

OPPOSITION STATEMENT submitted for PUBLIC HEARING SCHEDULED FOR MAY 22, 2023 @ 1:00 P.M.
on
APPLICATION ZAJ-23-1 by GIFFT HILL LAND, LLC to REZONE PARCEL 9-3 ESTATE GLUCKSBERG,
ST. JOHN from R-2 to R-4

Submitted by: Michael Milne, concerned St. John resident and architect at Barefoot Design Group, LLC

Position: I strongly **OPPOSE** the request by Giffit Hill Land, LLC (“GHL”) to re-zone Parcel 9-3 Glucksberg from R-2 to R-4 (the “GHL Application”) and urge DPNR to transmit a report to the Legislature recommending that the GHL Application be **DENIED**, and stating that the property should not be re-zoned from R3 to R-4 nor be issued a variance with conditions permitting expanded use. For the following reasons, the GHL Application for rezoning must be **DENIED**:

1. GHL’s building plans under any zoning category do not comply with the law

GHL obtained earth change permits and building permits to construct “two (2) single family dwellings” while actually applying to construct two (2) “12 unit group living buildings”. Each building will consist of twelve (12) prefabricated container apartments (2 units per 40’ container) surrounding a communal kitchen space (no living space). Each of the 12 units will be separately-metered for electricity and water. I have appealed the decision to issue these permits to the Board of Land Use Appeals, docketed as BLUA Appeal No. 002-2023, in part because the project does not comply with the current R-2 zoning, which does not allow multi-family construction, and in addition because the submission is inadequate for approval.

The laws and regulations that govern multi-family construction differ from the laws governing single-family construction with respect to everything from building codes, fire safety, permit fees, waste disposal, parking and traffic standards, and tax obligations. GHL is circumventing the specific laws governing planned area development for mobile home parks and apartment houses/guesthouses/hotels, *see e.g.*, 229 V.I.C. §§ 231, 232, by marketing the project as “communal living” in a single-family home. This is disingenuous because the project actually is substandard multi-family housing or short-term rental units. Details of the many violations that render this project unfit to be permitted are at issue in the BLUA appeal.

Although GHL in fact requested permits for two (2) “twelve (12) group living buildings”, DPNR granted permits for two (2) “single-family dwellings”, because GHL argued that the definition of “family” is vague. However, the VI Code is very clear and intentionally differentiates between residential dwellings and guest houses, hotels and apartment houses. This unprecedented interpretation of the law potentially affects almost every portion of the codes that govern development. Under this new interpretation, any apartment or hotel, even with hundreds of rooms or apartments, could be presented as a “single-family residence” eliminating legitimate government oversight, drastically cutting permit fees and property taxes, and allowing various types of high density construction in any zoning. Perhaps to undercut the pending BLUA appeal, GHL is now applying for a zoning change that would allow it to construct many more units, perhaps over 100. GHL has conceded that its intention was never to build “communal living residences” but instead was to build dozens inexpensive multi-family housing apartments crammed onto just one-acre of land. The GHL Application seeks approval of illegal spot-zoning in circumvention of the laws put in place for the safety and welfare of our community and must be **DENIED**.

2. Rezoning 9-3 Glucksberg to R-4 is Illegal Spot-Zoning that only benefits GHL.

Parcel 9-3 Glucksberg consists of one-acre of land which abuts a main road (Gifft Hill Road), on the other side of which lies Estate Bellevue, which is zoned R-1 and is largely undeveloped. Within Estate Glucksberg, the developed parcels comply with existing zoning laws and are single-family homes. The proposed rezoning of 9-13 Estate Glucksberg to R4 is both inappropriate and illegal; it is not in harmony with St. John’s comprehensive plan and is not in keeping with the character of the district. There has been no change in the neighborhood that would encourage the reclassification of 9-3 Glucksberg, especially from R-2 to R-4, so that GHL can build a 70+ unit residential community, or even as many as 100+ units if GHL builds to three stories, which is allowed by R-4. Each individual living unit is tiny, making them marketable to only single individuals, not families with children or elderly parents. The proposed rent makes each unit more expensive per square foot than other rental options in St. John. Overall, this project does nothing to improve the general welfare of the community; rezoning this 1-acre parcel to R-4 in support of this development would be for the sole benefit of GHL and to the detriment of the St. John community as a whole. It would cause immense congestion on the streets, overcrowding in the neighborhood, undue congestion of population in an area without adequate public transportation, water, sewerage, and increase the population density beyond acceptable limits.

“Zoning regulations constitute a valid exercise of police power when they have a rational relation to the public health, safety, or general welfare.” *Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926). Zoning laws “establish standards and policies concerning development of land which may be used in helping to achieve the goals of a General Development Plan” and which “reflect and express a sense of community value toward its physical environment including the value appearance and congenial arrangement for conduct of trade, industry, residence and other uses of the land necessary to the community’s well-being”. 29 V.I.C. § 221. Importantly, “zoning regulations promote the health, safety, morals and general welfare of the community” by governing types of construction and use of land and water:

to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air; **to prevent overcrowding of land; to avoid undue congestion of population and to facilitate the adequate provision of transportation, water, sewerage,** schools, parks and other public requirements of the community; by . . . **regulating and limiting lot occupancy and population density;** providing minimum size yards and other open spaces; **establishing off-street parking** and loading requirements

29 V.I.C. § 222 (emphasis added).

Zoning regulations were established by the government decades ago for the wellbeing of the community. GHL’s request to rezone a one-acre parcel of land from a low density residential zoning category to a medium density zoning in order to construct 74 housing units (108 if the same design expanded to three stories as allowed by R-4) is outrageous. While the government has a legitimate interest in encouraging developers to build safe, reasonably-priced housing, GHL’s proposed project for 9-3 Glucksberg is neither safe, affordable nor reasonably designed to target long-term tenants in need of housing on St. John. Granting this request to rezone 9-3 Glucksberg, located in an established single-family residential neighborhood, from R-2 to R-4 lacks any rational relationship to a legitimate governmental interest. The substandard housing project does not benefit the community in accordance with a comprehensive plan, but is merely for the benefit of a single landowner. Notably, the only other comparably sized parcel of land currently for sale on St. John that allows multi-family development (R-3),

is listed for nearly \$2 million. As such, we can conclude that this GHZ zoning change could quadruple the value of GHZ's land, while not providing any true benefit to the community. A decision to re-zone this one small parcel would be arbitrary, unreasonable, and an abuse of discretion, constituting illegal spot zoning.

3. The sheer density of the proposed project renders it unsafe; rezoning the parcel of land from R-2 to R-4 to allow construction of this high-density project is against the welfare of the people.

The proposed project design will do nothing to address the need for affordable family housing on St. John. The project envisions tiny studio apartments of 160 sqft, of enclosed space per occupant (one room with a single bed and a kitchenette). This is not feasible living space for couples and families, but appears to only provide overpriced dormitory accommodations for single workers. This type of housing is not what St John needs or wants. How many individuals are interested in this "communal" living arrangement for long-term? For property designated residential, there are 5 different categories, with each category having uses as a matter of right and other uses that are permitted subject to specific conditions.

- R-1 is Residential Low Density Zone that permits dwellings and schools as a matter of right.
- R-2 is Residential Low Density One and Two-Family Zone that permits art galleries, dwellings libraries, schools and swimming pools as a matter of right.
- R-4 is Residential Medium Density Zone that permits as of right group dwellings and rooming & boarding houses, and youth correctional institutions.

Generally speaking, changing the zoning of a single parcel of land to be used for higher density construction, where it is surrounded by low density construction, is a huge change that negatively affects the entire community. The effects of such a change are magnified where sheer volume of the proposed density change is **25 times** more than the closest multi-family housing community.

The density of the proposed project also renders it unsafe, which is another reason why re-zoning the parcel of land from R-2 to R-4 to allow construction of this high-density project is against the welfare of the people. A look at Bellevue Village Apartments, the closest multi-family project (zoned R-1 Low Density Zone), is a stark contrast in quality, safety and standards compared to what GHZ intends to construct. Bellevue Village Apartments has 72 units (36 duplexes) compared to GHZ's proposed 73 units; *but Bellevue Village Apartments is located on 25.5 acres while GHZ is on only 1 acre*. This results in 25 times the density (dwelling units per acre). Bellevue Village has 1, 2, 3, and 4-bedroom apartments, conducive to individuals and families, and provides parking for each unit, lawns, gardens, and a community center. GHZ offers nothing to offset the zoning, fails to meet statutory parking requirements by providing only 20 parking spaces for its proposed 73 units, and no lawn, gardens, or community center. Also, R-4 zoning allows construction of buildings up to three stories, which would permit GHZ to add another floor to its design, further increasing the density of this one-acre parcel of land to 37 times the density of Bellevue, if the same design is expanded to three stories.

Bellevue's rents are below \$1,000/month for multiple bedrooms with utilities while GHZ's rents are to start at \$1,600/month plus utilities and fees. What happens if GHZ is unable to find individuals willing to pay \$1,600 a month, plus utilities, for less than 160 sq. ft. of enclosed personal space? Especially when that same tenant could find 2 or 3 other housemates each paying the same amount (combined monthly rent of \$4,800 to \$6,400) and lease an entire house, with a pool, living area, etc.? The move to conversion to short-term rentals for these units is obvious, given the buildings configuration and the increased likelihood of success among short-term renters. All without having to comply with appropriate laws and building regulations.

4. This proposed construction will not result in “affordable” housing.

Per U.S. Department of Housing and Urban Development (“HUD”) the term ‘affordable housing’ is generally defined as housing on which the occupant is paying no more than 30 percent of gross income for housing costs, including utilities. Per the 2020 Census, the median household income for the U.S. Virgin Islands was \$40,408 per year. Therefore, to be considered affordable housing, the monthly cost of rent and utilities should amount to about \$1,010.20 per month.

Put another way, if the rent is \$1,600 a month per person (not taking into consideration utilities), an individual would need to earn a minimum of \$64,000 a year in order for that rent to be considered affordable for them. That is \$5,333.33/month or \$33.33/hour at 40 hours/week. According to V.I. Electronic Workforce System(vidolviews.org), the occupational annual wage rates in 2021 for the following jobs indicate that target renters would not be able to afford this housing:

Job Type	Entry-Level Annual Wage	Experienced-Level Annual Wage
Education, Training, and Library	\$37,390	\$61,210
Community and Social Services	\$36,700	\$59,360
Healthcare Support	\$29,400	\$37,240
Healthcare Practitioners and Technical	\$36,910	\$79,360
Food Preparation and Serving Related	\$23,870	\$31,280

While the specifications of the pre-fabricated container units have not been provided, as is required by IRC (R104.11 and ISO/TR 15070) for alternative construction methods, the habitable area of each unit does not qualify “housing” pursuant to the VI Code. An efficiency apartment (one room) must have a minimum habitable area of 150sqft not including the kitchenette or bathroom. 26 V.I.C. § 301(c). The GHL units occupy an exterior footprint of 160sqft (8’x20’ or half a container) less a 40sqft bath and less wall thickness resulting in a total habitable area of less than 102sqft. After including space for the kitchenette, there is less than 80sqft of habitable area. These units all have exterior doors and are separate from any other habitable space so they cannot be considered as “bedrooms” within a “residence”. Therefore, no matter the zoning, these units are closer to a detention center than housing and cannot legally be made available for lease.

Conclusion

GHL’s presented design violates multiple laws relating to high-density living accommodations and is unfit to serve as suitable housing to meet the needs of St. John residents. Furthermore, GHL admits that the Conceptual Design is not the final design so almost any concept could replace it, including a design worse than stacked shipping containers. Instead the GHL container dormitory concept provides units that are neither affordable nor housing, with the only beneficiary of the requested zoning change being GHL. The proposal is not in keeping with the established character of the district or its particular use as low-density residential living. GHL’s application to change the zoning of its small one-acre parcel of land from R-2 to R-4 constitutes illegal spot zoning, and must be denied.

The following photographs depict what GHL plans to impose on St. John:



