

# Comments on the Proposed Zoning Use Variance

April 15, 2024

**Giff Hill Land, LLC - Parcel 9-3 Est. Glucksberg, St. John, VI**  
Permit Application: ZAJ-23-1

The DPNR Report for the proposed zoning change of Parcel 9-3 Glucksberg, St John (Item 20 of the Senate package) recommends that applicant be granted a use variance of a “lodging/ rooming house” to lease rooms separately instead of granting the requested R-4 zoning change. However the proposed bill does not limit the total number of rooms covered by this variance or identify a design. The design submitted to DPNR for this zoning change includes 72 units but the drawings only illustrate a conceptual site plan. A previous design was approved but was abandoned and another design for this same property has been submitted to DPNR but is not before the Senate and has not been made available to public. As a result the Senate is being asked to approve a “conceptual project” without reasonable limits and could grant a use variance for a project that is not available to public review. In fact the design under review by DPNR, or another design yet to be submitted, may be completely different than those made public so approving the bill as written could have unexpected consequences and/or adversely impacts on its neighbors.

The design that DPNR approved in January, 2023 appears similar to the buildings submitted for zoning change but cannot be known for certain. That design included two (2) buildings with 12 units each, identified by DPNR as “single-family dwellings”, for a total of 24 units. This approval was granted despite fact that the design shows that each unit could be seen as an “apartment” having living sleeping, and kitchen facilities (developer states that cooking to be added), with individual utility meters, and despite the fact that the submission was incomplete and missing critical elements required by governing codes. In contrast the design before the Senate reports to propose six (6) buildings of the same design for a total of 72 units. Which of these designs does the DPNR Report apply, to the 24 unit design or the 72 unit design? Or does this report also apply to the design currently under review by DPNR? The bill does not reference a particular design and provides no limit to the number of rooms. Perhaps the unknown design is a 72 room “single-family dwelling”?

The DPNR Report is dated July 21, 2023 so is outdated and appears to omit significant facts related to this project and worth the Senate’s consideration. In February, 2023 the Earth Change and Building Permits for this project were appealed before BLUA due to many apparent design deficiencies and review defects. In June, 2023 BLUA had set a schedule to hear the claim and the matter was fully briefed July 6, 2023. Because the ongoing construction did not comply with the approved permits, on July 18, 2023 BLUA

issued a stay to stop all construction until the issues could be reviewed. Nonetheless the applicant continued to work into August, violating the BLUA stay. Then, to avoid further review before BLUA and decisions affecting the design, the applicant abandoned their permits. These important facts occurred prior to the release of the DPNR Report yet are omitted from the record. The DPNR Report speaks about “granted permits” yet there is currently no “permitted design” before the Senate to consider.

The proposed bill before the Senate is extremely vague and broad in scope, allowing a great deal of interpretation or alternative designs other than those currently proposed. To avoid potential misunderstandings, the Senate could amend the bill to limit the number of "rooms" allowable under this variance for a “lodging/rooming house”. For example, under this bill a "single-family dwelling" with 72 rooms (or more) could be allowed with each rented individually. Such a design would exceed the allowable density of R-4 zoning.

The proposed bill allows for a use variance for Parcel 9-3 Glucksberg but is not associated with a particular design or with this developer who promises affordable housing. To avoid potential misunderstandings, the Senate could amend the bill to be associated with a particular design, with long term leases, and not allow these new rights to be transferred. Without associating the use variance to a specific project and applicant, the expanded use is only associated with the land which could result in unexpected results. For example, once this bill passes, the value of the property will increase with expanded development rights so GHJ could sell the property for a profit and a future buyer could take that variance and develop a project that provides no housing but only more short-term rentals. Or, for that matter, GHJ could completely change the design resulting in unexpected and potentially adverse results.

Lastly and importantly, if Bill 35-0137 is enacted without revisions allowing a “lodging / rooming house”, the proposed design as submitted or as previously approved, shall violate other laws of which DPNR may apparently not be aware and may be actionable by neighbors and concerned citizens. For example:

- The VI Code limits the capacity of a “Lodging or Rooming House” to no more than nine (9) rooming units. The previously approved, but now abandoned, design included 24 rooming units and the design now before the Senate includes 72 rooming units. Pursuant to the law only nine (9) rooming units can be rented as a lodging / rooming house so none of the proposed designs can be fully leased as individual units.
- The VI Code differentiates between “Lodging or Rooming Houses” and “Hotel and Guest Houses” given that lodging or rooming house is not open to the public while a hotel and guest house is available to the public. Notably none of these uses are allowed in R-1 or R-2 zoning and are instead restricted to R-3 and R-4 zoning within residential zoning.
- The VI Code does not allow a “rooming unit” to include cooking or eating purposes but every “rooming unit” proposed by either design include a refrigerator (eating).

- The VI Code requires that any parking of more than five (5) vehicles must be screened by fence, wall, or hedge. None of the submitted designs provide screening of parking.
- The VI Code requires that any parking of more than five (5) vehicles shall be within ten (10) feet of a dwelling. Almost all of the proposed parking areas are closer than 10 feet from a dwelling so are
- The VI Code requires that one (1) parking space shall be provided for every dwelling and for every transient guest room so each building with twelve (12) rooming units would require 13 parking spaces (1 per dwelling and 1 per guest room). That means that two (2) buildings would require 26 parking spaces and six buildings would require 78 parking spaces. None of the designs submitted meet these parking requirements.

## VI Code

### Title 29

#### § 225. Definitions

57) *Hotels & guesthouses.* Any building containing more than five (5) guest rooms used, or intended to be used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests, whether rent is paid in money, goods, labor or otherwise. It does not include buildings in which sleeping accommodations are provided for persons who are harbored or detained to receive medical, charitable or other care or treatment or provided for persons who are involuntarily detained under legal restraint.

(61) *Lodging house.* A "lodging house" or rooming house is a building other than a hotel where lodging is provided for five (5) or more persons for compensation pursuant to previous arrangements but not open to the public or transients and meals and drinks are not served.

81) *Rooming house.* See "Lodging house".

82) *Rooming unit.* Any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

#### § 293. Definitions

*Rooming house* - Any dwelling, or part thereof, containing not more than nine rooming units, in which space is rented by the owner to three or more persons who are not relatives of the owner.

*Rooming unit.* Any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

#### § 230. Off-street parking and loading regulations

##### Parking areas: development and maintenance

(l) Every parcel of land hereafter used as a public or private parking area shall be developed and maintained by the owner in accordance with the following requirements:

- 1) *Screening and landscaping.* Off-street parking for more than five (5) vehicles or any use in the TABLE OF PERMITTED USES, subject to conditions, shall be effectively screened on each side which adjoins or faces premises situated in any residential district, or premises used for residential purposes in any district, by a

fence of acceptable design, wall or compact hedge. Such fence, wall or hedge shall be not less than four (4) feet and no solid portion shall be more than six (6) feet in height and shall be maintained in good condition and shall provide year-round screening. The space, if any, between such fence, wall or hedge and the side lot line of adjoining premises shall be landscaped with grass, hardy shrubs or suitable ground cover and maintained in good condition.

2) *Minimum distances and setbacks.* No part of any parking area for more than five (5) vehicles or for any use in the TABLE OF PERMITTED USES, subject to conditions, shall be closer than ten (10) feet to any dwelling, school, hospital or other institution for human care. If not on the same lot with a principal structure, the parking area shall not be located within the front yard or side street yard required for such structure.

(n) Subject to the provisions of subsection (m) one (1) off-street parking space shall be provided for each dwelling unit, transient guest room, or other separate residential accommodation for individuals on any premises in any district.