

MEMORANDUM

To: Town Council

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

Date: October 14, 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).

The Town Council reviewed the above-referenced request at its September 20, 2022 work session. There were questions and discussion during the staff and applicant presentations regarding several pertinent topics: adequacy of the space between the property line and the structures; parking ratio; public utility easement (PUE) variance request; occupancy; proposed off-site PUEs; and buffering. The applicant, in response, submitted a revised application dated October 4, 2022 which contained several modifications. Discussion of these and other key points is provided below.

MODIFICATIONS TO APPLICATION

- **Revision to show required minimum 15' public utility easement (PUE) along south and east property lines; variance still requested to reduce the required 15' PUE width to 10' along the northern property line.**
 - **Proffer change to address memorandum of understanding between developer and adjacent property owners to provide off-site utility easements**
- **Removal of one unit; reduction of the total number of bedrooms from 98 to 95 bedrooms**
- **Walkway connection to property to northeast of development**

This staff memo covers the changes proposed and the cumulative effects of the changes to the development. However, there are still a number of concerns regarding the overall intensity of the development and its effects on the surrounding area that are covered in previous staff memos and staff reports, and that are still applicable to the discussion of this rezoning request.

- **Revision to show required minimum 15' public utility easement (PUE) along south and east property lines**

The application has been changed to show a 15' PUE along the southern and eastern property lines, as required in the subdivision ordinance for any property to be subdivided per §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. Such easements may be conveyed by reference on the final plat to a declaration of the terms and conditions of such common easements and recorded in the Montgomery County land records. The agent may require a wider easement where necessary to provide adequate separation between water, sewer, and/or stormwater management facilities.

The applicant is still requesting a variance to §5-901 to reduce the width of the easement along the northern property line from 15' to 10'. The applicant has worked with the adjacent property owners to the north to secure a commitment in the form of a memorandum of agreement to dedicate an additional 10' easement on adjacent properties. The proffer statement has been revised to reference the commitment by the developer and adjacent property owners, and was reviewed for legal sufficiency by the Town Attorney.

Based on recent discussion at the work session, staff is providing the detail below for clarification of several points.

The code requires a minimum 15' PUE to be dedicated centered on all interior lot lines, and ***interior to all perimeter lot lines***. The code does state that these PUEs are to be conveyed to "...cable television, gas, telephone, and electric service to the subdivision..." but the Town is the manager of these franchises within its corporate limits and therefore determines the location and provision of these easements. The code goes on to state that a wider easement may be required by the Town to provide required separation for water, sewer, and stormwater management facilities, but it does not specifically address provisions or requests to vary below the minimum 15' requirement. This section anticipates that easements are intended for Town public utilities with the last sentence of the code as above. The intent of §5-901 is to ultimately provide 30' public utility easements along development boundaries to accommodate all utilities.

Furthermore, the language in the deeds of dedication that are required to accompany the graphical illustration of the easement on a plat, gives the authority to the Town to provide public utility service within these easement areas:

"...the Landowner grants to the Town, its successors and assigns, a perpetual easement and right-of-way and all privileges necessary for the purpose of providing access to, constructing, maintaining, renewing, replacing, relocating, and operating public utilities (*which includes utility, water and/or sewer pipes or lines, meters, and appurtenances*) under, through, and across and on that certain parcel of land..."
[Emphasis added.]

The language in the above deed of easement for the Summit at Uptown Townhomes (1820 North Main Street) was drafted by the Town Attorney and is one of the most recently-recorded deeds for private development, from January 2022. There is additional language in the deed that further describes the rights of the Town to its own easements, and the limitations of the landowner in using the easement area.

Adequacy of space provided for yards, easements, and buffers

Staff continues to have concerns regarding this specific request to reduce public utility easement widths in the broader context of the proposed site layout and the intensity of the development. In this particular case, the applicant is proposing that not only will the PUE along the northern property line be 10', but the rear yard of the individual units is the same 10', and no buffer yard will be provided. The same is true of the rear yards for the eastern and southern property lines, but that rear PUE area is 15', not 10'. Residents will not be allowed to place any structures, including seat walls, decks, or buildings in their rear yards because the PUE takes up much, if not all of that space. Landscaping or fences, or other improvements may be removed if work is to be done in the easement, and may not be replaced. While this is true of ***all*** public utility easements, *in most cases, additional rear yard and/or vegetative buffer is provided in addition to the required public utility easement*. It is understood that the improvements required for development such as required yards, easements, and buffers are to be layered together within the spaces around structures, but for all residential zoning districts, the minimum rear yard requirement is greater than 15':

RR-1	20'
RR-2	20' or as approved through public hearing
R-4	25'
R-5	25'
OTR	25'
RM-27	25'
RM-48	25'
PR	18' or as approved through public hearing

In this case, the layering of these elements does not allow for the placement of a buffer yard. As noted in the staff report, while not required, a buffer yard may be appropriate as the proposed development is 50% more dense than the surrounding neighborhood. While the application has been revised to provide the required minimum PUE along the east and south property lines, staff is concerned with the overall inability to accommodate required public utility easements, appropriate building setbacks/required yards, and appropriate buffer yards for the proposed development due to the desired density and layout.

- **Reduction of the total number of bedrooms from 98 to 95 bedrooms; removal of one unit**

The application has been revised to remove one unit and reduces the total number of bedrooms proposed. This brings the proposed density to 30.8 bedrooms per acre, which is approximately 50% greater than the surrounding zoning would allow, and the Future Land Use designation which envisions no more than 20 bedrooms per acre for multifamily uses. See the original staff report dated July 15, 2022, and subsequent memos, for full discussion regarding density, Future Land Use designation, and related impacts.

The applicant has modified the layout of the proposed development to remove one unit from Building 6 along the northern property line from 8 units to 7 units. Further adjustments to the proposed layout to maintain the desired density for the development and also accommodate the provision of the required PUE along the east and south property lines include:

- Deeper lots for Buildings 2 and 3 along the southern property line to accommodate 15' rear PUE; shifted buildings forward on their lots closer to center of the site.
- Shifted southern entrance north along Whipple Drive to accommodate deeper lots. ***It should be noted that engineering staff reviewed this change and noted that it does not have a discernable impact on the functionality of the entrance and adjacent crosswalk.***
- Shifted open space north to accommodate deeper lots.
- Overall reduction in size of the central Open Space by approximately 30 square feet: overall reduction in the width of the central green space; overall increase in the length of the central green space (this is likely due to the shape of the lot being somewhat wedge-shaped with the wider end to the north). ***It should be noted that the proposed open space does meet the minimum 20% requirement.***
- Deeper lots for Buildings 4 and 5 along the eastern property line (from approximately 71' to 73'); shifted buildings closer to the center of the site; reduction of lawn area in front of buildings due to buildings shifting forward on lots.
- Loss of two parking spaces, but increase in ratio due to reduction in bedrooms.
 - 98 to 96 spaces; 1.00 spaces per bedroom to 1.01 spaces per bedroom.

In order to accommodate the deeper lot depth needed for the 15' rear PUE along the east and southern property lines, there may be other changes that are not immediately apparent upon review without further information such as detailed dimensions.

- **Walkway connection to property to northeast of development**

The revised sheet Z3 shows a sidewalk connection to the existing “driveway/trail” to the adjacent property northeast of the development. This area was the subject of discussion at the Corridor Committee meeting, the staff report, Planning Commission, and Town Council. There is an existing shared driveway/access easement granted from the neighboring property to one of the five parcels implicated in the rezoning request. It is unclear at this time, if the existing easement would be legally sufficient to provide access to the proposed development, considering that the existing lot to which the access is given will no longer be a legal lot. The applicant should ensure that the appropriate legal mechanisms are in place to allow the use of this non-vehicular connection if it is shown on the plan.

Key Elements (per July 15, 2022 staff report)

- *Density proposed above FLU designation*

See analysis above and in previous staff memos and reports.

- *Need & justification for change*

No changes were made to the application or plan.

- *Consistency with intent of PR district in providing housing product to fill identified housing needs*

No changes were made to the application or plan.

- *Appropriateness of proposed district standards compared to surrounding neighborhood*

No changes were made to the application or plan that substantially change the proposed district standards.

- *Intensity of development; proposed layout of development*

No changes were made to the application or plan that substantially reduce the intensity of the development or change the layout of the development.

- *Adequacy of area for rear yards/perimeter buffer*

See analysis above and in previous staff memos and reports.

- *Request for variance to reduce perimeter Public Utility Easement (PUE) width from 15’ to 10’*

See analysis above and in previous staff memos and reports.

- *No restrictions on occupancy*

See previous analysis in staff memos and reports.

All of the Key Elements identified in the staff report, as well as the other items discussed at the Planning Commission, and at Town Council 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, or address any specific unmet housing needs identified in the Comprehensive Plan.

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 October 4, 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 October 4, 2022.
2. Each new townhome unit shall have a photo voltaic solar power system installed at the time of construction. The combined system 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.
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. 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 six (6) townhomes must be certified.
7. JJB Properties LLC has entered into an agreement with _____, the owner of adjoining property designated as Parcel Number 015625 and Tax Map Number 167-24-50, for _____ to dedicate to the Town of Blacksburg a public utility easement along the boundary of its property as shown in the attached Exhibit A. If, as part of acting upon this Application, the Town Council grants to JJB Properties LLC the requested variance to the requirement for the width of the public utility easements (from 15’ to 10’), _____ shall dedicate the easement shown in Exhibit A as part of the subsequent site plan approval process. If the Application is approved, but the requested variance is not granted, or the Application is otherwise not approved, then Proffer 7 shall not be effective.
8. JJB Properties LLC has entered into an agreement with _____, the owner of adjoining property designated as Parcel Number 015612 and Tax Map Number 164-24-48 49, for _____ to dedicate to the Town of Blacksburg a public utility easement along the boundary of its property as shown in the attached Exhibit A. If, as part of acting upon this Application, the Town Council grants to JJB Properties LLC the requested variance to the requirement for the width of the public utility easements (from 15’ to 10’), _____ shall dedicate the easement shown in Exhibit A as part of the subsequent site plan approval process. If the Application is approved, but the requested variance is not granted, or the Application is otherwise not approved, then Proffer 8 shall not be effective.
9. JJB Properties LLC has entered into an agreement with _____, the owner of adjoining property designated as Parcel Number 120122 and Tax Map Number 167-24-47, for _____ to dedicate to the Town of Blacksburg a public utility easement along the boundary of its property as shown in the attached Exhibit A. If, as part of acting upon this Application, the Town Council grants to JJB Properties LLC the requested variance to the requirement for the width of the public utility easements (from 15’ to 10’), _____ shall dedicate the easement shown in Exhibit A as part of the subsequent site plan approval process. If the Application is approved, but the requested variance is not granted, or the Application is otherwise not approved, then Proffer 9 shall not be effective.

6 – RZN22-0002 Whipple Townhomes PRD
1800 Whipple Drive
14 OCT 2022 KJO

ATTACHMENTS:

Revised Application dated October 4, 2022