

4
Original Proffers _____

Amendment _____ **X**

PROFFER STATEMENT

OUT OF BOUNDS

Date of Original Proffer: November 18th, 2013

Date of Proffer Amendment: August 19, 2015
February 22, 2016

Project Name: Out of Bounds

Original ZMA Number: 201200003

New ZMA Number: 201500005

Owner: Barracks Heights, LLC

Existing Zoning: R1-Residential

Zoning Requested: Neighborhood Model District (NMD)

Acreage of Parcel: 9.42

Magisterial District: Jack Jouett

Tax Map #(s): TMP 06000-00-00-06500

Legal Reference: DB 4254 PG 660; DB 3882 PG 327; DB 3439 PG 709; DB 3439 PG 705; DB 3108 PG 578; WB 111 PG 306; DB 1405 PG 207

Exhibit(s)/References: 1) Rezoning Application Plan for Out of Bounds (sheets 1 through 7 dated April 1, 2013 and last revised on June 30, 2015), prepared by Justin Shimp, P.E.

The Term "Owner" as referenced within this document shall include within its meaning the owner, or owners, of record of the Property, or properties, and their successors in interest.

Barracks Heights, LLC, the owner of Tax map and Parcel Number 06000-00-00-06500 (hereinafter, respectively, the "Owner" and the "Property") hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to rezone the Property from the R1 District to the Neighborhood Model District as requested (hereinafter, the "Project"), the Owner shall develop the Property in accord with the following proffered development conditions (each, a "Proffer," and collectively, the "Proffers"), which the Owner acknowledges are reasonable, pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.7 of the Albemarle County Zoning Ordinance. If rezoning application ZMA 201500005 is denied, these amended proffers shall immediately be null and void and of no force and effect.

1. **Affordable Housing.** The Owner shall provide 8 affordable housing units, in accordance with guidelines established by the Albemarle County Department of Housing and approved by the Albemarle County Board of Supervisors on February 4, 2004, within the Project in the form of 8 townhouses. The 8 affordable townhouses shall consist of units 7-14, as shown on the Application Plan. Each affordable unit shall be located on a single lot. Before the Owner applies for a building permit for any residential unit within Block 1 of the Project, as defined in the Application Plan, the Owner shall have offered for sale or for rent, as provided herein, each Affordable Housing Unit within the Project. The Owner shall convey the responsibility of constructing the affordable units to the subsequent owners of lots designated affordable on the site development plans or plats.

- A. **For-Sale Affordable Units.** All purchasers of the for-sale Affordable Housing Units shall be approved by the Albemarle County Housing Office or its designee. The Affordable Housing Units will be designed for households with incomes less than eighty percent (80%) of the area median income such that housing costs consisting of principal, interest, real estate taxes, and homeowners insurance (PITI) do not exceed thirty percent (30%) of the gross household income. The Owner shall provide the County or its designee a period of ninety (90) days to identify and prequalify an eligible purchaser for the affordable units. The ninety (90) day period shall commence upon written notice from the Owner that the unit(s) will be available for sale. This notice shall not be given more than sixty (60) days prior to receipt of the Certificate of Occupancy for the applicable Affordable Housing Unit; the County or its designee may then have thirty (30) days within which to provide a qualified purchaser for such Affordable Housing Unit. If the County or its designee does not provide a qualified purchaser during the ninety (90) day period, the Owner shall have the right to sell the unit(s) without any restriction on sales price or income of the purchaser(s). This proffer shall apply only to the first sale of each of the for-sale affordable units.

B. For-Rent Affordable Units.

(1). **Rental Rates.** The initial net rent for each for-rent affordable unit shall not exceed the then-current and applicable maximum net rent rate approved by the County Housing Office. In each subsequent calendar year, the monthly net rent for each for-rent affordable unit may be increased up to three percent (3%). For purpose of this proffer statement, the term "net rent" means that the rent does not include tenant-paid utilities. The requirement that the rents for such for-rent affordable units may not exceed the maximum rents established in this paragraph shall apply for a period of ten (10) years following the date the certificate of occupancy is issued by the County for each for-rent affordable unit, or until the units are sold as low or moderate cost units qualifying as such under either the Virginia Housing Development Authority, Farmers Home Administration, or Housing and Urban Development, Section 8, whichever comes first (the "Affordable Term"). The Owner of each Affordable Rental Unit shall, at the request of the Albemarle County Office of Housing, provide written reports documenting rental rates and occupancies of the affordable units.

(2). **Conveyance of Interest.** All deeds conveying any interest in the for-rent affordable units during the Affordable Term shall contain language reciting that such unit is subject to the terms of this paragraph 1. In addition, all contracts pertaining to a conveyance of any for-rent affordable unit, or any part thereof, during the Affordable Term shall contain a complete and full disclosure of the restrictions and controls established by this paragraph 1. At least thirty (30) days prior to the conveyance of any interest in any for-rent affordable unit during the Affordable Term, the then-current owner shall notify the County in writing of the conveyance and provide the name, address and telephone number of the potential grantee, and state that the requirements of this paragraph 1(2) have been satisfied.

2. **Residential Units.** There will be a maximum of 56 dwelling units within the development. The existing house and adjacent garage is identified on the Application Plan as a single-family detached dwelling unit. The remaining 55 dwelling units shall be single-family attached and/or townhouse units.
3. **Cash Proffers for Residential Units.** The Owner shall contribute cash for each new residential unit in excess of the nine (9) residential units the Owner has demonstrated could be constructed under R-1 Residential zoning in existence at the time of this zoning map amendment and that is not classified as an affordable unit for the purposes of addressing the fiscal impacts of development on the County's public facilities and infrastructure, i.e. schools, public safety, libraries, parks and transportation. The cash contributions shall be Four thousand nine hundred eighteen dollars (\$4,918) cash for each new single family detached dwelling unit. The cash contributions shall be Three thousand eight hundred forty five dollars (\$3,845) cash for each single family attached or townhouse dwelling unit. The cash contribution shall be paid at the time of the issuance

of the building permit for each new unit, unless the timing of the payment is otherwise specified by state law.

Beginning January 1, 2014, the amount of the cash contribution required by this proffer shall be adjusted annually until paid, to reflect any increase or decrease for the proceeding calendar year in the Marshall and Swift Building Cost Index ("MSI"). In no event shall any cash contribution amount be adjusted to a sum less than the amount initially established by this proffer. The annual adjustment shall be made by multiplying the proffered cash contribution amount for the preceding year by a fraction, the numerator of which shall be the MSI as of December 1 in the preceding calendar year, and the denominator of which shall be the MSI as of December 1 in the year preceding the calendar year most recently ended.

4. **Public Road Improvements.** At its sole expense, the Owner shall plan, design, bond and construct the following road improvements in the location shown on the Application Plan. The improvements shall be designed and constructed to County and VDOT standards, including the design and construction of related drainage, slope and utility easements, as applicable. Either as a condition for the issuance of the first certificate of occupancy for any structure or upon request by VDOT, whichever is sooner, the Owner shall complete construction of the improvements described in paragraph B. As a condition for the issuance of the first certificate of occupancy for any structure on the Property, the Owner shall complete construction of the improvements described in paragraph C. Construction of travel lane improvements shall be deemed complete when the County Engineer determines that the roadway is safe and convenient for traffic.

- A. **Bennington Drive Connection.** A public road shall be constructed from Westminster Road to the extension of Georgetown Road through the existing platted 50' ROW as shown on sheet 7 of the Application Plan. The road shall be 24' in width from face of curb to face of curb and a single 5' sidewalk shall be provided on one side of the road.
- B. **Modification to Signal at Barracks and Georgetown.** The Owner shall design and construct modifications to the traffic signal at the site entrance to accommodate the extension of Georgetown Drive into the Property as shown on the Application Plan. The modifications to the existing signal will provide a new (fourth) leg for the signal that will allow vehicles to exit the Property at the intersection.
- C. **Modifications to Existing Turn Lane.** The Owner shall extend the existing east bound left turn lane from Barracks Road onto Georgetown Road as shown on Sheet 4 of the Application Plan to provide 150' of total vehicle storage length.

5. **Offsite Drainage Repair and Maintenance.**

Impacted Properties:

The properties with drainage channels pertaining to this paragraph 5, are as follows:

TMP 60D, Section H, Parcels: 3,4,5,6, 12,13,14,15, 16A, 28 and 29, AND TMP 60D, Section F, Parcels 7 and 8.

Definitions:

As used in this proffer the term *fully flowing channel* shall mean: Drainage channel clear of any impediments that in the opinion of the County Engineer would prevent storm water runoff from freely flowing through the channel.

As used in this proffer the term *existing channel conditions* shall mean: The shape, slope, lining conditions, width, side slope and vegetative state of the existing storm water channel that follows the existing drainage easement as approximately shown on the plat recorded in DB 485 PG 522 and in the condition as it exists today.

As used in this proffer the term *impacted property owner* shall mean: A property owner of a lot that it is physically impacted by the proposed repair or maintenance of the drainage channel. The impacts may be those caused from direct repair or maintenance of the channel on the property or the movement of materials or equipment through a property to maintain the drainage channel on a neighboring property.

As used in this proffer the term *permission from impacted property owner* shall mean: written permission obtained from the property impacted by performing required maintenance or repairs. The Owner will send the request to the impacted property by certified mail. If the impacted property does not respond to the initial request within 15 days a second certified letter shall be sent. If the impacted property owner does not respond in the affirmative within 10 days the permission will be deemed to be denied. The current acting president of the Canterbury Hills Association shall be copied on all correspondence to impacted property owners.

As used in this proffer the term *drainage channel* shall mean: the portion of the channel through the Canterbury Hills neighborhood (as shown approximately on the attached Exhibit A) that that is composed of the underground drainage system located on the northeast side of Smithfield Road, the drainage pipe under Smithfield Road, the drainage pipe located on the southwest side of Smithfield Road, the stone-lined ditch located at the end of that pipe, the portion of the creek from the end of the stone-lined ditch until it goes under Westminster Road.

At its sole expense, the Owner shall perform initial repairs and provide continuing maintenance of the drainage channel through the Canterbury Hills neighborhood as shown approximately on the attached Exhibit A. The task associated with the repairs and

maintenance as outlined below shall be conditioned on the ability of the Owner to obtain written permission from impacted property owners whose property would be physically impacted by the repairs or maintenance. There shall be no obligation on the Owner to perform maintenance or repairs on an impacted property owner's property if permission from the impacted property owner is not obtained. Any damage done to existing vegetation, landscaping, or structures on the impacted properties during repair or maintenance shall be repaired or replaced at the Out of Bounds Owner's expense.

The obligations of this proffer shall pass from the Owner to the Home Owners Association (HOA) of Out Of Bounds upon establishment of the HOA.

- A. Initial Repairs.** Prior to the Owner requesting issuance of a building permit for the Property, the Owner shall perform repairs to the drainage channel as necessary to maintain a fully flowing drainage system. This will include removal of logs and debris from the drainage channel, removal of brush and shrubs overgrown within the drainage channel and removal of silt deposits in the drainage channel or pipes within the limits of the drainage system to be repaired. The storm drainage structure shown as structure #1 on Exhibit A shall be modified to prevent clogging by modification of the structure grate and ditches approaching the structure as approved by the County Engineer and VDOT.
- B. Maintenance.** The Owner shall perform yearly inspections of the drainage channel to determine if any additional maintenance or repairs are needed to maintain a fully flowing channel. Any debris or impediments that would reduce the capacity of the drainage channel and or pipes in the drainage system shall be removed either during inspections or, if it is not possible to do so during the inspection, within 7 days thereafter to maintain the drainage channel as a fully flowing channel. The Owner shall submit an inspection report to the County Engineer within 30 days after each inspection. The report shall identify all needed repairs, describe the nature of the repairs to be made, and state the time within which the repairs will be completed. The County Engineer may, within 14 days after receipt of the inspection report, require that the repairs identified in the inspection report be completed in less time than proposed by the Owner if the County Engineer determines that it is reasonable and necessary under the circumstances to require the repairs to be completed within the time he determines, taking into consideration the nature of the repairs, their complexity, and the risk of imminent damage to the impacted property owners' properties if the repairs are not timely made. All maintenance and repairs shall be completed to the sole satisfaction of the County Engineer. At the request of the Canterbury Hills Association in writing, the Owner shall perform up to two (2) additional inspections and repairs per year. The Owner shall provide a copy of the request to the County Engineer within 14 days after its receipt. Any needed maintenance or repairs identified during an inspection shall be made at the Owner's sole expense.

C. New Drainage Improvements. The Owner shall pay 5% of the cost for the construction of any new drainage improvements associated with the drainage channel initiated by the Canterbury Hills Association or any impacted property owner if the Association or the impacted property owner provided written notice of the improvements to be constructed and their cost to the Owner prior to the physical construction of the improvements commencing. The Owner shall provide a copy of the written notice to the County Engineer within 14 days after its receipt. Payment shall be made by the Owner to the Association or the impacted property owner within 60 days after receipt of proof of payment for said construction. The Owner shall provide a copy of the proof of payment to the County Engineer within 14 days after its receipt. The new drainage improvements shall be considered to be part of the drainage channel and the Owner shall maintain the new improvements as such at its sole expense as provided in this proffer and, in particular, in paragraph B.

This document shall supersede all other agreements, proffers or conditions that may be found to be in conflict. These proffers shall be binding to the property, which means the proffers shall be transferred to all future property successors of the land.

WITNESS the following signature:

BARRACKS HEIGHTS, LLC:

By: _____
Vito Cetta, Manager

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____ 2015
by Vito Cetta, Manager of Barracks Heights, LLC, a Virginia limited liability company.

My Commission expires: _____

Notary Public