

THE BERKELEY (SP #431): DENSITY ANALYSIS

Introduction

AHC, the developer of this project, is asking for permission to replace its two existing affordable housing buildings on this South Glebe Road site with two new buildings that will more than double the number of the existing units, from 137 to 287. To accomplish this objective, the new buildings would occupy a significantly greater footprint and add an additional, fifth story. While the existing buildings are setback some distance from Glebe Road, the footprint along the front of the proposed buildings would come within just a few feet of the sidewalk along the edge of Glebe Road.

To acquire this new density, AHC would not only need a zoning variance, it would need extraordinary bonus density: 25% to which it claims to be eligible because its new buildings would contain affordable housing units, and an additional .35 FAR based on conformity with LEED's standards.¹

This memo takes a closer look at the density aspects of AHC's proposal and asks if AHC has demonstrated entitlement to be awarded the density it is seeking.

Guiding Principles

At the very outset, we wish to reassure readers that the Arlington Ridge Civic Association (ARCA) strongly supports the County's objective to provide affordable housing within its boundaries. This policy promotes diversity as well as healthy retail and service economies needed to service the needs of not just the County's full-time residents, but also those who live elsewhere but commute to jobs located within the County.

The County must, however, be mindful, when reviewing developers' proposals to provide new additions to the County's existing housing stock, of the evolving population demographic that will likely result from its approval of developers' applications. For example, much of the new housing stock that has been approved to be built in recent years consists of small, mostly 1-bedroom, rental units that are primarily attractive to singles and childless couples who are, generally speaking, likely to be transients rather than long-term residents with a strong commitment to Arlington as a community. The need to be mindful of likely consequences applies as well to the development of affordable housing. For example, will there be sufficient affordable housing to enable lower-income *families* to live in the County.²

¹ LEED Silver, .25 FAR; and LEED EBOM .1 FAR.

² Typically, smaller, 1-BR units generate more rental income per square foot than larger units – perhaps a reason why developers of residential properties in the County, including AHC, generally seek to fill their buildings with mostly smaller units.

For these reasons, among others, we are hesitant to challenge some of the predicates contained in AHC’s Berkeley application. However, it is part of a uniform pattern of practice by all developers in Arlington County to push development envelopes above and far beyond the permissible limits of the GLUP and zoning ordinances. A line in the sand needs to be drawn.

Discussion

To date, AHC has not provided any meaningful information about the actual size, in terms of square feet, of any of its units, much less any description of the units that would be included within its affordable housing allocation.³ What we have been told, illustrated in the following chart, will be discussed below.

UNIT NUMBERS			
	Existing	Proposed	Increase
Affordable	110	171	55%
Market	27	116	330%
Total	137	287	110%

Eighty percent (80%) of the units in the existing buildings are affordable; twenty percent (20%) are rented at market rates. If AHC’s proposal were to be approved, that ratio would change dramatically; only 60% of the new units would be affordable, and the number of market-rate units would more than treble, from 27 units in the existing project, to 116 units in the proposed project. The overall, 287-unit density is calculated as follows: (a) initially, it is predicated on the 4.61 acres contained in AHC’s survey plat, a significant portion of which lies beyond the Four Mile Run flood wall, down in the flood plane and even under water – not only is this portion of AHC’s property unbuildable, it is public parkland and designated as such in the GLUP; and (b) bonus density to which AHC claims to be entitled.

In prior development projects in Arlington County, ARCA has demonstrated that zoned density that cannot be utilized on physically or legally unbuildable land cannot lawfully be transferred to a buildable site. Such a process would be tantamount to Rumpelstiltskin spinning straw into gold, a process that clearly was not contemplated by the Commonwealth’s “Transfer Density Right” (TDR) enabling statute. Virginia Code Section 15.2-750. Moreover, the Virginia Code

³ At the April 17, 2014 SPRC meeting, AHC did advise that the new buildings would include: 18 efficiencies, 171 1-BR units, 89 2-BR units, and 10 3-BR units. How these units would be allocated between affordable and market rates was not specified. AHC has, thus far, failed to fulfill its obligation under Zoning Ordinance §15.6.9.A.2 to inform the SPRC about the size and location of its proposed ADUs.

affirmatively forbids the calculation of developable density in urban areas to be predicated on any surface area (acreage or square footage) in parkland or public rights-of-way. Va. Code Article 15.2-2223.1.⁴ However, AHC and County staff have calculated their 167-unit by-right density under the existing RA8-18 zoning based upon the entire 200,873 sq ft (4.61 Acres)⁵ of the Berkeley site, a significant portion of which is physically and legally unbuildable⁶ and, therefore, of very little, if any, intrinsic value.⁷

Temporarily putting aside this infirmity in AHC's application, let us now focus exclusively on the bonuses requested to permit the construction of the additional 120 units requested – all but 4 of which would be rented at market rates. Despite this fact, AHC contends that it is entitled to be awarded 100% of the 25% bonus for affordable housing, entitling it to build an additional 42 units. However, given that only 60% of the new Berkeley units are proposed to be set aside for affordable housing, one might ask whether AHC should be eligible to claim 100% of the bonus available for affordable housing. That question comes more sharply into focus when one considers the fact AHC will only be increasing the number of existing affordable units by 55% while using the bonus to increase the number of existing market-rate units by **330%**.

Finally, AHC bumps the number of units it hopes to build by another 78 units based upon its pledge to construct its buildings in conformity with LEED standards. Of course, we recognize that the County has sought to encourage developers to build energy-efficient buildings in order to reduce greenhouse gases, a worthy goal. However, we question the premise that developers need bonus density incentives to do so. Indeed, the County's practice of awarding them needs to be curtailed, if not stopped altogether. The simple fact is that it is in developers' own financial self-interest to build energy efficient buildings. While some additional up-front costs are incurred, they are more than recouped over the long run in the form of reduced utility expenses.

⁴ Much of the recent development in Arlington County, and in the 22202 cordoned-off fortress zone where The Berkeley is located, unequivocally amounts to "urban development" within any definition of the term. While Arlington County may contend that it is not subject to this statute because it has never formally declared any of its real estate to lie within an urban development zone, any such contention is not only disingenuous, but legally wanting.

⁵ This square footage includes the 18,170 sq ft portion that is currently zoned S-3A.

⁶ We do not know exactly what portion of AHC's 4.61-acre plat lies within the Four Mile Run parkland and cannot, therefore, recalculate the by-right density available for The Berkeley's redevelopment.

⁷ AHC defends its utilization of the parkland's square footage in its density calculation by contending that it pays taxes on that footage; it does not, however, reveal how much, or why it would choose to do so rather than just deed it over to the public entity that owns and controls the waterway.

The time has come for the County to reassess its practice of awarding bonus density for a myriad of reasons conjured up by developers that abuse and distort its GLUP and zoning ordinances beyond recognition.⁸ A good place to start is with the LEED bonuses. In a similar vein, just because a particular building project will contain *some* affordable housing should not automatically qualify that project to utilize the full, 25% affordable housing bonus. And lastly, whatever bonus density may be appropriate for The Berkeley must not be predicated on by-right density calculated on that portion of AHC's 4.61-acre lot that is parkland.

Recommendation

- *** Recalculate the developable acreage of AHC's lot to exclude the Four Mile Run parkland; then recalculate the by-right number of units permitted.
- *** AHC might choose to retain the current design proposal, or building envelope, simply by enlarging the square footage of the units and increasing the number of 2- and 3-bedroom units, thereby reducing the overall number of units.
- *** Award affordable housing developers only that portion of the 25 percent bonus that mirrors the portion of the units in any development project that will be set aside for rental at affordable, rather than market, rates. In this instance, given that only 60% of The Berkeley's units would be set aside as affordable housing, only 60% of the affordable housing allowance bonus should be awarded to AHC.⁹ Of course, if AHC were to modify its proposal to increase the number (and percent) of units to be rented at affordable rates, while reducing the number to be rented at market rates, it could qualify for a greater portion of the affordable housing bonus.
- *** Curtail or eliminate the bonus density awardable for compliance with Energy Star and/or LEED standards.

⁸ At the SPRC's request, staff combed through all comparable development projects approved by the Board in recent years and discovered one, "Buckingham Village 1," where the Board approved similar density to that sought by AHC, albeit in light of different factors. To justify AHC's proposal, one would have to subscribe to the notion that "the exception should swallow the rule."

⁹ When doing so, the County should also consider the ratio of square feet set aside for affordable versus market-rate units to be sure that this proposed bonus formula is not being abused.