developments to the west and southwest of the Subject Property which pre-date the LDC and thereby have a vested right to higher density. The remaining RL-1 adjacent sites have densities of 3.8 du/ac (Northwest), 6.67 du/ac (South), and 7.8 du/ac (Southeast). The Applicant's requested increase to 13.72 du/ac is incompatible with the character of the surrounding area. The additional conditions of approval proposed by the Applicant do not mitigate the incompatibility. Therefore, the Application is inconsistent with various Comprehensive Plan and LDC policies, including without limitation, the following:

- a. The Comprehensive Plan and LDC define Compatibility as follows: "A condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition." In this case, the residents provided testimony explaining how the Application's proposed high density will unduly negatively affect the character of the area. The Board was also provided

with, *inter alia*, maps and aerial pictures demonstrating the lower-density nature of the area.

- b. The Application is inconsistent with Policy 2.102-A2: COMPATIBILITY, which states “[1]and shall be developed so that adjacent uses are compatible with each other, pursuant to the requirements of other Policies in this Future Land Use Element, so that one or more of the following provisions are accomplished: a. there have been provisions made which buffer incompatible uses from dissimilar uses; b. incompatible uses are made more compatible through limiting intensity and scale of the more intense use; c. uses are transitioned through gradual scaling of different land uses activities through the use of innovative techniques such as a Planned Unit Development.” In this case, the Applicant is proposing to construct 200 multi-family units on 14.58 acres, which equates to a density of 13.72 du/ac. As previously noted, excluding vested property rights with higher densities, the adjacent residential developments together average 6.1 du/ac. The proposed density requested under the PD would therefore be an increase of more than 100% of the existing, non-vested, average density in the area. The significant difference in densities is not gradual scaling nor does it limit intensity, even with the proposed buffer. No other residential development in the surrounding area, save for those with vested rights, has the density proposed by the Application, rendering the proposed PD incompatible.
- c. The Application is inconsistent with Policy 2.102-A10: LOCATION CRITERIA, and Policy 2.119-A2: LOCATION CRITERIA, which both require consideration of a list of factors when determining the appropriateness of establishing or expanding any land use or development area. Both policy sections require consideration of the nearness to incompatible land uses. In this case, proposed buffering does not mitigate the Application’s incompatibility with the adjacent lower-density RL-1 area; therefore, the Application is inconsistent with Policy 2.102-A10 and Policy 2.119-A2.
- d. The Application is inconsistent with Policy 2.119-A3: DEVELOPMENT CRITERIA, subsection b., which requires new residential development, immediately adjacent to existing residential areas, to be designed so as to minimize any potential adverse impacts due to dissimilar densities or building scale. Here, the opposition presented evidence that the dissimilar densities and building scale would adversely impact the surrounding RL-1 areas.
- e. The Application is inconsistent with the LDC section 303 regarding PDs. A PD application must address how the planned development meets intensity and timeliness standards, as well as internal and external design criteria. Subsection C provides: “The intensity and timeliness of a PD shall be determined by the surrounding infrastructure needed to support the residents within that development.” Under this section, the minimum qualifications for residential density shall be based on achieving a locational eligibility score. The Application received a locational score of 40 under Table 3.4 of the LDC, which would allow

for a density of 15 du/ac, however subsection C specifically dictates that “the Locational Eligibility Score is not an entitlement but rather a measure of timing only. The maximum density in Table 3.4 is **not** guaranteed” (*emphasis added*). As previously mentioned, the Application’s high density is unresponsive to the nature and character of the area and fails to provide gradual changes in intensity and density. Subsection E regarding external design requires the proposed development to be compatible with and responsive to the character of the surrounding area. Specifically, “PDs shall provide for gradual changes in intensity and density when sharing property boundaries with less intense adjacent development using buffering and screening techniques; increases in peripheral lot sizes and widths; decreases in height; and other compatibility strategies as necessary to adequately protect existing or probable uses of surrounding property.” In this case, insufficient mitigation exists to buffer and protect the adjacent RL-1 areas from the proposed higher density development. Further, “the entrances and most common vehicle routes of a proposed development shall minimize adverse impacts upon nearby development and have an adequate amount of access points to serve the number of units within the development.” The Board received testimony from area residents that the proposed development will have an adverse impact upon nearby roadways.

- f. Given the reasons stated above, the Application also fails to meet the following: sections 906A.2., 3., and 5.; and sections 906D.12.a, b., and c.

12. Florida courts have held that it is appropriate to consider whether the proposed zoning “is consistent with the properties adjacent to the [subject] property and is consistent with the actual development of the area.” *Metro. Dade County v. Blumenthal*, 675 So. 2d 598, 605 (Fla. Dist. App. 3d 1996). Citizen testimony is perfectly permissible and constitutes substantial competent evidence, so long as it fact-based. *Miami-Dade County v. Walberg*, 739 So. 2d 115 (Fla. Dist. App. 3d 1999). Here, the Board received fact-based testimony regarding the character and aesthetics of the neighborhood as compared to the requested higher density of the proposed project. Additionally, the Board was provided with evidence depicting the general character of the area, including photographs, an aerial map overlaying the site plan on the Subject Property, and a parcel map. Maps, reports, and other information which, in conjunction with the testimony of the neighbors, if believed by the Commission, constitutes competent substantial evidence. *Walberg*, 739 So. 2d at 118.

13. The Applicant carries the initial burden of persuasiveness and of demonstrating entitlement to the development order through competent substantial evidence. *See* LDC §§ 959A. & C. In this case, the initial burden was not met.

14. Per LDC section 933, after a petition for an action for a property has been denied by final decision without prejudice, a re-application for requests without material changes on the same property may be submitted at any time.

It is therefore ORDERED AND ADJUDGED as follows:

For the reasons set forth above, and in accordance with the Polk County Comprehensive Plan and the Polk County Land Development Code, the Board hereby denies LDPD-2024-2 without prejudice. Therefore, pursuant to LDC section 933, a request for a PD on the Subject Property may be submitted at any time.

DONE AND ORDERED in Bartow, Polk County, Florida, in regular session this **3rd** day of **December, 2024**, by the Polk County Board of County Commissioners.

**Polk County Board of
County Commissioners**

**ATTEST: Stacy M. Butterfield, Clerk
and Auditor to the Board**

By: _____
T.R. Wilson, Chair

By: _____
Deputy Clerk

This Decision is rendered to the Clerk on _____, 2024.

By: _____
Deputy Clerk

cc: John McVay, Applicant
Land Development Division Official File