

MEMORANDUM

To: Planning Commission

From: Kinsey O'Shea, AICP; Senior Town Planner *KO*

Date: September 2, 2022

Subject: RZN 22-0002/ORD 1994-Request to rezone 3.08 acres at 1800 Whipple Drive (Tax Map Nos.197-1 50A, 51C, 5; 197-a 51B, 52B, 5; 197-1 51A, 52A, 5; 167-24 53A and 197-1 46A) from R-5 Transitional Residential to PR Planned Residential by Balzer and Associates (applicant) on behalf of JJB Properties LLC (property owner).

Background

The above-mentioned application was originally submitted on June 1, 2022, and was reviewed by Planning Commission at the July 19, 2022 work session. The applicant submitted revisions on Friday, July 22, 2022, though staff had informed them that we could not commit to providing an analysis in such a tight turnaround prior to the August 2, 2022 Planning Commission Public Hearing while still allowing time for the Planning Commission and the public to review.

At the August 2, 2022 Planning Commission Public Hearing, staff presented the analysis of the June 1, 2022 application, because there had not been enough time to review the July 22, 2022 materials. The Planning Commission continued the public hearing to September 6, 2022, to allow staff, the Planning Commission, and the public to review the materials submitted on July 22, 2022.

A work session was held on August 16, 2022 to review the July 22, 2022 materials. During the work session, the applicant indicated that additional minor changes would be submitted, and agreed to follow staff's suggested timeline for submission deadline of August 22, 2022 in order to remain on schedule for a September 6, 2022 public hearing. The applicant submitted revisions on August 18, 2022.

The items below are several remaining identified issues from the August 12, 2022 memo, the July 29 memo, the July 15 Staff Report Key Elements, and analysis of the submitted revisions dated August 18, 2022. Prior staff analysis memos and reports are still applicable to this rezoning request, and should be considered as a whole in evaluating the appropriateness of the rezoning request.

- Solar photovoltaic systems:
 - Need for clarity regarding ownership and maintenance
 - Need for clarity regarding the amount of solar panels provided and the impact on the energy use/consumption in the units
 - Need for clarity on the commitment in the proffer language regarding "photovoltaic solar power system installed at the time of construction"
 - Conflict with trees shading the systems in the long term

The applicant made changes to the proffer regarding solar to add specificity regarding the capacity of the system. As submitted, the proffer states: "Each new townhome unit shall have a photo voltaic solar power system installed at the time of construction. The system will consist of a total capacity of 115

kilowatts confirmed on the day of commissioning of the system. The solar power systems shall be maintained in perpetuity by the Homeowners Association.” As written, it is unclear if the “system” referred to in the second sentence of the proffer refers to an individual unit system capacity of 115 kilowatts (kW) or if the entire development system has a capacity of 115kW. Given staff’s understanding of PV systems, it is likely that this capacity is representative of the entire development rather than an individual unit.

The Town Attorney reviews all proposed proffer language for clarity and enforceability, but not for technical content. Staff provides input regarding the technical aspects of the proffers for consideration by Planning Commission and Town Council. The Planning Commission and Town Council must review the proffers for their adequacy in terms of mitigating impacts, meeting the intent of the PR district, and providing justification for the need for change in zoning. In consultation with the Town Attorney, additional language has been suggested to add clarity regarding the system and the distribution of solar panels: *“Each new townhome unit shall have a photo voltaic solar power system installed at the time of construction. The **combined** systems will **have** a total capacity of 115 kilowatts confirmed on the day of commissioning of the system, **with the electrical power distributed to the townhomes as evenly as possible.** The solar power systems shall be maintained in perpetuity by the Homeowners Association.”* This additional language will address clarity and enforceability concerns.

- *Accessibility (also a Key Element—Consistency with intent of PR to provide housing to fill identified need):*
 - *Need for clarification of whether any units are fully-accessible including zero-step entry, and if this is a commitment in the application*
 - *Concerns that some paving/surface materials may not meet accessibility requirements*

The applicant made changes to the master plan to indicate that a minimum of 10 units will have a primary bedroom and bathroom on the ground floor, and that of those, a minimum of 6 will be “entry level accessible”. The plan indicates a footnote referring to the standards for “entry level” to “only meet handicap accessibility req. of a Type B dwelling per ICC A117.1.” It is not clear if these units will meet all requirements for Type B accessibility. The floor plans indicate that a main level bedroom and full bathroom as well as “Stacked ADA W/D [laundry]” will be located on the ground floor of these units.

- *HERS/Energy Efficiency*
 - *Need for clarification of whether the HERS rating verbally provided at the meeting is a commitment, and if the rating is sufficient to address energy efficiency goals*

In the July 22, 2022 revision, the applicant included a proffer that “all new townhomes would be built to achieve a minimum HERS rating of 55.” In the August 12, 2022 memo, staff indicated concerns regarding clarity and enforceability of this proffer as it was written. As an example, staff cited language from the Berewick proffer statement that included more specificity regarding how this would occur when the units are constructed and inspected. The Berewick proffer states, “Qualification shall be demonstrated through documentation submitted to the Department of Planning and Building from a home energy rating service certified through the Residential Energy Services Network (RESNET) that demonstrates that each dwelling unit has attained qualification, prior to the issuance of the Certificate of Occupancy (CO) for each dwelling.”

In the case of Berewick, homes will be constructed at different times, and have different floorplans, etc. and the applicant proffered that every home would be certified. Conversely, certification of units may

also be a percentage of the total, which may be more applicable in an attached single family product such as a duplex or townhome.

As previously stated, The Town Attorney reviews all proposed proffer language for clarity and enforceability, but not for technical content. Staff provides input regarding the technical aspects of the proffers for consideration by Planning Commission and Town Council. The Planning Commission and Town Council must review the proffers for their adequacy in terms of mitigating impacts, meeting the intent of the PR district, and providing justification for the need for change in zoning. In consultation with the Town Attorney, additional language has been suggested to the applicant to add clarity and enforceability as follows: ***“All new townhome units shall be built to achieve a minimum HERS (Home Energy Rating System) rating of 55. Documentation of the HERS rating will be provided by a certified third-party inspector. This documentation must be provided before certificates of occupancy are issued. To satisfy this requirement, a minimum number of _____ townhomes must be certified.”***

It should be noted that in the above suggested language that was sent to the applicant on August 30, 2022, staff had not yet identified a minimum number of units to be certified, as consideration should be given to the energy-efficiency differences between end units and interior units. After further staff consideration, staff suggests that ***“a minimum of two units per building—one end unit and one interior unit, for a total of 12 units, must be certified.”***

At the August 16, 2022 Planning Commission work session, the applicant indicated in their presentation that the townhomes, as proposed with solar panels, would be able to achieve a HERS rating of approximately 35. The applicant indicated that a typical new construction home rates around 75, while an existing older home may rate closer to 100. A net-zero home rates at 0. However, no changes to the minimum HERS rating in the proffer are proposed. As written, the applicant has committed to a HERS rating of 55, which includes the solar panels and any efficiencies that they afford.

- *Request to reduce required perimeter Public Utility Easement from 15' to 10' (also a Key Element)*

The applicant has not revised the plan to provide the required minimum 15' perimeter PUE. The August 18, 2022 utility easement exhibit shows a continuous 10' PUE around the perimeter of the property, as well as interior PUEs around the proposed public utilities for the development. ***The applicant is requesting a variance to Subdivision Ordinance Standard §5-901 to reduce the width of required public utility easements from 15' to 10'.***

The request to eliminate required width in public utility easements, and to layer landscaping, rear yards, and the PUEs is to support the applicant's desired increase in density and proposed layout to maximize the number of units. For new development, there is no reason that this minimum development standard cannot be met. Staff does not support the request to reduce the required perimeter public utility easements from 15' to 10'.

The revised application also now shows that a 10' easement is proposed on three adjacent properties owned by Ratcliff Corner, LLC, to the north of the subject parcel. Two of these parcels are undeveloped, while one is developed with the Ratcliff Corner (RC) Townhomes. The RC Townhomes were developed with a conditional use permit in 2018. There was no perimeter public utility easement required, because the property was not subdivided. The three other adjacent parcels to the north owned by Gilmer Properties LLC currently have an existing 15' wide perimeter public utility easement along the

rear parcel line adjacent to the Whipple PRD property. The applicant has indicated that the adjacent property owners are willing to dedicate easements on their properties to support the proposed development. It should be noted that this proposal only addresses the northern property line; no off-site easements are proposed along the eastern or southern property lines. The western property line is bordered by Whipple Drive, and the applicant is showing the required 15' PUE along this frontage.

Staff and the Town Attorney have concerns regarding the commitment and enforceability of this proposal to use adjacent properties for required PUEs. The applicant provided an unsigned agreement that their attorney has drafted for the adjacent property owners to sign as commitment of intent to dedicate the easements. The agreement was provided to staff under separate cover from the revised application and is attached to this memo. The document that was provided is a memorandum of understanding, which is a statement of intent by JJB properties and landowners adjoining JJB's Whipple Drive property to grant each other a ten foot public utility easement ("PUE") along the borders of their properties. The MOU does not state when that the dedication will occur. More details, such as details about what will be permitted in the PUE and what role the Town has (typically PUEs are dedicated to the Town), will be needed.

- Lack of restrictions on student occupancy (also a Key Element)
- Ownership vs. rental of units (also a Key Element—No restrictions on occupancy; and Consistency with intent of PR district to provide identified needed housing)

The original application included two proffers somewhat related to occupancy. One proffer states that the townhomes would only be leased by the unit, not by the bedroom. Leasing by the unit as opposed to the bedroom does not indicate that a development is not intended for students. This does not address the concerns and impacts that come with student occupancy. The proffer in no way limits or restricts student occupancy in either rental or ownership scenarios.

The other proffer states that the developer would maintain ownership and management of the development for five years after the first certificate of occupancy.

The applicant has not made changes to the proffer statement, but has included language in the body of the application, on page 4 and 5, that mimics the language used in the Midtown PR proffers. Generally, this language includes:

- No 4 bed/4 bath units
- All units leased by the unit, no leases by-the-bedroom
- Residents would have to sign an affidavit that they have twice the monthly rent as income at the time of unit rental
- Property management available to residents during office hours, and 24-hour emergency on-call maintenance
- Resident/guest parking policy with stickers and visitor passes
- Additional language for units if they are offered for sale, and also requiring that property owners be members of the HOA and adopt the following regulations:
 - Purchasers must sign an affidavit that they are not acquiring the unit for rental or investment purposes
 - If the units are rented, the owner has to provide the HOA with the names and contact information for all tenants, unless protected by law; or provide other name and contact information as appropriate

- Initial lease terms shall be 12 months, and no short term tenancies less than 12 months are allowed
- All leases have to contain a clause notifying the tenants of their obligation to abide by all appropriate regulations including HOA and Town occupancy limitations

The additional language in the application is enforceable as an element of the binding plan and application. To ensure this commitment in the application is met, the Zoning Administrator may request an affidavit of compliance from the owners on an annual basis.

- *Proposed Crosswalk for Blacksburg Transit Stop*

In the review of the original application, Blacksburg Transit staff suggested that an additional crosswalk at the rear of the bus stop on Whipple Drive should be included with this development to provide a safe condition for riders exiting the rear of the bus. The applicant indicated that they believed that users would not cross north toward the rear of the bus to return south to the development. However, many users choose to cross behind the bus due to better visibility. The applicant did not make changes to the plan to include the recommended crosswalk. Blacksburg Transit had no additional comments on the revised plans.

SUMMARY

All of the Key Elements identified in the staff report and staff memos, as well as the other items discussed at the Planning Commission work session and public hearing are related and cumulatively reflect the impacts of the proposed development request due to the intensity and site design proposed. There are remaining significant issues that have not been addressed with regards to neighborhood compatibility; the effect on the surrounding neighborhood; the need and the justification for the change; and the intent of the proposed PR district. Additionally, the proposed plan does not conform to the Comprehensive Plan Future Land Use designation or specifically meet identified unmet housing needs. The desired density and proposed layout of the development remain the primary driver for the applicant's proposed standards below the minimum regulations in the zoning and subdivision ordinances such as shallower setbacks, increased FAR and lot coverage, and reduced public utility easement widths.

MODIFICATIONS REQUESTED

- **§5-901** *The subdivider shall convey a 15 foot wide common or shared public utility easement centered on all interior lot lines **and interior to all perimeter lot lines**, to franchised cable television operators furnishing cable television and public service corporations furnishing cable television, gas, telephone, and electric service to the subdivision...The agent may require a wider easement where necessary to provide adequate separation between water, sewer, and/or stormwater management facilities.*

REVISED PROFFER STATEMENT AUGUST 18, 2022

1. The property shall be developed in substantial conformance, as determined by the Zoning Administrator, with the submitted rezoning application entitled Whipple Drive Townhomes Planned Residential Development (the "Application") dated June 1, 2022 and revised July 22, 2022. *[This proffer will have to be revised to reflect the August 18, 2022 updated application submission.]*
2. Each new townhome unit shall have a photo voltaic solar power system installed at the time of construction. The system will consist of a total capacity of 115 kilowatts confirmed on the day

of commissioning of the system. The solar power systems shall be maintained in perpetuity by the Homeowners Association.

3. JJB Properties LLC will retain ownership and management of the townhome units for a minimum of 5 years, beginning at the time of issuance of the first certificate of occupancy.
4. All townhomes shall be rented/leased by the unit. No by the bedroom leases will be permitted. This requirement shall be included as part of the Homeowners Association documents and will remain in place for all units whether rented or sold.
5. Property owner shall issue parking permits/stickers to residents and residents shall abide by the written parking policy as determined and provided by the Homeowners Association.
6. All new townhome units shall be built to achieve a minimum HERS rating of 55. *[Staff suggests that the acronym for HERS is spelled out in plain language for clarity.]*

ATTACHMENTS:

Revised Application dated August 18, 2022

Memorandum of Understanding example for adjacent properties & utility exhibit

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is entered into on August 16, 2022, by and between **JJB PROPERTIES, LLC**, a Virginia limited liability company, ("**JJB**"), **RMP INVESTMENTS, LLC**, a Virginia limited liability company ("**RMP**"), **RATCLIFFE CORNER, LLC**, a Virginia limited liability company, ("**Ratcliffe**") and **GILMER PROPERTIES, LLC**, a Virginia limited liability company, ("**Gilmer**"). JJB, RMP, Ratcliffe and Gilmer are sometimes referred to herein individually as a "Party", and collectively as the "Parties".

JJB is the owner of that certain parcel of real property located in Montgomery County, Virginia, designated as Tax Map Numbers 197 (1) 46A, 167 (24) 53A, 197 (1) 51A, 52A, 5*, 197 (1) 51B, 52B, 5*, and 197 (1) 50A, 51C, 5* and Parcel ID Numbers 005849, 006143, 017085, 011084 and 015610 (collectively the "**JJB Property**").

RMP is the owner of that certain parcel of real property located in Montgomery County, Virginia, designated as Tax Map Number 167 (24) 45A and Parcel ID Number 130408 (the "**RMP Property**").

Ratcliffe is the owner of those certain parcels of real property located in Montgomery County, Virginia designated as Tax Map Numbers 167 (24) 50 and 167 (24) 48 & 49, and Parcel ID Numbers 015625 and 015612 (collectively the "**Ratcliffe Property**").

Gilmer is the owner of those certain parcels of real property located in Montgomery County, Virginia designated as Tax Map Number 167 (24) 47 and Parcel ID Number 120122 (the "**Gilmer Property**").

The Ratcliffe Property, the Gilmer Property and the RMP Property each share a boundary line with the JJB Property and are located immediately adjacent to and/or contiguous with the JJB Property and the Parties acknowledge that a Public Utility Easement centered on the boundary line of the JJB Property boundary line with the boundary lines of the Ratcliffe Property, the Gilmer Property and the RMP Property such that each property has a ten foot (10') wide public utility easement on such property will benefit all properties and Parties.

JJB, Ratcliffe, Gilmer and RMP each individually and collectively do hereby declare and state that they shall each create and establish, for the benefit of and as an appurtenance to their respective properties and as a burden upon ten feet (10') running along the boundary lines as shown and described in Exhibit A, and will grant, and convey unto the other Parties, their successors, grantees and assigns, a perpetual, non-exclusive easement, right and privilege (the "**Public Utility Easement**") over, upon, across and through the portion of the JJB Property, the Ratcliffe Property, the Gilmer Property and the RMP Property as described and depicted on that certain plat of survey entitled, "**WHIPPLE DRIVE TOWNHOMES PLANNED RESIDENTIAL DEVELOPMENT PROPOSED SHARED PUBLIC UTILITY EASEMENTS MOUNT TABOR MAGISTERIAL DISTRICT MONTGOMERY COUNTY, VIRGINIA**", prepared by Balzer & Associates, dated May 4, 2022, designated Project Number 24210126.00, which plat and exhibit is attached hereto and incorporated by reference for all

purposes as Exhibit "A", (the "**Public Utility Easement Area**"), for the purpose of creating a Public Utility Easement. Such rights shall include the ability to disturb the surface of said Public Utility Easement Area and to excavate thereon, and to cut down, trim, clear, and/or otherwise control the area of the easement to protect and prevent intrusion or disturbance of the Public Utility line; and the right of ingress and egress to and over said above referred Public Utility Easement Area, for the purpose of exercising and enjoying the rights granted, and doing anything necessary or useful or convenient in connection therewith. The Parties acknowledge and agree that no fee, payment, or other charge shall be payable by any Party, its successors and/or assigns, to any other Party for the grant, and conveyance by each of the Parties to the other Party for the Public Utility Easement.

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Understanding to be executed by and through their respective duly-authorized representatives.

JJB PROPERTIES, LLC

By: _____

Name: _____

Its: _____

RMP INVESTMENTS, LLC.

By: _____

Name: _____

Its: _____

RATCLIFFE CORNER, LLC

By: _____

Name: _____

Its: _____

GILMER PROPERTIES, LLC

By: _____

Name: _____

Its: _____

EXHIBIT "A"

Depiction of Public Utility Easement Area

(See attached)

