

MEMORANDUM

To: Planning Commission

From: Emma Martin, Planner I EM

Date: August 14, 2020

Subject: VAR20-0001 Subdivision variance request to eliminate required public utility easements centered on all interior lot lines and interior to all perimeter lot lines, and a request to eliminate required dedication of open space for the proposed 9 lot Lee and Main Townhome subdivision, located on 0.609 acres at 201 S Main Street, 103 Lee Street, and 105 Lee Street (Tax Map Nos. 257- A 48 and 257- A 47) submitted by Laura Morillo of Draper Aden Associates (applicant) for Lee and Main Street LLC (property owner).

SUMMARY OF VARIANCE REQUESTS

Requests:	1. Request to eliminate required public utility easements centered on all interior lot lines and interior to all perimeter lot lines. 2. Request to eliminate required dedication of open space and eliminate fee in lieu requirement
Property Location:	201 S Main Street, 103 Lee Street, 105 Lee Street
Current Number of Lots:	2 Lots
Proposed Number of Lots:	9 Lots
Tax Parcel Numbers:	Tax Map Numbers 257-A 48 and 257-A 47
Property Owner:	Lee & Main Street LLC
Current Use:	Vacant, Single-Family Residential
Zoning:	Downtown Commercial
Surrounding Zoning:	North, South, and West: Downtown Commercial East: Office
Surrounding Land Use:	North: Religious Assembly, Office, Restaurant East: Office, Single-Family and Multi-Family Residential South: Retail, Office, Multi-Family, Hotel West: Retail, Vacant, Commercial
Future Land Use:	High Impact Commercial

BACKGROUND

The 0.609 acre parcels located at 201 S. Main Street, 103 Lee Street and 105 Lee Street were purchased by Lee & Main Street LLC in 2017. The property is zoned Downtown Commercial, consisting of two parcels of land with an existing commercial building, accessory building and two single-family homes. The existing building at 201 S. Main has parking on the side of the building adjacent to Lee Street. The single-family homes at 103 and 105 Lee Street have driveway access from Lee Street.

The proposed Lee and Main Townhome Subdivision property abuts three roadways, Lee Street, S. Main Street, and Church Street SE, as shown in the attached aerial.

A proposed conceptual subdivision layout has been submitted along with the variance requests and the applicant's justification for the variances (attached). A subdivision plat was submitted on March 26, 2020 and a review letter was sent to the applicant on May 7, 2020 with required revisions. A revised subdivision plat has not yet been submitted. The applicant has submitted a site plan that is currently undergoing its second review with the Town. The proposed layout is in conformance with the approved Certificate of Appropriateness dated May 23, 2019 and the Conditional Use Permit (CUP 19-0004) for the subject properties.

REQUEST

The applicant has requested two variances for the proposed 9 lot subdivision:

1. Request to eliminate required public utility easements (PUEs) centered on all interior lot lines and interior to all perimeter lot lines (Section 5-901)
2. Request to eliminate required dedication of open space and eliminate fee in lieu requirement (Sections 5-1001 & 5-1003)

The variances should be acted upon separately by the Planning Commission.

PLANNING COMMISSION REVIEW

Planning Commission reviews and approves or disapproves subdivisions of 50 lots or greater. Planning Commission is also responsible for review and approval or disapproval of any requested variances for subdivisions of six or more lots. The criteria for review of variances is detailed in sections 2-200 and 2-201 (attached) and considers unusual situations where the subdivision requirement results in a substantial injustice or hardship to the applicant. No variance shall be granted which is illegal or which would prejudice the health and safety of citizens of the Town.

The last variance that was heard by Planning Commission was a request for an increase in the maximum cul-de-sac length and a request to eliminate sidewalks for the 12 lot Chimneyhill Farms Subdivision project located at 2410 Toms Creek Road. The Chimneyhill Farms requests were denied by Planning Commission as they did not meet the criteria for hardship or unusual circumstances. An appeal was filed to Town Council and the request was approved with two conditions.

ANALYSIS OF REQUESTS

Public Utility Easement Variance

The Subdivision Ordinance requires conveyance of 15-foot wide common or shared public utility easements centered on all interior lot lines and interior to all perimeter lot lines, to franchised cable television operators furnishing cable television and public service corporations furnishing cable television, gas, telephone, and electric service to the subdivision.

These boundary and interior public utility easements are important because they facilitate the installation of franchised private utility services and could benefit not only the development but the surrounding community. These PUEs also provide access to utilities for maintenance.

There is no PUE proposed on the interior lot line separating the two largest lots in the subdivision due to the presence of proposed structures. There are no PUEs proposed along the East perimeter and North perimeter lot lines. In addition, there is no PUE from Main Street to Church Street along the South

perimeter line due to the presence of a retaining wall. The dedication of additional right-of-way along Lee Street for a total right-of-way width of 50 feet is required due to the subdivision. Staff supports the dedication of right-of-way and acknowledges that this inhibits the presence of a PUE along the North perimeter lot line.

As noted during the CUP process, this is an urban downtown development and space on the site is limited. At the time of historic review and the conditional use permit request, the applicant had not determined if the project would be subdivided or if a condominium association would be created. Staff discussed subdivision options with the applicant that would not require a variance, which included a lot line adjustment and creation of a condominium association rather than a subdivision of 9 lots.

The applicant has indicated this option is not viable upon discussion with the owners. Staff has been working with the applicant to ensure that PUEs are provided where possible within the constraints of the urban site. Given the proposed conceptual subdivision layout (attached), Staff feels that the public utilities are accessible for maintenance within the easements as shown.

The Planning Commission is asked to consider and make a determination of approval or denial of the applicant's variance request in this specific circumstance.

Variance for Required Open Space

Residential subdivision developments generate demands and needs for public services and facilities, including public parks, playgrounds, which are met by a reservation/dedication of land. The Subdivision Ordinance states that the subdivider shall dedicate for public use a minimum of 10% of the total land area of the subdivision. An alternative is offered in the Subdivision Ordinance that allows the subdivider to reserve 10% of the total land area of the subdivision for private common recreation space, which would be maintained by a condominium or homeowners association. In the event there is not a suitable or reasonable site within the subdivision for private or public land, the subdivider shall pay the Town an amount of money equal to the assessed value of 10% of the total land area of the subdivision. The existing site is located on two parcels at 201 S. Main Street and 105 Lee Street SE. The fee in lieu would be calculated by taking 10% of the assessed land value of parcel 1 and take 10% of the assessed land value of parcel 2 and adding the two together.

The site is urban in nature and could only accommodate open space in the front yard at 201 S. Main St. This location would not serve the purpose of residential open space. Staff discussed the fee in lieu option with the applicant since the dedication of land for open space on site would present problems for a potential restaurant tenant and the use of the front lawn of this parcel. Rather than provide the required open space or pay a fee in lieu, the applicant is requesting a variance to eliminate open space requirements. The applicant has not provided an explanation of why the fee in lieu cannot be paid.

While not directly related, the Planned Residential zoning district provides some guidance for reduction or elimination of open space. These considerations include proximity to downtown, walking distance to services and transit, proposed improvements to streetscape, and access to nearby public open space, among other things. The applicant may wish to provide justification using these and other criteria for the variance request.

The Planning Commission is asked to consider and make a determination of approval or denial of the applicant's variance request in this specific circumstance. The Planning Commission can consider requiring a lesser fee in lieu with a conditional approval. For example, the applicant could pay 60% of the value of the fee in lieu since the residential portion of the development accounts for 60% of the total

acreage of the site. Planning Commission should take action separately for the elimination of the 10% open space requirement **and** for the elimination or reduction of the fee in lieu.

PUBLIC INPUT

A notice for the variance request along with a copy of the variance application was mailed to the adjoining property owners per section 2-203 of the Subdivision Ordinance. Staff received email correspondence from an adjacent property owner that is attached. Any additional written comments or correspondence received will be attached to a memo and transmitted to the Planning Commission for their public hearing scheduled for September 1, 2020.

SUMMARY

The decision to approve or deny the requested subdivision variances is a discretionary decision of the Planning Commission, and reasons for denial or approval should be made. The Planning Commission will need to determine if each variance request would result in a substantial injustice and hardship to the applicant in the development of their subdivision. The Planning Commission may also grant a variance subject to specific conditions of approval.

APPEAL

Per section 2-205 of the subdivision ordinance, "Any person aggrieved by the agent's or Planning Commission's decision on a variance may appeal the action to the Town Council on written application filed with the Town Clerk within fourteen (14) days from the date of the decision. After at least ten (10) days' written notice to the adjoining landowners and to the applicant for the variance, the Town Council shall act by resolution to approve or deny the variance within thirty days from the receipt of the application for appeal. The decision of the Town Council in any case shall be final. During the pendency of the appeal, the approval of the subdivision shall be held in abeyance."

ATTACHMENTS

Variance request letter and conceptual layout dated June 29, 2020

Subdivision Ordinance Excerpts

Aerial Map

Email Correspondence From Adjacent Property Owner dated August 14, 2020



2206 South Main Street
Blacksburg, Virginia 24060
540.552.0444
www.daa.com

June 29, 2020

Ms. Emma Martin
Planner I
Town of Blacksburg
400 South Main Street
Blacksburg, VA 24060

**RE: Town of Blacksburg Subdivision Ordinance Variance Request
Lee and Main Subdivision – 201 South Main Street, Blacksburg, VA 24060**

Dear Ms. Martin:

On behalf of Lee and Main Street Development, this letter is provided to formally request a variance from Appendix B – Ordinance No. 1217, Division 9, Section 5-901 of the Town of Blacksburg Code of Ordinances. This section requires the developer to convey a 15-foot wide common or shared public utility easement centered on all interior lot lines and interior to all perimeter lot lines, to franchised cable television operators furnishing cable television and public service corporations furnishing cable television, gas, telephone, and electric service to the subdivision. This variance is a request to accommodate the subdivision of the townhomes within this urban development with 0-foot lot line setbacks, allowing the public utility easements to be located and as per the widths shown on the attached exhibit. The proposed retaining wall inhibits a continuous easement from Main Street to Church Street along the south property line. Additionally, the project proposes to dedicate additional right-of-way along Lee Street for a total right-of-way width of 50 feet.

Additionally, this letter is provided to formally request a variance from Appendix B- Ordinance 1217, Division 10, Section 5-1000 of the Town of Blacksburg Code of Ordinances. This section requires 10% of the entire parcel (before Subdividing) to serve as Dedicated Open Space. The nature of this development is Urban as stated above and cannot accommodate open space except on the Restaurant Parcel front lawn. This could potentially interfere with the Restaurant Owner and his future use of the front lawn of this parcel.

Ms. Emma Martin
June 23, 2020
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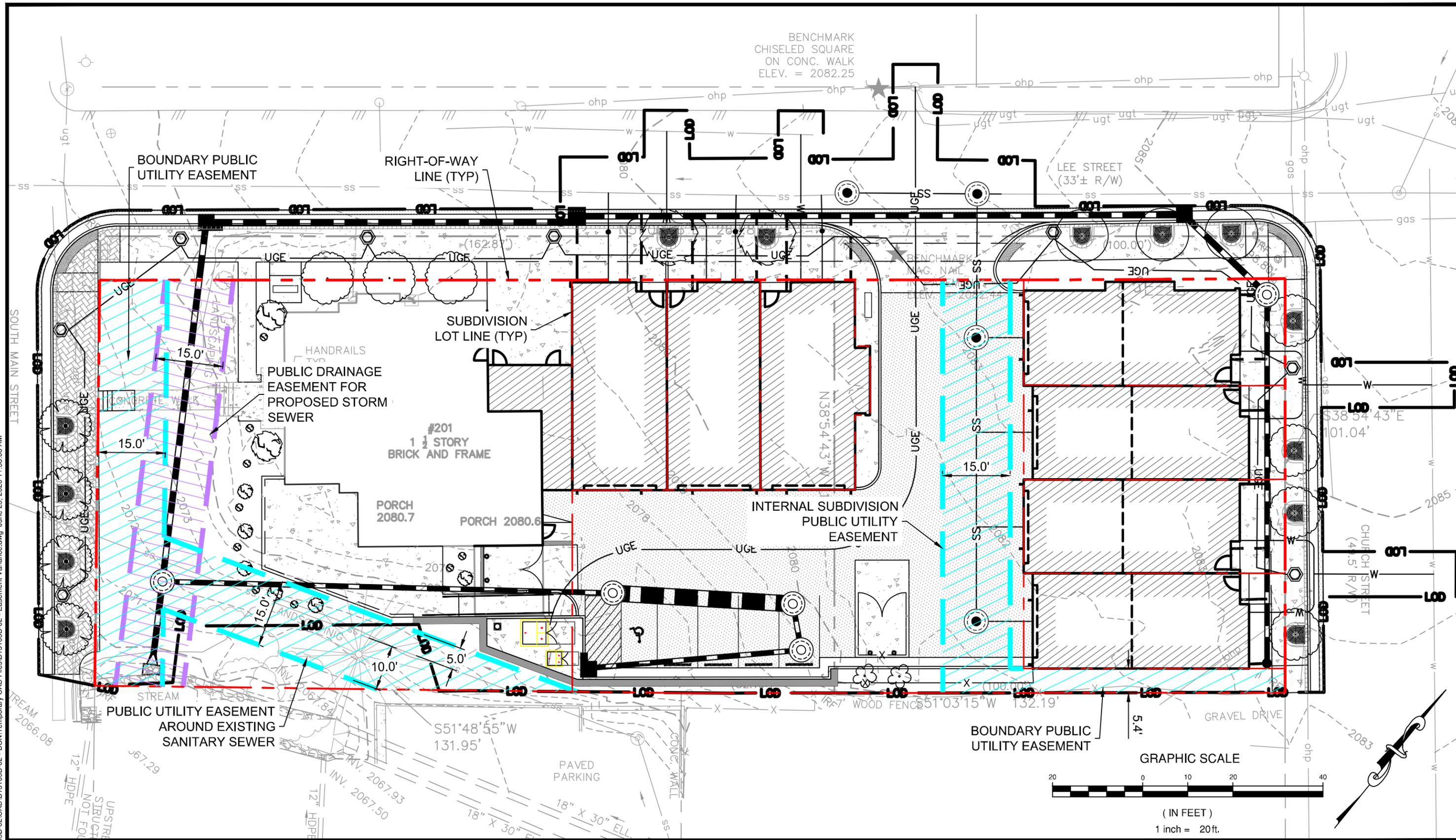
We appreciate your consideration of the above referenced variance request. Please feel free to contact me if you have any questions or would like additional information.

Sincerely,
Draper Aden Associates



Laura Morillo, P.E.
Senior Project Manager
Site Development & Infrastructure

cc: Ms. Kali Casper, Town of Blacksburg Planning Department
Mr. Bobby Kaufman and Jonathan Butt, Long and Foster
Ms. Nina Kempic, Engineer, Draper Aden Associates



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Draper Aden Associates
 Engineering • Surveying • Environmental Services
 2206 South Main Street Blacksburg, VA 24060
 540-552-0444 Fax: 540-552-0291
 Richmond, VA Charlottesville, VA Hampton Roads, VA
 Raleigh, NC Fayetteville, NC Northern Virginia Virginia Beach, VA

DESIGNED NRK
 DRAWN NRK
 CHECKED LMM
 DATE 06/22/2020

PUBLIC UTILITY EASEMENT VARIANCE REQUEST
 MAIN & LEE DEVELOPMENT
 201 SOUTH MAIN STREET, BLACKSBURG, VA

SCALE: 1" = 20'
 PROJECT: B15105B-02

FIGURE
 1

Subdivision Ordinance Excerpts

SUBDIVISION ORDINANCE, VARIANCE

Sec. 2-200. – Variances authorized.

“In cases of unusual situations or where strict adherence to the general regulations in this ordinance would result in substantial injustice or hardship, the agent or Planning Commission, as appropriate, may vary any of the provisions of this ordinance, under the terms, procedures, and conditions established in this division. No variance shall be granted which is illegal or which would prejudice the health and safety of citizens of this Town.”

Sec. 2-201. – Process.

“Each request for a variance from the terms of this ordinance shall be made in writing by the subdivider, stating specifically the provision from which the variance is requested, and the grounds therefor. Where possible, the subdivider should submit a request for a variance with the preliminary plat submission. All variance requests shall be accompanied by such plats, drawings, and engineering documents required by the agent to allow the agent or Planning Commission to understand and act on the variance.”

SUBDIVISION ORDINANCE REQUIREMENT FOR PUBLIC UTILITY EASEMENTS

Sec. 5-901. - Public utility easements.

“The subdivider shall convey a 15 foot wide common or shared public utility easement centered on all interior lot lines and interior to all perimeter lot lines, to franchised cable television operators furnishing cable television and public service corporations furnishing cable television, gas, telephone, and electric service to the subdivision. Such easements may be conveyed by reference on the final plat to a declaration of the terms and conditions of such common easements and recorded in the Montgomery County land records. The agent may require a wider easement where necessary to provide adequate separation between water, sewer, and/or stormwater management facilities.”

SUBDIVISION ORDINANCE REQUIREMENT FOR OPEN SPACE

Sec. 5-1000. - Purpose.

“Residential subdivision development generates demands and needs for public services and facilities. These include public parks and playgrounds the need for which is uniquely attributable to the subdivision. This need is best met on the site of the subdivision, by a reservation or dedication of land. This division shall set standards for the reservation or dedication of land for neighborhood parks and playgrounds. The requirements in this division shall be in addition to the requirements for public streets, easements, utilities, or rights-of-way.”

Sec. 5-1001. - Reservation required.

“The subdivider shall dedicate for public use a minimum of 10% of the total land area of the subdivision.”

Sec. 5-1002. - Private common space alternative.

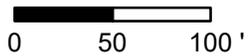
“Instead of dedicating land to the public as required by section 5-1001, above, the subdivider may reserve 10% of the total land area of the subdivision for private common recreation space. This area will be clearly identified on the subdivision plat. Any subdivider choosing this option shall form a homeowner's association for the maintenance of the space, and submit the homeowner's association documents to the agent or Planning Commission, as appropriate, for approval prior to approval of the final plat. The subdivider shall also submit plans for the park or playground to the agent.”

Sec. 5-1003. - Fee in lieu.

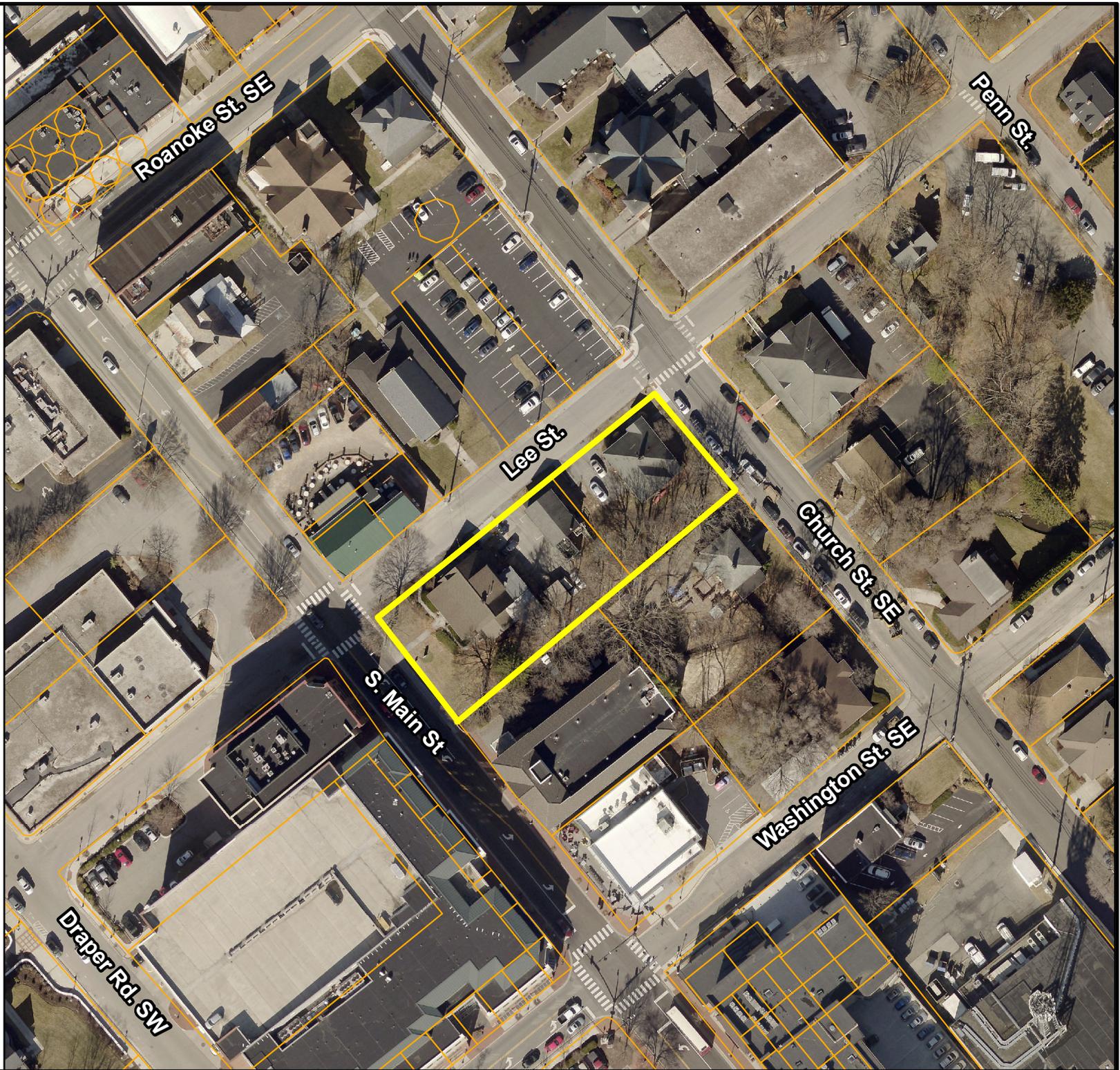
“When in the opinion of the agent or the Planning Commission, as appropriate, based on the purposes and standards of this division, there is not a suitable or reasonable site within the subdivision for public or private land as described in this section, the subdivider shall pay to the Town an amount of money equal to the assessed value of the land that would be required by section 5-1000, above. In determining suitability and reasonableness, the agent or Planning Commission shall consider the purpose of the proposed dedicated land, its location, accessibility and topography, composition and flooding potential. This fee must be paid prior to approval of the final subdivision plat.”

Lee and Main Subdivision Variance VAR20-0001

- Subject
Parcels
- Parcels



TOWN OF
Blacksburg
VIRGINIA



Emma Martin

From: RJ McGinnis <rjmcginnis@aol.com>
Sent: Friday, August 14, 2020 3:10 PM
To: Emma Martin
Subject: Proposed Development of 201 S Main St and 101/103 Lee Street

External Message Warning

August 14, 2020
Emma Martin
Planning Dept/Town of Blacksburg

The owners of the Main Street Inn located at 205 S Main Street in Blacksburg have received your letter (and attachments) dated August 7, 2020, concerning the proposed development of the properties at 201 S Main and 101/103 Lee Street.

We are in opposition to the proposed site plan for the development due to concerns that the added storm water from the developed adjacent property (which is at a higher elevation than the hotel property) will overload and erode the drainage ditch/stream on the hotel property that will create flooding problems that can restrict ingress/egress to the hotel from Main Street and to the parking area, affecting room occupancy.

In particular, we are concerned about the use of the drainage ditch/stream along the north side of the hotel property being used as the storm drainage storage area for the the adjacent development without any detention or retention of storm water drainage on their property, especially with the proposed development being an almost 100% imperious site due to a very tight and compacted development site plan with little or no property line setbacks or open space areas.

The drainage ditch/stream on our property can not handle any more storage (or flow) during heavy rains even after thousands of dollars were spent during construction in 2008, to improve and stabilize the ditch/stream with rocks and landscaping to prevent erosion caused by fast moving water during storms and also over \$100,000 in site improvements to direct water flow away from the hotel building area with the addition of a concrete structure and two large pipes to prevent the hotel property from being flooded by the undersized open drainage ditch on the adjacent/rear fraternity property.

Even with these drainage improvements the ditch/stream can be overloaded and flooded from upstream areas (Church St and beyond) during heavy rains which then floods the adjacent hotel property parking area before eventually flowing through an existing pipe under Main Street (to Draper St and beyond) which is either undersized and/or not properly maintained, restricting and slowing the water flow which can cause flooding problems for this area of Main Street, besides problems to the Main Street Inn.

Attached are pictures taken a few years ago after a heavy rain which shows storm water flowing through the ditch/stream on the hotel property. One picture is looking east at the twin pipes emerging from under the hotel parking area , another picture is looking west to where the water goes under Main Street, and the last picture is taken from the rear of the hotel property looking east over the adjacent fraternity property on Church St. Also attached are three pictures of severe flooding when the drainage ditch/stream overflowed onto the hotel parking areas and ingress/egress to Main Street, which was also flooded at the entrance to the hotel, preventing people from entering or leaving.

RJ McGinnis/Darlene K McGinnis
Main Street Inn Associates







