

**PLANNING COMMISSION
POLK COUNTY, FLORIDA**

Applicant: Kimley-Horn & Associates

Property Owners: Donald Wayne Burger, Pipkin Brothers LLC

Case Number: LDPD-2023-1 (Cherry Lane PD)

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ORDER DENYING LDPD-2023-1 WITHOUT PREJUDICE

THIS MATTER came before the Polk County Planning Commission (“Planning Commission”) at a public hearing held on May 3, 2023 in accordance with the Polk County Land Development Code (“LDC”) and the Polk County Comprehensive Plan (“Comprehensive Plan”), pursuant to the application submitted for Case Number LDPD-2023-1. The Planning Commission fully incorporates herein the entire record for the public hearing of LDPD-2023-1. The Planning Commission having been fully advised in the premises, makes the following findings of fact and rulings for its written order, in accordance with LDC §974.C.1 and §125.022, Florida Statutes:

1. The Applicant, Kimley-Horn & Associates (“Applicant”), submitted an application for Planned Development (PD) approval of a 74-lot single-family subdivision with reduced setbacks, reduced lot sizes, and increased density on 19.59 ± acres (the “Application”). The subject property is located on the north side of Cherry Lane, south side of Parker Road, west of Old Highway 37, south of Lakeland, in Section 14, Township 29, Range 23 of unincorporated Polk County. The Subject Property’s land use designation is Residential Low-2 (RL-2) within the Transit Supportive Development Area (TSDA) (the “Subject Property”).

2. The Subject Property is currently undeveloped and vacant. The Subject Property is surrounded by the RL-2 land use designation except for a portion of the southern boundary that is adjacent to RL-4. The surrounding development consists of vacant land to the northeast; low-density residential development to the north, south, and west with lot sizes ranging from .6 to 8 acres; and higher density residential development along the southeast boundary of the Subject Property with lot sizes ranging from .08 to .22 acres. Denser residential development can be found closer to Old Highway 37 to the east of the Subject Property.

3. The PD process is a mechanism to increase density and reduce lot sizes and setbacks below the RL-2 standards so long as the Applicant can demonstrate consistency with Comprehensive Plan and LDC policies and compatibility with surrounding uses. Without PD approval, the Applicant could develop 39 single-family homes on the Subject Property with 15,000 square-foot lots. Instead, the Applicant seeks approval of 74 lots, which is almost double the number of lots permitted by right in the RL-2 district. The Application’s site plan proposes minimum lot sizes of 5,800 square feet (.13 acres) and reduced side setbacks from 7 to 5 feet. The PD’s gross density is 3.78 units per acre. In addition, the Applicant proposes a Type “B”

landscaping buffer along the east and west property lines and a type “A” buffer along the north and south property lines.

4. The Development Review Committee (DRC) concluded that the Application was consistent with the Comprehensive Plan and Land Development Code and compatible with the surrounding land uses and general character of the area and recommended approval.

5. On May 3, 2023, the Planning Commission held an advertised public hearing for LDPD-2023-1. Mr. Ian Nance of the Polk County Land Development Division presented a slide show depicting the Subject Property and surrounding neighborhood. Mr. Nance testified that he recommended approval of the Application, and in his opinion, the Application was consistent with the Comprehensive Plan and compatible with the surrounding land uses and general character of the area. The Applicant presented testimony regarding consistency with the land development code requirements. Next, the neighbors provided opposition testimony at the hearing and submitted letters in opposition prior to the hearing. The residents presented a number of concerns, but the primary concern was the PD’s density and smaller lot sizes being incompatible with the rural, low-density character of the surrounding area. On rebuttal, the Applicant addressed traffic and stormwater issues and recognized the compatibility issue of introducing higher density development into an existing area of low-density residential development. The Planning Commission voted 5-2 to deny the Application.

6. As further discussed below, the Application is not compatible with the surrounding land use and general character of the area surrounding the Subject Property. The proposed PD is significantly denser with smaller lot sizes when compared to the adjacent low-density, rural residential development and is overall unresponsive to the character of the surrounding area. The proposed buffers do not mitigate the incompatibility or provide adequate transition and scaling. Therefore, the Application is inconsistent with various Comprehensive Plan and LDC policies, including without limitation, the following:

- i. 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, smaller lots and reduced setbacks will unduly negatively affect the rural character of the area. The Board was also provided with, *inter alia*, maps, and aerial pictures demonstrating the rural nature of the area.
- ii. The Application is inconsistent with Policy 2.102-A2: COMPATIBILITY, which states “[l]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 74 lots, with a minimum lot size of .13 acres, adjacent to existing lots ranging from approximately .6 to 8 acres. The significant difference in lot sizes is not gradual scaling nor does it limit intensity, even with the proposed buffers. With the exception of the development located to the southeast of the Subject Property, no other development in the immediate area has the density and lot sizes proposed by the Application. Moreover, the requested side setback reduction further intensifies the overall incompatibility by reducing the open space between the proposed single-family structures.

- iii. The Application is inconsistent with the LDC section 303 regarding PDs. As previously mentioned, the Application’s small lot sizes are unresponsive to the rural character of the area and fail to provide gradual changes in intensity and density. The reduced setbacks intensify the overall incompatibility. Moreover, no evidence was submitted at the hearing addressing how the reduced setbacks promote general health, safety, welfare, design excellence, or neighborhood compatibility. Therefore, the Application is inconsistent with subsections 2.e., 6., 6.e., 6.g., 6.l., 6.o., and 6.t.
- iv. Given the reasons stated above, the Application also fails to meet the following: sections 906A.2., 3., and 5.; and sections 906D.7.a, b., and c.

7. 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 lot sizes and setbacks of the proposed PD. Additionally, the Board was provided with evidence depicting the rural 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.

8. 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.

9. Per LDC section 933, a final decision of the Planning Commission that results in denying the application “shall be deemed a denial without prejudice thereby allowing a re-application for requests without material changes on the same property within one year after the final decision...”

It is therefore ORDERED AND ADJUDGED as follows:

In accordance with the Polk County Comprehensive Plan and the Polk County Land Development Code, the Polk County Planning Commission hereby denies LDPD-2023-1 without prejudice for the reasons set forth above. Pursuant to section 933 of the LDC, a re-application for a CU request without material changes on the subject site may be submitted at any time.

DONE and ORDERED in open session in Bartow, Polk County, Florida this **7th** day of **June**, **2023**.

**POLK COUNTY PLANNING
COMMISSION**

ATTEST:

By: _____
Becky Troutman, Chairman

BY: _____
Angela Kaufman, Recording Secretary

This Decision is rendered to the Clerk on _____, 2023.

By: _____
Deputy Clerk

cc: Land Development Division Official File
Kimley-Horn & Associates, Applicant