

## STAFF REPORT

TO: Town Council

DATE: Tuesday, May 23, 2023

PROJECT: Jade Creek Architecturally Integrated Subdivision (AIS)  
Special Use Permit-A

APPLICANT : KB Home  
4506 S Miami Boulevard  
Suite 100A  
Durham, NC 27703

PURPOSE: To acquire a Special Use Permit-A for the construction of a  
72 lot single family residential subdivision

EXISTING ZONING: R-20.

TAX MAP NUMBER: 9860-81-0089

LOCATION: 8522 Old NC 86

TRACT SIZE: 36.7 acres, approximately 1,598,590 sf

EXISTING LAND USE: Vacant

PROPOSED LAND USE: 1.110 Residential, Single Family Detached, One dwelling  
unit/lot

SURROUNDING  
LAND USES: North: R-R; *single-family residential*  
South: R-R; *single-family residential*  
West: R-R; *Old NC 86*  
East: R-20; *single-family residential*

ZONING HISTORY: R-20 Since 1980

## **EXECUTIVE SUMMARY**

Jade Creek is a proposed major subdivision of approximately 36 acres of land along Old NC 86. If approved, the developer will be allowed to create 72 new lots, each intended for a single-family home. New public roads and sidewalks, stormwater treatment features, recreation facilities including a playfield, and other amenities will be added to the site as well. The main entrance to the subdivision will be a new road connecting to Old NC 86, and a road connects to an existing road in the adjacent Lake Hogan Farms subdivision on the east side of the property as well. The development will include an affordable housing component consisting of homes constructed in the subdivision along with a payment in lieu provided to the town's Affordable Housing Special Revenue Fund. A minimum of 40% of the land must be set aside as common open space and a tree canopy of at least 40% must be left in place by way of existing vegetation and / or planting of new trees.

Additional details regarding the project are included in each respective section below.

## **ANALYSIS**

### **Background, Concept Plan**

#### **Background**

KB Home has submitted an application for the construction of a 72 lot Architecturally Integrated Subdivision residential development located at Old NC 86 (see Attachment B).

The Special Use Permit-A, if approved, would allow the creation of a 72 lot residential subdivision, with common shared open spaces, recreation amenities and supporting infrastructure.

The subject property is zoned R-20 and is about 36.7 acres in size. The subject parcel is identified by Orange County PIN 9860-81-0089. For a vicinity map, see cover sheet of Attachment B.

#### **Concept Plan**

Before formal plans were submitted, the applicant prepared a concept plan as required by Section 15-48.1 of the LUO. The conceptual design ordinance requires the designer to describe in detail their project and receive feedback from the Joint Advisory Boards. As required, the applicant provided written responses to the advisory board's comments (received from Affordable Housing Advisory Committee, Planning Board, Environmental Advisory Board, Stormwater Advisory Committee, and Appearance Commission). These written responses are attached (Attachment C).

### **Density, Affordable Housing**

Density.

The 72 units pursued by this project is the maximum base density the parcel allows in the R-20 zoning district (1 unit/20,000 sf of lot area) after deductions for site constraints are completed. The Affordable Housing Density Bonus provisions of the LUO would allow for more lots / units, but the applicant is choosing to construct the base level of 72 units.

Affordable Housing

Per the provisions of Section 15-54.1 of the LUO, the applicant is providing 15% affordable housing by way of combining both providing units on the ground, four total, and by agreeing to a payment-in-lieu for affordable housing as well. In this case, the applicant is choosing to pay the fee associated with the equivalent of eleven and a third (11.3) additional affordable units, partly in relation to being exempted from the size-restricted housing portion of the ordinance as further described below. This total of 15 affordable homes, by way of the combination, amounts to 20% of the total number of units credited as affordable.

Size-Restricted Units

Section 15-188 of the LUO includes provisions that require that the developer build a percentage of “size-limited” units between 1,350 and 1,100 square feet as a strategy to provide some affordable housing on the market. Section 15-188(j) provides an exemption from this requirement. This section stipulates that to qualify you need to provide at least 85% of the maximum number of affordable bonus units available utilizing the affordable housing density bonus (Section 15-182.4). The Land Use Ordinance allows payments-in-lieu to be counted as affordable units. In this instance the maximum number of units available is as follows:

- ☐ 1.5 x 72 units (maximum base density) = 108 possible total units with affordable housing density bonus.
- ☐  $108 - 72 = 36$  bonus units (each new market rate unit is required to have at least one affordable unit match) –This results in 18 bonus units and 18 affordable units.
- ☐ 85% of 18 affordable units = **15.3 units.**
- ☐ The applicant is proposing to build four (4) units and pay the equivalent of 11.3 affordable housing payments-in-lieu, thereby satisfying the exemption.

**CONCLUSION** – The project meets all the requirements of the Land Use Ordinance pertaining to density and affordable housing subject to conditions 1, 2, and 3 included in the staff recommendation below.

**Streets & Sidewalks, Connectivity, Traffic Analysis, Traffic Calming, Greenways  
Transit, Parking:**

Streets & Sidewalks

The proposed subdivision is accessed from its west side off of Old NC 86 and off its east side by an extension of Blocker Road within the existing Lake Hogan Farm subdivision. Within the subdivision, sub-collector streets are proposed to be built according to the public street standards of Article XIV of the LUO; this requires a minimum 26' wide

pavement section with curb and gutter, and sidewalks on both side of the street; no bike lanes are required.

#### Connectivity

As mentioned above, a road connection is shown to and from the existing road, Blocker Road, within the adjacent Lake Hogan Farms subdivision. This connection is shown in accordance with and in compliance with the town's Land Use Ordinance (LUO) requirements related to street connectivity. The town's connectivity policy and associated ordinance provisions are intended to support the development of an interconnected matrix of public streets. Specifically Section 15-214 of the LUO requires new subdivisions to tie into anticipated or existing streets outside the development, thereby providing "connectivity" to the Town's public road system.

#### Traffic Analysis

Vehicular traffic to the 72 new homes will be served off Old NC 86 and from Blocker Road as previously mentioned. This number of units did not require a formal traffic study based on NCDOT's requirements, but the applicant did agree to complete a traffic impact analysis (see Attachment D). The 72 units are expected to add approximately 746 trips per day onto the surrounding road network. Details about trip distribution, etc are noted in the analysis.

The plans have been reviewed by NCDOT and do show a road widening along Old NC 86 to install a left turn lane into the subdivision while traveling south and increased right turn capacity into the subdivision while traveling north. No signalization is proposed. The developer will need to obtain a driveway permit which may include additional encroachment agreements from Public Works and NCDOT prior to construction plan authorization.

#### Greenways

The applicant has agreed to and included on the plan a ten-foot wide asphalt greenway path running parallel to and along Old NC 86 from the north property line going southward to the point at which a stream feature creates difficulties with continuing the path. At the stream feature, the greenway turn and runs west to east to connect with a similar existing feature in the adjacent Lake Hogan Farms subdivision. The plans indicate that the greenway will be dedicated to public use.

#### Parking:

Per section 15-291 each lot will be required to park two cars safely outside of the street right-of-way. The parking spaces within the garage cannot be counted toward this requirement. Because of this the following condition is required:

- Prior to construction plan approval, the plans need to include a standard detail, per section 15-291 of the LUO, demonstrating that each lot can provide off-street parking sufficient to accommodate two cars, excluding those spaces provided within the garage.

The applicant has also included an EV charging area next to the proposed location for the mail kiosk, in accordance with LUO requirements.

CONCLUSION – The project meets all the requirements of the Land Use Ordinance pertaining to Streets & Sidewalks, Connectivity, Traffic Analysis, Traffic Calming, Greenways, Transit, & Parking, subject to conditions 4 and 5 included in the staff recommendation below.

### **Tree Protection, Street Trees, Tree Canopy**

#### **Tree Protection**

The site is largely covered with mix of hardwoods and pines, more hardwoods than anything based on the GIS tree layer. Large trees, as defined by the LUO, having a diameter of 18 inches or greater are to be retained whenever possible (15-316). A complete tree survey has been performed identified 58 such trees on this property, 30 of which will require removal to accommodate the installation of the road and related infrastructure as shown on the site plan. As required, the applicant has provided the attached tree removal justification letter (Attachment E).

#### **Street Trees**

The landscape plan proposes a variety of trees as identified on Sheet L1002 of the plans. These trees combine to demonstrate compliance with the street tree requirements of the LUO. Section 15-315 of the LUO provides guidelines for the planting and retention of trees adjacent-to and within street R/W's where an offer of dedication has been made to the Town. The landscape plan proposes a street tree layout primarily within the R/W with a fairly uniform pattern. However, because existing trees may be preserved during the construction process staff recommends that the proposed layout be considered only as a possible scheme and that the street tree requirement be revised as needed so that it may be field adjusted as conditions warrant. Additionally, the Town's policy is to require that 1/3<sup>rd</sup> of all such trees be evergreen.

#### **Tree Canopy**

Section 15-319 requires that residential developments maintain a tree canopy equivalent to 40% of the lot area. As shown on the project's Landscape Plan, the trees retained in conjunction with the newly planted trees will comply with this LUO section.

#### **Protective Road Buffer**

Section 15-312 requires a protective road buffer be left in place and / or planted to achieve a Type A screen on the development side of the subdivision that is an average of 100 feet. The buffer must be a minimum of 50 feet and a maximum of 200 feet for purposes of this calculation.

CONCLUSION – The project meets all the requirements of the Land Use Ordinance pertaining to Tree Protection, Street Trees, and Tree Canopies, subject to condition 6 included in the staff recommendation below.

## **Drainage and Water Quality, Stormwater Bonding, Stream Buffers and Floodplain, Grading, Erosion Control, and Phasing**

### **Drainage and Water Quality**

Section 15-263 of the LUO establishes stormwater management criteria that must be met for the project. In particular, the applicant must meet stormwater runoff standards with respect to water quality, quantity, and volume.

To this end, the grading and drainage plan show a system of curb and gutter, catch basins, pipes feeding into two stormwater wetland ponds that will treat the water in accordance with the applicable LUO standards, including the post-development discharge rates for storm events identified in the LUO, not increasing the 1% chance flood elevation on upstream properties, and stormwater volume control.

Relative to the Town satisfying state requirements pertaining to the National Pollutant Discharge Elimination System (NPDES) Phase II permit, the following conditions are required:

- That the applicant shall provide to the Zoning Division, prior to the recordation of the final plat for the project or before the release of a bond if some features are not yet in place at the time of the recording of the final plat, Mylar and digital as-builts for the stormwater features of the project. Digital as-builts shall be in PDF format and shall include a base map of the whole project and all separate plan sheets. As-built PDF files shall include all layers or tables containing storm drainage features. Storm drainage features will be clearly delineated in a data table. The data will be tied to horizontal controls.
- Per Section 15-263.1, that the developer shall include a detailed stormwater system maintenance plan, specifying responsible entity and schedule. The plan shall include scheduled maintenance activities for each stormwater BMP in the development, performance evaluation protocol, and frequency of self-reporting requirements (including a proposed self-reporting form) on maintenance and performance. The plan and supporting documentation shall be submitted to Town engineer and Stormwater Utility staff for approval prior to construction plan approval.

### **Stormwater Bonding**

Section 15-263 (i) enables the Town to require the developer post a security to the Town to assure that the stormwater BMPs perform as designed; because of this, the following condition is recommended.

- That, prior to issuance of a CO, a final plat, or the certification of a stormwater BMP, the applicant shall submit a performance security to be posted and held by the Town for a period of two years per the provisions of Section 15-263(i).

### **Stream Buffers and Floodplain**

The proposed grading and stormwater plan does not encroach into stream buffers or floodplain area on the property.

### Erosion Control

An erosion control plan has been provided which is provisionally satisfactory to Orange County Erosion Control. Additional details will be provided as part of the Construction Plan review process.

### Phasing

The project is not phased.

CONCLUSION – The project meets all the requirements of the Land Use Ordinance pertaining to Drainage and Water Quality, Stormwater Bonding, Stream Buffers, Grading, Erosion Control, and Phasing, subject to conditions 7, 8, and 9 included in the staff recommendation below.

## **Utilities, Fire Safety, Lighting, Refuse Collection**

### Utilities

The water and sewer plans have been reviewed by OWASA and meet with their general approval. OWASA will review the plans in greater detail during construction plan review.

Regarding electric and gas, utilities, the applicant has submitted letters by the respective providers indicating that they can serve the development.

Per Section 15-246 of the LUO, the plans must specify that all electric, gas, telephone, and cable television lines are to be located underground in accordance with the specifications and policies of the respective utility companies.

The Public Works Department prefers to receive written confirmation from the electrical utility prior to construction plan approval.

### Fire Safety

The plans have been reviewed and provisionally approved by the Fire Department subject to further review during construction plans.

Fire flow calculations must be submitted and approved by the Town Engineer and Fire Department prior to construction plan approval.

### Lighting

The Town's Street Lighting Policy regulates the lighting requirements for the proposed new street. To this end the applicant has proposed street lights that satisfy the Town's current requirements. Proposed is a decorative pole, which will need to be reviewed in more detail and approved by the Public Works Department before the construction plans can be approved.

### Refuse Collection

The project's waste arrangements have been reviewed by both Public Works and Orange County. The Town and County will provide trash and recycling collection services for the development while the County will be involved in managing construction waste.

Waste management during construction requires from the County an approved Solid Waste Management Plan as well as a permit. The Solid Waste Management Plans and permit will be obtained prior to construction.

CONCLUSION – The project meets all the requirements of the Land Use Ordinance pertaining to Utilities, Fire Safety, Lighting and Refuse Collection subject to conditions 10 and 11 included in the staff recommendation below.

### **Open Space, Recreation,**

#### **Open Space**

Per the provisions of 15-198, every residential development is required to set aside at least 40% of the total area of the development in permanent open space. To this end, the applicant has provided compact lots in an efficient arrangement leaving undeveloped as open space, 61% of the property.

#### **Recreation**

The proposed 72 residential dwelling units combine to require 748.08 recreation points, per Section 15-196 of the LUO. The applicant satisfies this requirement by providing a total of 1,113.84 points as detailed on the cover sheet of the plans. As recommended per 15-196-f, 10% of the amenities are suitable for children under the age of 12; with the proposed play equipment providing sufficient points to exceed this requirement. Other proposed recreation amenities include a playfield accessed by a mulch path and boardwalk, and walking trails and a greenway along Old NC 86, and a gathering / art space in the center of the development.

CONCLUSION – The project meets all the requirements of the Land Use Ordinance pertaining to Open Space and Recreation subject to conditions as needed.

### **Miscellaneous**

#### **Construction Management**

Prior to construction plan approval the Town will inform the applicant and contractor of the requirements of the Town Code pertaining to construction noise and hours of operation and obstructing or excavating within public street rights of way. Section 15-49 (c-1) further enables the Town to require the applicant submit a construction management plan prior to construction plan approval.

#### **Architectural Standards**

The recommended architectural standards provisions of Section 15-177 of the LUO uses examples and descriptions of the Town's existing "vernacular" housing stock to exemplify coherent design standards. These standards are considered recommended due to changes in the state legislature that prohibit municipalities from regulating architectural design. The intention of this section is to support cohesive building design that is either in the Carrboro vernacular "style", or, is of another equally cohesive design language. The applicant has submitted a document showing illustrative elevations for the project (Attachment F).



Voluntary Annexation

The applicant has indicated that they will apply for voluntary annexation of the property into the municipal limits if the project is approved.

CAPS

Per Article IV, Part 4 of the LUO, the applicant must receive the required Certificate(s) of Adequacy of Public School Facilities (CAPS) from the Chapel Hill Carrboro City Schools District prior to construction plan approval.

Neighborhood Information Meeting

The applicant conducted a neighborhood information meeting on October 11, 2022. Some amount of dialogue has occurred between the applicant and residents of Lake Hogan Farms as well, both before and after the NIM, and responses to earlier comments received from them are included in Attachment C. Residents and / or the applicant may choose to speak during the public hearing regarding the current status of discussions.

Homeowner's Association Documents

Prior to construction plan approval Homeowner's Associations Declarations and Covenants will need to be submitted to the Town for review and approval by the Town Attorney. Section 15-83.36 of the LUO specifically prevents these documents from prohibiting "devices that generate or conserve energy or water." Photovoltaic panels and clotheslines are such devices that cannot be regulated by homeowner's associations.

**CONCLUSION** – The project meets all the requirements of the Land Use Ordinance pertaining to categories listed above subject to conditions 12, 13, and 14 included in the staff recommendation below.

**STAFF RECOMMENDATIONS:**

Town staff recommends that the Advisory Boards offer comments as needed (including review of the following staff recommendations) and prepare summary recommendations for a Special Use Permit-A to allow the construction of the proposed Jade Creek AIS. Staff recommendations are as follows:

1. That Certificates of Occupancy for the final four units may not be issued until such time as Certificates of Occupancy have been granted for the four affordable units constructed within the development and the *payment in lieu* is received for 11.3 additional units satisfied by way of a payment to the town's Affordable Housing Revenue Fund, in the amount equivalent to 11.3 times the amount included in the Town's fee schedule at the time of payment. A note to this effect shall be required on the final plat.
2. That the continued affordability of four units must be specified in the Homeowner's Association documents per the provisions of Section 15-182.4 of the Land Use Ordinance. These documents must be approved by the Town Attorney prior to construction plan approval.

3. That in accordance with Section 15-182.4, the developer shall include in the restrictive covenants applicable to the subdivision, and in the deeds for the affordable units, covenants and restrictions that are sufficient to ensure that the affordable units will remain affordable as described in that section. Those covenants and restrictions shall include provisions that will allow the Town of Carrboro to enforce the commitment that the housing units remain affordable. These documents shall be subject to the approval of the Town Attorney.
4. That the applicant must receive a driveway permit from NCDOT prior to approval of the construction plans.
5. Prior to construction plan approval, the plans need to include a standard detail, per section 15-291 of the LUO, demonstrating that each lot can provide off-street parking sufficient to accommodate two cars, excluding those spaces provided within the garage.
6. That flexibility be allowed in the execution of the street tree planting plan (subject to the approval of public works and the planning department), such that the combination of existing and proposed trees along all publicly dedicated streets in the subdivision meet the street tree requirements of Section 15-315 of the Land Use Ordinance and that the final arrangement is such that 1/3<sup>rd</sup> of the street trees retained and/or proposed for this purpose are evergreen.
7. That the applicant shall provide to the Zoning Division, prior to the recordation of the final plat for the project or before the release of a bond if some features are not yet in place at the time of the recording of the final plat, Mylar and digital as-builts for the stormwater features of the project. Digital as-builts shall be in PDF format and shall include a base map of the whole project and all separate plan sheets. As-built PDF files shall include all layers or tables containing storm drainage features. Storm drainage features will be clearly delineated in a data table. The data will be tied to horizontal controls.
8. Per Section 15-263.1, that the developer shall include a detailed stormwater system maintenance plan, specifying responsible entity and schedule. The plan shall include scheduled maintenance activities for each stormwater BMP in the development, performance evaluation protocol, and frequency of self-reporting requirements (including a proposed self-reporting form) on maintenance and performance. The plan and supporting documentation shall be submitted to Town engineer and Stormwater Utility staff for approval prior to construction plan approval.
9. That, prior to issuance of a CO, a final plat, or the certification of a stormwater BMP, the applicant shall submit a performance security to be posted and held by the Town for a period of two years per the provisions of Section 15-263(i).
10. That the developer provide a written statement from the electrical utility stating that electric service can be provided to all locations shown on the construction plans prior to the approval of the construction plans;
11. That fire flow calculations must be submitted and approved by the Town Engineer and Town Fire Department prior to construction plan approval.
12. That the applicant must submit a voluntary annexation request and that the town must approve the annexation thereby bringing the property into the Town's municipal limits prior to the recording a final plat for the project.

13. That the applicant receive(s) CAPS from the Chapel Hill-Carrboro City Schools district pursuant to Article IV, Part 4 of the Carrboro Land Use Ordinance prior to construction plan approval.
14. That, prior to final plat approval, the Homeowner's declarations and covenants shall satisfy the applicable provisions of the Land Use Ordinance subject to review and approval of the Town Attorney.