



Matthew J. Carpenter

Associate

t: 919.835.4032

f: 919.834.4564

matthewcarpenter@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC
Washington, DC

February 11, 2022

Via E-mail (Meredith.Gruber@rolesville.nc.gov)

Meredith Gruber
Rolesville Planning Director
502 Southtown Circle
Rolesville, NC 27571

Re: **Pulte Wait Avenue Subdivision SUP 21-01 (the "SUP")**

Dear Meredith,

Following in red are the applicant's responses to staff review comments received January 18, 2022.

Staff Comments

Upon review of the revised submission materials, we recommend that the Town staff consult with the Town attorney to review the process proposed by the applicant to achieve the desired development. It appears that several the proposed "conditions" are to grant relief and/or deviate from the standards of the ordinance as they related to lot size, setbacks, open space, streets, and permitted uses. We recommend a review of the proposed application by the Town Attorney and Planning Staff to determine if the revisions to the PUD and SUP are conforming with the requirements of the Ordinance.

The R&PUD District language of the UDO, contained in Section 6.2 states, "...deviations from these standards may be permitted whenever it is determined that the underlying standards can be met without strict adherence to them and because peculiarities in the developer's tract of land or the facilities proposed would make it unreasonable to require strict adherence to these standards." However, the application did not include any reference to any peculiarities exist in the tract or type of facility, or how the standards of this district are met.

The UDO's standards for a Special Use Permit are to determine that the proposed development or use meets certain findings of fact, such as, "be in harmony with the scale, bulk, coverage, density, and character of the neighborhood in which it is located" and "complies with all applicable requirements of this ordinance."

RESPONSE: We have conferred with the Town Attorney and confirmed our outstanding that deviations from the base UDO standards may be requested and granted pursuant to UDO Section 6.2. Section 6.2 acknowledges that “the underlying objectives of [section 6.2] may be achieved even though the standards are not adhered to with mathematical precision.”

Pursuant to UDO Section 6.2.7, amendments to R&PUD zoning require the approval of a Special Use Permit (“SUP”). SUPs require a quasi-judicial hearing at which the Board of Commissioners (the “Board”) hears evidence and testimony relating to the factors outlined in UDO Section 3.6.2.(A)-(G) (the “SUP Factors”). Prior to the SUP hearing we will submit affidavits from expert witnesses. At the SUP hearing, we will submit evidence and expert testimony to the Board. The affidavits, evidence, and expert testimony will show that (1) the proposed development meets the SUP Factors, and (2) the requested deviations are reasonable because “the underlying standards can be met without strict adherence to them.” UDO Section 6.2.

In our review of the application and other submitted materials, we offer the following comments:

A. Application Statement

It should be noted that a revised Application nor a revised Application Statement was received as a portion of the current submission as part of the package that WR received for the review. The comments contained herein refer to the statement on the application dated December 21, 2020. Many of the comments are not new, however we were not able to locate a comment response letter for the SUP to see how the comments had been addressed and they are repeated here as they remain unaddressed.

1. The proposed development and/or use will not materially endanger public health or safety

The applicant notes that this proposal encourages an “active lifestyle” but is requesting a condition that could result in a reduction of required recreational open space. Staff would suggest editing this statement as it appears to contradict the conditions proposed.

RESPONSE: After further review, the proposed development meets the minimum improved recreation space requirement and offers over twice the amount of required open space. Accordingly, in the proposed conditions, we have added a commitment to a minimum of 30% open space but removed the requested deviation from the UDO requirement for improved active open space for townhomes. The minimum 30% open space requirement is also depicted on the Master Plan. The Preliminary Plat will include a chart detailing how UDO open space requirements are being met and/or exceeded. Additionally, the project will promote an active lifestyle by offering a pool, clubhouse, and fitness center for residents of the community.

2. The proposed development and/or use will not substantially injure the value of adjoining property.

Staff would advise the applicant that to make this statement during the hearing, a report from an expert may be needed. Effects on property values shall be confirmed by a licensed professional in that field, namely a NC licensed real estate appraiser. Expert testimony is required within the quasi-judicial process.

RESPONSE: Expert testimony at the public hearing will show that the project will not have adverse effects on property values.

3. The proposed development and/or use will be in harmony with the scale, bulk, coverage, density, and character of the surrounding area.

The applicant notes that this proposal will orient commercial uses to minimize impact on surrounding residential uses however, the proposed conditions request additional uses not permitted in the underlying district without standards to protect adjacent residents. If allowed to be included by determination of the Planning Director and Town attorney, the conditional permitted uses should also provide standards that buffer adjacent residential uses from impacts associated with such uses.

RESPONSE: The additional commercial uses listed in the proposed SUP conditions have been removed. As shown on the Master Plan, there are two proposed commercial areas – one on the eastern portion of the site along Classical Way (the “Eastern Commercial Area”), and another at the northwest corner of the site (the “Northern Commercial Area”). The Eastern Commercial Area will be separated from the residential development by a 20’ type D buffer, the Classical Way right of way, and a 10’ type D buffer. The Northern Commercial Area will be separated from the residential development by a 25’ type B buffer, riparian buffer, and a stormwater pond.

4. No comments on statement number 4.

5. No comments on statement number 5.

6. No comments on statement number 6.

7. The proposed development and/or use will comply with all applicable requirements of the Unified Development Ordinance.

As mentioned previously and as indicated on the marked-up plans, the proposed development does not meet with many of the applicable requirements of this Ordinance, specifically those required by the PUD. This includes but not limited to lot size, setbacks, building separation, street length, open space, and permitted uses. The Planning Director and Town Attorney will need to make a determination on the interpretation of the PUD and SUP standards in the UDO.

RESPONSE: As discussed above, evidence and testimony will show that (1) the proposed development meets the SUP Factors including the underlying UDO standards, and (2) the requested deviations are reasonable because “the underlying standards can be met without strict adherence to them.” UDO Section 6.2.

B. Amended Master Plan

1. The Master Plan indicates specific number of units in each development area. However, the most recent Preliminary Plat submittal shows a different number of units in the development areas (eg. DA-4 indicates 9 units on the Master Plan but

the Preliminary Plat shows 10; DA-5 indicates 24 units on the Master Plan but 42 on the Preliminary Plat.) **REPEAT COMMENT.**

Between the preliminary plat and the SUP, there is a difference of 19 units with the preliminary plat having 296 units and the SUP stating 315.

RESPONSE: All documents have been revised to show a total of 293 units.

2. The applicant is proposing several new dimensional standards, for example: a 20-foot unit separation instead of the 30-foot required by the UDO, smaller lot size, smaller front, and rear yard setbacks, as well as an alternative open space design. We defer comment on the appropriateness of the applicant using the permitted PUD deviations and/or the SUP quasi-judicial procedure as the methodology to grant relief from the ordinance requirements to the Town of Rolesville Planning Director and Town Attorney.

RESPONSE: As shown in the revised conditions, the number of requested deviations has been reduced. Expert testimony at the public hearing will show that “the underlying standards can be met without strict adherence to them” as required by the UDO.

C. Proposed Conditions

As mentioned previously, the applicant has provided, with this submission, a revised set of Proposed Conditions to the SUP. A number of these conditions are included to provide relief from the ordinance standards applicable to the PUD use.

1. No comments on proposed condition number 1.
2. No comments on proposed condition number 2.
3. No comments on proposed condition number 3.
4. **Proposed Condition 4. To improve community aesthetics, the Project shall be subject to the following architectural and design criteria (the “Design Commitments”)**
 - a. Staff will defer to the Building Inspections department to ensure this design commitment is compliant with NC Building Code.
 - b. For this commitment, specify what is meant by “home”. Will this requirement apply to the townhome units as well?

RESPONSE: This condition has been revised to make clear that it applies to single-family detached homes and townhouses.

- c. During construction drawing review, architectural drawings will need to be provided with the plans to correlate with this condition.

RESPONSE: Understood

- d. Once again, specify if this applies to all residential structures or if this is just for the townhomes or single-family units.

RESPONSE: This condition has been revised to make clear that it applies to single-family detached homes and townhouses.

5. Proposed Conditions 5. In consideration for the Design Commitments and as permitted by UDO Section 6.2, the Project shall be permitted the following deviations from the standards in UDO Section 6.2.

UDO Section 6.2 indicates that permit deviations are permitted when based on “peculiarities in the developer’s tract of land or the facilities proposed (that) would make it unreasonable to require strict adherence to these standards.” Furthermore, in UDO Section 3.6.2, it states that for a use permit to be approved, the proposed development and use must be shown to comply with all applicable requirements of this ordinance (ie. UDO Section 6). Further, UDO Section 3.6.2 states that the Board will establish conditions for the project, not the applicant. The applicant is requesting these deviations. Our comments are below:

RESPONSE: As discussed above, expert testimony at the public hearing will show that the requested deviations should be allowed because “the underlying standards can be met without strict adherence to them” as required by the UDO. As is the practice in Rolesville, we have submitted proposed draft conditions which the Board may adopt as part of the case following the quasi-judicial hearing.

a. Front facades, covered porches, and balconies of single family detached and townhouses may encroach up to five (5) feet into the front setback.

Per UDO 6.2.1.2, “Encroachments into the rear setback by the principal residence and attached structures, including decks and porches, may not exceed 12 feet or one-half the distance of the rear setback, whichever is greater, and be no nearer than three feet from the rear lot line.” Encroachments are not permitted in the front yard setback.

RESPONSE: Deviations from the base UDO standards may be requested and granted pursuant to UDO Section 6.2. Section 6.2 acknowledges that “the underlying objectives of [section 6.2] may be achieved even though the standards are not adhered to with mathematical precision.” The requested deviation to allow front porches to modestly encroach into the front setback will allow homes to be designed to have front porches and covered entrances. Additionally, this deviation will allow rear loaded townhomes to be placed closer to the street, resulting in a more uniform, pedestrian focused streetscape.

b. Front facing, single door, garages shall be permitted regardless of lot width. Garages may protrude up to five (5) feet beyond the front building line of residences.

Per UDO 6.2.1.3(2), “For dwelling units not served by rear alleys, garages are to be to the side or rear of the dwellings. Garages to the side shall not protrude beyond the front building line of the residences.”

RESPONSE: Deviations from the base UDO standards may be requested and granted pursuant to UDO Section 6.2. Section 6.2 acknowledges that “the underlying objectives of [section 6.2] may be achieved even though the standards are not adhered to with mathematical precision.” The requested deviation to allow garages to protrude up to five feet beyond the front building line will result in a more practical design. For single-family detached homes, this deviation will allow for the front façade of the garage to be even with the front of the front porch. Additionally, for some housing types, front entrances are recessed to allow for cover from bad weather and for safety entering and exiting the home.

c. Parking shall be permitted in the front of residences regardless of lot width.

On-street parking is subject to site plan review. The language provided “regardless of width”, is too vague as parking must meet minimum lot widths noted in UDO Section 10.1.

RESPONSE: This condition requests a deviation from UDO Section 6.2(f) which states that “alleys are to serve the rear of residential lots.” The intent does not address street parking, but rather states that parking shall be permitted in the driveway in the front of residences. This language has been revised for clarity.

d. A minimum of 30% of the gross acreage of the Residential Portion shall be open space (the “Total Open Space”)(UDO Section 6.2.3 requires a minimum of 15% open space). In light of the additional Open Space provided, 100,000 square feet of the Total Open Space shall be improved active recreational open space (the “Active Open Space”). The Open Space and the Active Open Space may be divided amongst phases of the Project. A minimum of 5% of the Non-Residential Portion shall be passive Open Space.

If the applicant is providing more than what is required, we would suggest this be a design commitment rather than a “condition” and provide such benefit in a revised application statement. Further, the applicant should show what is required by ordinance standards in order to understand what the added benefit is or to request “relief” from what is required.

RESPONSE: As discussed above, the project is providing 30% total open space – over double the UDO requirement of 10% for single-family detached and 15% for townhomes. Additionally, the project meets the improved open space requirement. Accordingly, we have removed the Open Space deviation from the conditions and maintained the 30% Open Space commitment as a condition.

e. Townhouses shall have a minimum rear setback of 10 feet and minimum building separation of 20 feet.

Townhomes shall be separated based upon their building height per UDO Section 8.3.2. Also, rear setbacks for townhomes are required to be 15 feet per UDO Section 6.2.3.

Both the building separation and rear setback reductions are deviations from the ordinance requirements.

RESPONSE: We have removed the requested deviation from the rear setback for townhomes and townhomes will have a minimum rear setback of 15 feet. We are requesting a deviation from the minimum 30-foot building separation for townhomes to permit minimum building separation of 20 feet. 20-foot building separation will result in a more compact lot configuration that allows us to preserve 30% open space in a more efficient and environmentally sensitive development pattern. Additionally, the reduced building separation will result in less maintenance for homeowners.

f. The Project shall include a planting strip at least 4 feet wide on both sides of all internal local residential streets.

We recommend this provision be moved to the design commitments area as a minimum 4-foot planting strip is permitted by UDO Section 6.2. However, it should be noted that since the applicant cannot adequately provide enough area in the planting strip for the street trees, the applicant should provide a blanket landscape easement on the individual lots in order to ensure the Town has the ability to maintain, repair, and replace the street trees that are installed on private lots. This should be an added condition to the SUP.

RESPONSE: This condition has been removed. The applicant is open to providing landscape easements as necessary but would prefer to dedicate landscape easements on the subdivision plat rather than as an SUP condition which becomes a part of the zoning.

g. Due to topography and for purposes of property accessibility, cul-de-sacs shall not exceed 500 feet in length from the nearest intersection with a street providing through access.

UDO Section 6.2 states that cul-de-sacs shall not exceed 250 feet in length from the nearest intersection with a street providing through access (not a cul-de-sac) unless necessitated by topography or property accessibility. Cul-de-sac lengths longer than 250 feet will be reviewed for approval on a case-by-case basis. Cul-de-sacs are permitted where topography makes a street connection impracticable.

RESPONSE: This condition has been removed and the project will comply with the 250-foot minimum cul-de-sac width.

6. To promote economic viability and allow flexibility for future commercial uses, the following uses not listed in UDO Section 6.2 for R&PUD may be allowed by the issuance of a Special Use Permit by the Board of Commissioners pursuant to UDO Section 3.6:

- a. Animal hospital or veterinary clinic**
- b. Animal service facilities**

- c. **Drive-thru Facilities**
- d. **Convenience Store with Gasoline Sales**
- e. **Grocery Stores up to 50,000 square feet**

These uses are not currently permitted uses within a PUD. We do not believe that a special use permit is the instrument to add permitted uses to a zoning district or a specific parcel; this is the function of a zoning text amendment. As mentioned in this memo, we defer additional comment on this to the Town Attorney and Planning Director.


RESPONSE: Agreed. This proposed condition has been removed.

D. Comprehensive Plan Consistency/FLUM

The 2017 Comprehensive Plan and Future Land Use Map (FLUM) distinction shows this area of Rolesville as *medium density* residential.

1. *Medium density* is defined as predominately single-family residential uses with portions of duplex, townhouse or multifamily residential. These are lots or tracts at a density range of three to five dwelling units per gross acre including preserved open space areas along with limited non-residential uses under planned unit development or form base code provisions.
2. The SUP aims to limit specific nonresidential use types that could be deemed incompatible with residential zoning. It does not remove any residential uses and thus the proposed conditions are consistent with the FLUM.

Sincerely,



Matthew J. Carpenter