

MEMORANDUM

TO: Pepper Pike City Council
Richard Bain, Mayor

FROM: George Smerigan, City Planner

DATE: July 11, 2020

RE: Axiom / Beech Brook
Analysis of Proposed Text Amendment



I earlier provided City Council with a summary of the latest changes to the proposed text amendment that were submitted by Axiom. That earlier memorandum also addressed the latest version of the development plan. Pursuant to Council's request, I am now providing my professional planning analysis of Axiom's proposed text amendment with special attention to the impacts of the latest changes to their document. I am not addressing the latest development plan, as that is not what is formally before City Council for action, but merely a representation of how they might proceed if the text and map amendments are approved. I have concentrated on the text amendment, as that is what will determine the range of future development options and the extent of the City's control over those options.

As I indicated in the June 3rd memorandum, their approach continues to be an "overlay district" that would apply to three (3) parcels of land (Beech Brook, New Directions, and the Parker property). Under the proposed amendment, the zoning classification of all three parcels would continue to be U-2 Public Buildings District (the underlying zoning classification) and all three properties would continue to be subject to the standards and provisions of the U-2 Public Buildings District. Only subsequent to submission and approval of a "unified and cohesive development plan" for their entire property would any one of the three property owners be permitted to develop their property with the uses and standards set forth in the overlay district. Once a "Master Development Plan" for any of the three parcels has been approved, the property can only be developed consistent with that Master Development Plan.

There is nothing unique or special about the overlay district zoning technique. Overlay districts are a well-recognized zoning technique that has been used by many communities, of various sizes and complexities, for many years. As with any zoning methodology, the success of the tool is directly dependent on how well it is written and administered. While the applicants could have approached rezoning these properties in any one of a number of ways, an overlay district is the approach or technique they have selected. There is nothing inherently wrong, inappropriate, or problematic about the use of an overlay district on the subject sites, so the use of this technique should not be an issue.

The overlay district in this instance is designed to permit “mixed-use” development of the properties. While that term is sometimes used in different ways, in the current context it provides for the mixing or intermingling of commercial (retail, restaurant, etc.), office, and residential uses within a single zoning classification and even within a single building (i.e. vertical integration), but only pursuant to an overall master development plan. The most recent modifications to the proposed text amendment include a modification to the definition of “Mixed-Use” that appears to eliminate the inclusion of “multi-family dwelling units” within the district. I note, however, that the language still permits vertically integrated buildings with commercial or office uses on the first floor. Typically this language would infer that dwellings could be located above the first floor. Such dwelling would be considered multi-family dwellings. If that is not the intent, the language will need to be revised to clarify that point, otherwise, multi-family dwellings have not actually been eliminated except in single use or stand alone multi-family buildings. At the very least, the current language is awkward and subject to varying interpretation. In general, the elimination of multi-family dwellings is more consistent with maintaining the established character of Pepper Pike. It would be appropriate to modify the language to better clarify the handling of multi-family dwellings and vertically integrated buildings.

The applicants have included the term “townhouse” in the new draft. It is unclear why that new terminology is being introduced. The previous draft permitted single-family attached dwellings, which incorporates any arrangement of side-by-side attachment, including townhouses. The new language has produced less rather than more clarity.

The new draft does include a limitation of not more than four (4) single-family attached units connected in a single building. This additional provision is an enhancement to the draft amendment that helps to ensure that the scale or massing of the attached dwelling unit buildings is limited. It also limits the number of interior units, which tend to be less desirable than end units. Exceptionally long buildings, particularly ones that are three stories tall, can create a number of issues, can act as visual and physical barriers, and often have limited aesthetic appeal. The limitation on the length of non-residential buildings that is in the draft language would not apply to buildings consisting only of single-family attached dwellings, so this provision is an important additional design control feature.

The proposed Code now provides for only three (3) Subareas as opposed to the previous four (4) Subareas. Former Subarea C has been eliminated and the new provisions provide that only single-family attached dwellings, single-family detached dwellings, and community buildings are to be located south of Willey Creek. This change essentially provides for all of the mixture of non-residential uses to occur north of Willey Creek. The southern portion of the property would solely consist of single-family residential dwellings. This change is positive in that the southern portion of Beech Brook abuts other residential properties, while the north portion abuts and is in close proximity to non-residential uses and the City's limited retail center. This change limits southern expansion of the non-residential components of the development. If this change to the text amendment was coupled with a provision that prohibited residential driveways directly onto Lander Road south of Willey Creek, (in other words, require residential driveways to be off of streets that are internal to the project as shown on the development plan), it could minimize visual impacts and help maintain traffic flow on Lander Road. While the applicants appear to be taking that approach, and while this approach could be addressed in development plan review, nothing in the code language as written specifically prohibits curb cuts on Lander for individual homes.

The new amendment language retains the maximum size limitation of 12,000 square feet for any individual retail store and adds a maximum limit on the total amount of all retail uses of 40,000 square feet. However, the new language also reorganizes the list of permitted non-residential uses so that "Office, Service, and Institutional Uses" are not subject to either of those limitations. As drafted there is no specific square footage cap on the amount of non-residential uses other than retail stores. There is obviously still a maximum effective limit on non-residential uses based on the setbacks and the parking requirements, but that effective limit would depend on the design of a specific development plan. The proffered development plan, for example, contains a total of 195,500 square feet of non-residential (i.e. retail, service, office, entertainment, etc.) space. If the intent is to establish a specific limitation on the maximum amount of commercial or non-residential space, then additional text language would be required.

By the same token, there is no minimum amount of retail, service, or office space that is required to be constructed as part of any approved development plan. In other words, based on the current draft amendment, it would be possible to submit a plan that was 100% residential and still be compliant with the minimum code provisions, if not with the overall spirit and intent of the regulation. While the current contract owner may be completely genuine about how they intend to develop the property, there is no guarantee that they will actually be the final developers of the property. Circumstances change and someone else could be in control of the property in the future. So the only real control of future development is the specific language of the Zoning Code.

If the City truly desires a mixed-use development, which makes sound land use planning sense for fiscal impact reasons, then the lack of a minimum commercial or non-residential component could be considered a flaw or a loophole in the design of the regulation. Without an appropriate level of commercial and office components that will add to the City's economic base, this would become simply a much higher density residential district. An intensive residential development does not provide the same advantages or returns to the City and the school system that are accrued from the incorporation of non-residential uses. The solution to this would be a provision requiring a minimum percentage of the land use to be commercial or non-residential in order to create a balance of land uses and to produce a true mixed-use development.

The latest version of the amendment reduces the permitted maximum density from five (5) dwelling units per acre to four (4) dwelling units per acre. It maintains the provision inserted by the Planning Commission that the riparian corridor, as defined by the setback requirement, cannot be counted as part of the acreage for calculating density. Obviously this is a substantially higher density than is permitted under the City's U-1 Single Family Dwelling District, but less than what is permitted under the U-1A Townhouse District. The provision limiting the maximum percent of multi-family units has been eliminated, based on the elimination of multi-family dwellings (although that elimination is unclear as noted above). There is a requirement that one-half (50%) of all of the residential dwellings be detached single family homes. Under the old language one-half of the single family dwelling units had to be detached, now it is one-half of all of the dwelling units.

The percentages of open spaces have not been altered and a minimum of 30% of the entire land area is required to be open space. It should be noted that under the current U-2 District regulations, there is no minimum open space requirement and therefore only the riparian setback is currently required to be preserved or protected as open space. That area is significantly less than 30% of the total land area to be rezoned. Similarly, under the provisions of the U-1 District the creek and its riparian setbacks could be placed within the confines of individual building lots and there could be no common open space. The proposed overlay district text amendment and map amendment would provide greater environmental protection and preservation of open space, and would result in more common open land for the enjoyment of the City's residents, than would be provided or preserved by the current Zoning Code under the provisions of either the U-1 or U-2 Districts.

The maximum height of buildings has been modified. The number of stories has been increased from three (3) to three and one-half (3½), while the number of feet was reduced from forty-five (45) to forty (40). Specifically, single-family attached dwellings and "townhomes" are permitted to reach the new maximums. The necessity of this change is unclear since the height limitations were discussed at length before the Planning Commission. The minimum dwelling unit sizes have also been altered to simply refer to the existing minimum size standards for single-family detached

dwelling in the U-1 District and the minimum townhouse sizes set forth in the U-1A District. A consequence of this change is that any future modification of the size requirement in either of those districts would effectively amend the overlay district as well.

The requirement that garage doors not face the street has been altered to permit front facing garages if the garage entry is setback from the front wall of the dwelling. However, the requirement to have “side, courtyard or rear entry” garages was not modified, which results in conflicting provisions. The change to permit front facing garages probably makes sense given that the nature of the southern portion of the development is morphing to become more of a single-family cluster development. With the tighter clustering of units, it becomes more difficult to have side or rear facing garages. There is no standard established in the text for how far behind the front wall of the dwelling the garage entry must be placed in order to be compliant. Therefore it could be construed that a one-inch offset would be in compliance. This provision requires greater specificity.

The new plan indicates the connector road located entirely north of Willey Creek (as was originally conceived by Don Sheehy) eliminating the bridge crossing for vehicular traffic. The existing pedestrian bridge is still shown. Nothing in the text amendment would prohibit submission of a future development plan that returned to a vehicular bridge crossing the creek. If Council desires to minimize intrusions into the riparian corridor and ensure that the connector road remains north of Willey Creek, a provision restricting a street crossing through the riparian corridor would need to be added to the text amendment. Such a provision would further limit the potential environmental impacts associated with the development and ensure that the riparian corridor remains untouched. Again, while I do not question the intentions of the current applicants, they may or may not be the eventual developers of the property and the language of the Code will be the control. It may be possible to address this issue as part of development plan approval, but the City’s strongest control measure is the language of the text amendment.

The development plan submission, review, and approval provisions remain unchanged in the latest draft amendment. Those provisions and procedures are consistent with good land use planning practices and, if properly applied and followed, provide an appropriate framework for analyzing and processing site development plans. They also provide for performance and maintenance bonds to ensure proper installation and functioning of infrastructure improvements. Overall, those provisions provide reasonable and appropriate procedures and controls as necessary for an overlay district approach to land development.

In summary, looking solely at the proposed text and map amendments, it is my professional opinion that a properly conceived mixed-use development of the subject properties could be a positive addition to the City of Pepper Pike that would provide

greater economic benefits to the City and schools, better environmental protections, and result in a preferable land use arrangement than further development of the properties under the current provisions of the U-2 Public Buildings District (understanding that we are engaged in evaluating and potentially amending those provisions). It is my professional opinion that, if the City is to have a mixed-use development, then the locational characteristics of the subject site make it the most appropriate place within the City to do so.

As noted above, the current draft of the text amendment language has some gaps and limitations that will need to be addressed as part of the approval of any development plan and/or development agreement. I think it is important to view the text amendment, what it permits and restricts and how it does so, separate from any development plan. Once put into place, it is the language of the text amendment that will control the future use of the land regardless of who the developer of the property might be or when that development occurs. The code language will establish the parameters to be used for approving or denying any future development plans.

I understand that everyone is focused on the proffered development plan, but that plan is not what is being approved if the text and map amendments are adopted. What is being approved is merely the capability to achieve that plan, but also the potential to achieve some other plan that may look substantially different. I appreciate that it is difficult for people who do not deal with code language and land development on a regular basis to visualize the potential end results based on a reading of the code language. If a specific plan is desired and demanded, then rezoning to a planned unit development district that locks in a specific plan might be a better alternative to an overlay district. It must be noted, however, that any large-scale development takes time to reach completion and that circumstances inevitably change during that gestation period. If development projects are to be successful, compete effectively in the marketplace, and retain their value over time, that typically means readdressing and adjusting the plan at some point. That ultimately means that the end plan is not identical to the initial plan that was promised. If those adjustments require a ballot issue, that may be problematic. Based on my experience, there are very few large planned developments that were not amended or modified at some point. For those reasons, I am comfortable with the overlay district approach, but only if the text amendment includes all of the requisite provisions to ensure that the actual end development reflects the desires of the City Council and the community.