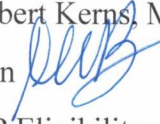


**MEMORANDUM**

**TO:** Karl Moritz, Robert Kerns, Maya Contreras, Jared Alves, Cathy Puskar  
**FROM:** David W. Brown   
**SUBJECT:** Analysis of SUP Eligibility, SUP #2024-10008. 5216 Seminary Road Townhomes  
**DATE:** November 6, 2024

I have been pondering for several days now over the applicant and staff position on this application, i.e., that it is eligible for a cluster development SUP. At this point, I am not persuaded on the eligibility claim. I explain why below. I welcome responses from any and all of you as to where you think I have led myself astray.

**The Zoning Ordinance**

I start with the text of the Zoning Ordinance, on the density criteria. Section 11-603 (D) states:

*Density.* The density of the cluster development shall not exceed the floor area and number of units which could have been developed under the applicable zoning regulations without cluster approval . . .

What the applicant must do to demonstrate meeting this limitation is provide staff

[a] general site layout plan depicting the density, design and development potential of the subject property under all regulations of the applicable zone without a cluster design.

Section 11-605 (B)(1).

As I read this requirement, the required layout plan, which has been referred to as the “by-right” plan, must address “density” as it is referred to in 11-603(D), i.e., both in terms of “floor area” and “number of units.” [The terms of the Ordinance thus directly refute the argument I have heard that the only density issue that is to be considered in the 11-603(D) analysis is the number of units per acre.] Further, the reference to “development potential” indicates to me that the by-right plan should show the maximum development potential of the property absent the cluster SUP. The one provided by the applicant does not do this, but that is not the main problem.

**Density: Number of Units Per Acre**

The Staff Report at 5 states that due to the proffer on the property limiting development to 7 townhomes, the maximum number of units per acre for the property is 22, and since the property comprises .43 acres, a seven-unit project is only 16.4 units per acre. Hence, the proposed project meets the units-per-acre part of the density test in 11-603(D). This is clearly correct.

### **Density: Floor Area**

Staff reports the total acreage of the property at .43 acres or 18,620 sf. Staff also reports the allowable floor area at .75 in the RB zone to be  $18,620 \text{ sf} \times .75 = 13,965 \text{ sf}$ . Staff reports (Staff Report at 8) the floor area of the submitted project at 17,678 sf. [I assume these numbers reflect the proper deduction from gross floor area, under one of the alternative definitions of floor area in the Ordinance. That is not a material issue here.] But the proposed 17,678 sf number is 3,713 sf above the RB zone maximum for this size property. In short, 11-603(D) has not been met, i.e., the cluster development density “exceed[s] the floor area . . . that could have been developed under the applicable zone regulations without cluster approval. . .”

### **Rear Loaded Garages**

Staff and the applicant view the small front yards (3.6’ to 5.7’), facilitating a rear-loaded townhouse design, as superior to meeting the statutorily required front yard requirement of 20’ under 3-706(A)(1). The standard front yard compliance outside historic districts is found in many much earlier RB developments, such as in the townhomes adjacent to the property facing Echols. Whether this change is superior is a debatable point, especially at this particular location, where the adjacent townhomes’ 20-foot front yards define the established front setback line for the block. But that is beside the point. The straightforward method to consider approving this non-compliance with the RB-based front yard requirement is to seek a site plan modification pursuant to 11-416. Instead, the cluster SUP process has been invoked without addressing the noncompliance with 3-706(A)(1). Whether that is a proper substitute or not, it simply cannot be used to justify a violation of the 11-603(D) limitation on the maximum floor area.

### **Bonus Density Under 7-700**

Staff notes that a maximum 30% bonus density under 7-700 would increase the allowed FAR to  $.75 + .3(.75) = .75 + .225 = .975$ . Staff Report at 8. Hence, staff and the applicant apparently claim that the maximum floor area for purposes of compliance with 11-603(D) is actually  $18,620 \text{ sf} \times .975 = 18,154 \text{ sf}$  and the floor area of the project (at 17,678 sf) is lower than this amount. Staff calculated that the actual bonus density increase sought would increase the allowed floor are from 13,965 sf to the desired 17,678 sf, and would require .5 units on the property to be a committed affordable unit. This, in turn, has resulted in agreement with the applicant at providing one affordable unit, albeit slightly smaller than the other six units. *Id.*

The Staff Report thus makes clear that the applicant is depending on some (but not all) of the achievable 7-700 bonus density to construct the planned project. But 7-700 is not an RB zone regulation; it is an entirely optional means, via an SUP, to obtain an authorization of increased density, in exchange for the developer’s commitment to provide affordable housing (either in kind or by payment in equivalent funds). This bonus increase in density, however, does not change the fact that 11-603(D) has not been met: the cluster development density “exceed[s] the floor area . . . that could have been developed **under the applicable zone regulations** without cluster approval. . .”

## **Maximum Development Potential**

I also note that in order for staff to check on compliance with 11-603(D), the applicant was required under 11-605(B)(1) to submit with the application “[a] general site layout plan depicting . . . the development potential of the subject property under all regulations of the applicable [RB] zone without a cluster design.” 11-605(B)(1). No such “by-right” plan utilizing the intended floor areas and heights of the proposed townhomes was submitted, and the one submitted, showing less than the maximum development potential is effectively useless for its intended purpose. Nevertheless, a proper layout plan can readily be inferred from the information in the plan actually submitted. Under the planned configuration, all the units face Echols Avenue, which parallels the longer dimension of this essentially rectangular lot (210’ x 90’, approximately). [Left unexplored is a layout plan with a single curb-cut leading to a central court with front-loaded townhomes facing each other across the court.] Each of the 7 side-by-side lots will have a depth of about 90 feet. The 210’ lot width dimension may be adequate to accommodate the intended seven units, with a combined width of 172.66’, plus two end unit side yards of 14.66’ (for 44’ high townhomes at a side yard setback ratio of 1:3). But the 90’ lot depth dimension is another story. The units in the applicant’s “by-right” plan do not and cannot show the project’s intended building height of 44 feet and building depth of 40’, along with the required 1:1 rear yard setback (here, 44 feet). When the required 20-foot front yard is added in, the necessary lot depth would be 20’ + 40’ + 44’ = 104’. For this property, the 90’ depth of the lot is about 14’ too narrow for this configuration. An appropriate reduction in either the height of the units or their depth (or a combination of the two) would have to be shown, reducing the required rear yard dimension and resulting in reconfigured units in order not to exceed the RB floor area maximum of 13,965 sf.

## **Conclusion**

No cluster development SUP should be considered in light of the project’s exceeding the explicit density (floor area) limit applicable to this RB project under 11-603(D), making it ineligible for cluster development as currently configured. The project’s ineligibility for cluster development, however, is not necessarily fatal to the project. If the cluster development SUP is denied (or withdrawn by the applicant), the project could be revised, re-presented and re-evaluated as an RB townhouse project with a bonus density SUP and other modifications to the RB development standards that would have to be judged on their individual merit.