

SUB2022-0033/VAR2023-0002 Additional Comment Response

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To: Bowker, Kristina J. <kbowker@cob.org>

Cc: Nelson, Ryan J. <rnelson@cob.org>; Riley Marcus <riley@avtplanning.com>

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Hi Mrs. Bowker,

Please find below a response to the one public comment that was received after the Hearing due to technical difficulties, and also to the public comment submitted by Mr. Ferrer at the Hearing. Please forward this response to the Hearing Examiner for her records. Thank you,

Ali

Response to Mr. Ferrer presentation:

Mr. Ferrer, in his presentation packet and oral testimony, makes many of the same arguments that were presented in public written and oral testimony. As noted in the Hearing, those arguments related to GF and other infill toolkit design regulations are not applicable to the plat or variance review; the design review and infill toolkit land use permits for this project were issued in 2023, and were not appealed, and as a result, they are not within the purview of the Hearing Examiner at this time. Despite this, the Applicant team is confident that even if the GF score is determined to be below .4 due to changes in tree removal, a final .4 or greater GF can be achieved. Additional mitigation plantings are anticipated to occur in the linear open space tract that is a part of the property along the west edge. These plantings, on-site, will be added to the GF calculation at the time of BP, and even if some other trees require removal due to construction issues, with the additional mitigation plantings that will be placed in the on-site open space tract, a .4 GF can be achieved, and will be required due to design review/infill toolkit permit conditions and codes already in place. Mr. Ferrer also continues the argument that removing 8 units will save additional trees without jeopardizing the project viability. This argument was discussed in detail during the Hearing and the Applicant offers no additional response at this time. Mr. Ferrer makes 5 bulleted recommendations in his presentation packet:

- A recommendation for a 10:1 mitigation ratio for trees over 30" dbh. This ratio exceeds the 3:1 ratio that the City is recommending by a factor of 3+. To the Applicant's knowledge the City has never required a ratio of mitigation greater than 3:1.
- A recommendation for a 3:1 mitigation ratio for trees 6" to 30" dbh. This ratio exceeds the 1:1 ratio that the City is recommending by a factor of 3. To the Applicant's knowledge the City has never required a ratio of mitigation greater than 1:1 for trees of this size dbh, and furthermore on several recent projects that the Applicant is directly involved in, has required mitigation ratios of less than 1:1 (.5:1 for example) for these smaller trees.
- A recommendation for sufficient mulch for every seedling. This was discussed at the Hearing and Applicant and Staff both agreed that mulch for seedlings was appropriate and could be required during review of the specific mitigation planting plan.
- A recommendation to plant on public lands or in Rights of Way. The Applicant supports the planting of mitigation trees on public lands and in Rights of Way, particularly in the Birchwood

Neighborhood, together with shifting the burden of long term maintenance to the City to better ensure survival. The Golf Course was offered as a mitigation site because of its proximity to the impact area. If the City desires to have mitigation spread around the neighborhood the Applicant can work with the City to achieve that. The Applicant did request the opportunity to plant mitigation trees in public parks and on public lands early in the design process, and was told by Parks Department staff that many of the Parks had enough trees already and that the open areas in Parks needed to be preserved for active recreation.

- A recommendation to provide a surety bond at 3x the cost of planting. The City has a standard practice of requiring a 1.5x surety bond for all mitigation projects, including all critical areas projects. This bonding requirement has been applied uniformly in the City for decades with success and there is no evidence that increasing the bond to a factor of 3x would generate more positive results or greater ensure mitigation uptake.

Response to Larson Comment:

Mr. Larson identifies 4 bulleted items in his comment letter.

Item 1 is related to the required .4 GF calculation, and Item 4 is related to the design of the internal access lane. Please see response to Mr. Ferrer's comments above.

Item 2 and Item 3 are related to the proposal by several public commenters to eliminate the 8 townhouse units that are designed as single story units in order to accommodate varied housing form. Mr. Larson opines that more than the approximately 40 trees the Applicant notes could be saved if the 8 units were removed AND the remainder of the project were redesigned. This is true, additional trees could likely be saved if the actions that Mr. Larsen suggests were taken. The statement made in the application, which Mr. Larsen contends is disingenuous, is not. That statement did not consider a redesign of the project, only the removal of the 8 units in their current location. As evidenced by materials presented via screen share during the Hearing, the removal of the 8 units would save approximately 46 trees. It is true that more trees could be saved with alternative designs (there are hundreds of designs that could be considered for this site, with varying degrees of tree preservation), but this does not alter the conclusion that the Applicant team has reached about the most appropriate design for the project. Mr. Larsen also argues that the claims made by the Applicant that the project financial viability would be damaged with the removal of 11% of the project density are unsubstantiated and that this is a "convenient" excuse to block any reduction. The Applicant stands behind their statements; the loss of 8 of the most valuable units in the project would indeed negatively impact the project financial viability. This was discussed in greater detail during oral testimony. This is an interesting line of reasoning considering that Mr. Larsen's public comment states "*significantly more mature trees can be saved, while still providing substantial infill housing and profit for the applicant*", and that the applicant is pursuing "*maximum profit potential of a maxed-out site plan*", and questions "*Where is proof or justification of this questionable financial assertion?*" while simultaneously stating that the "*assertion seems highly unlikely on its face, based on basic math applied to real estate development costs and returns*". Apparently it is not appropriate for a project applicant to make assertions about the financial viability of their project without providing detailed substantiation for those assertions, but it is appropriate for a member of the public to make assertions about the profitability of a project without any substantiation of these assertions.

This concludes the Applicant response to additional public comment.

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Principal

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