

WILLIAMS MULLEN

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September 17, 2018

VIA HAND DELIVERY AND E-MAIL

Rachel Falkenstein, rfalkenstein@albemarle.org
Principal Planner
Albemarle County
Community Development
401 McIntire Road
Charlottesville, VA 22902

RE: Willow Glen Proffer Amendment ZMA-2016-00013 – Supplemental Letter

Dear Rachel:

On behalf of Dickerson Ridge, LLC (the "Applicant"), the owner of Tax Map Parcels 03200-00-00-049F0, 03200-00-00-049I0, and 03200-00-00-049J0 (the "Property"), we requested a proffer amendment, ZMA-2016-00013 (the "Proffer Amendment"), in June of 2016. This letter and the enclosed materials serve to supplement the Proffer Amendment.

Background

Timeline:

- | | |
|------|--|
| 2007 | Comprehensive Plan Amendment (CPA-2006-00003) changed the Property's land use designation from Office/R&D/Flex/Light Industrial to Urban Density Residential |
| | Zoning Map Amendment (ZMA-2006-00019) changed the Property's zoning classification from Rural Area (RA) to Planned Residential Development (PRD) |
| 2008 | Final Site Plan approved for 234 units (9.88 dwelling units per acre)
32 of the 36 residential units of Phase 1 were completed |
| | <i>Great Recession Halts Construction</i> |
| | <i>New Demand for Flex/Light Industrial Space</i> |
| 2017 | Comprehensive Plan Amendment (CPA-2017-00001) request submitted to change a portion of the Property's land use designation from Urban Density Residential back to Office/R&D/Flex/Light Industrial |
| | <i>New Stream Buffer Regulations – Project no longer economically viable</i> |

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2018 Site Plan Amendment and Variation Request to replace the condominium buildings with townhomes, reducing the total allowable residential units by 93, to 141 units, to be filed.

As noted in the timeline above, the Property has been subject to various planning applications, including the first rezoning and comprehensive plan amendment in 2006 (the "First Application"). Due to the Great Recession, construction on the approved residential units was postponed. After several years, the economy revitalized and there was newfound demand for office/light industrial space. To adapt to these market changes, the Applicant submitted a second comprehensive plan amendment and rezoning request in 2017 and earlier this year (the "Second Application"). The Second Application would have allowed for approximately an acre of commercial or light industrial space, as well as replaced the condominium buildings with townhomes, among several other changes. Between the time the First Application was approved and the Second Application was submitted, the County's stream buffer regulations were amended, expanding the stream buffer area applicable to the Property. As a result of the expanded stream buffer area, the Second Application was no longer economically viable, for it substantially reduces the number of lots the Property can yield. Thus, the Applicant withdrew the Second Application, and is no longer requesting a commercial element be added to the project, eliminating the necessity to rezone the Property.

However, the Applicant is still requesting several changes to the Property through a site plan amendment and variation request. These requests propose to replace the condominium buildings with townhomes and some single-family detached homes. The overall density will be reduced by 93 units, to a total of 141 units instead of 234 units. In addition, the site plan amendment and variation propose to reduce the potential impact on the streams on the Property from 290 linear feet to approximately 275 linear feet, which is a reduction of 15 linear feet and is 25 linear feet below the allowable USACE/DEQ impact.

Proffer Amendment

In 2013, the Virginia General Assembly enacted legislation, § 15.2-2303.2D of the Code of Virginia, relating to cash proffers (the "2013 Proffer Law"). The 2013 Proffer Law stated that "no cash payment proffered shall be used for any capital improvement to an *existing* facility, such as a renovation or technology upgrade, that does not *expand the capacity* of such facility or for any operating expense of any existing facility such as ordinary maintenance or repair" § 15.2-2303.2D (emphasis added). In response to such legislation, the County enlisted the Fiscal Impact Advisory Committee ("FIAC") to analyze how to amend its formulaic cash proffer program to conform to state law. FIAC was formed in recognition of the fact that the County's methodology for determining cash proffer amounts (a uniform formula applied to each project tied to the County's general capital improvement needs) may not comply with the 2013 Proffer Law's requirement that each new project proffers' contribute only to capacity needs beyond ordinary maintenance or repair.

On September 22, 2015, FIAC presented its recommendation to the Board of Supervisors. As part of the recommendation, FIAC stated that the recalculated maximum per unit cash proffer amount, by dwelling unit type, should be \$4,918 for Single Family Detached (SFD) units, \$3,845 for Single Family Attached / Townhouse (SFA/TH) units, and \$5,262 for Multifamily (MF) units.

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The much reduced numbers reflected the goal of the Virginia General Assembly of decreasing barriers to growth and development across the state, which became even more critical after the Great Recession.

However, the FIAC recommendations were not implemented by the County, in part, because Virginia's General Assembly went further in restricting localities' cash proffer programs.

On March 8, 2016, the General Assembly enacted § 15.2-2303.4 of the Code of Virginia, to come into effect on the following July 1 (the "2016 Proffer Law"). This Proffer Amendment was submitted prior to when the 2016 Proffer Law became effective and is therefore not subject to its more stringent restrictions. However, this Proffer Amendment is subject to the 2013 Proffer Law and under such regulations, the reduced proffer amounts presented by FIAC should control.

As evidenced by the timeline above, the Applicant has had to adjust to various market conditions over the years. The Virginia General Assembly has similarly revised the Virginia Code accordingly, with the specific intention of encouraging development, adding more and more stringency to localities' ability to accept certain proffers. As a result, more recent projects may be subject to less costly proffers than projects that were previously approved. Because the newer projects have less costly proffers, these developers can accept lower prices for their lots and/or can more easily absorb the substantial recent increase in construction costs. This leaves the more recent projects at a competitive advantage over the older projects subject to previous versions of the proffer law. This competitive advantage may paralyze a developer's ability to complete construction of his or her project. Because proffers are not paid until a Certificate of Occupancy is issued for each lot, the result of this competitive advantage created by changes in market conditions and revisions to the proffer law is that localities may never actually receive the proffered funds – if not unit is ever built, the cash proffer is never paid. Cash proffers are only paid to localities if the units are actually constructed, which requires a project to remain economically viable.

The Applicant faces a similar situation to the one outlined above. The Applicant is subject to proffer amounts that far exceed the figures resulting from the 2013 Proffer Law:

- First Application proffer figures:
 - \$17,500 for each single family detached dwelling and
 - \$11,900 for each single family attached dwelling
- FIAC figures recommended after the 2013 Proffer Law:
 - \$4,918 for each single family detached dwelling and
 - \$3,845 for each single family detached dwelling

The Applicant was forced to halt construction after the Great Recession and therefore proffers are no longer being paid to the County. Moreover, the Applicant is forced to compete with projects constructed after the 2013 Proffer Law, which may have a \$5,000 or less cost basis. As a result, the Applicant may be forced to abandon the development, in which case the County will obtain no proffer payments. To avoid that situation, the Applicant requests to be subject to the 2013 Proffer Law so that the project may proceed with less of a competitive disadvantage as to new projects.

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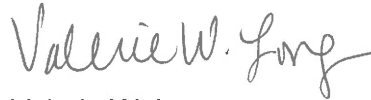
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In addition, in November of 2013, the County adopted a policy to only apply proffer figures to those units beyond the number of units allowed on the applicable property by-right. This policy was adopted for the Brookhill and Oakleigh projects, among others. The justification for the policy change was for reasons of fairness. The purpose of cash proffers is to mitigate the potential impacts of residential development *outside* the scope of currently existing zoning designations. The justification being that the County can budget, plan and coordinate community amenities based on allowable development within existing zoning designations, but it cannot predict requests for *changes* to those designations. Because of the unpredictability and potential consequential impacts on community amenities borne out of rezonings, cash proffer policies were instituted to offset such potential impacts. Based on the policy justifications outlined above, these proffered amounts should necessarily only include those impacts above and beyond what is currently allowed by right. For these reasons, we request the proffer figures from the 2013 Proffer Law not apply to the 10 units allowed by-right under the original Rural Area (RA) zoning designation of the Property.

Please do not hesitate to contact us should you have any questions. Thank you for your careful consideration of our request.

Sincerely,



Valerie W. Long

cc: George W. Ray, Jr., Dickerson Ridge, LLC
Steve Edwards, Edwards Design Studio

Enclosed:

ZMA Resubmittal Application Form
Proffer Statement ZMA-2006-00019
Proposed Proffer Statement ZMA-2016-00013
Redline Showing Changes of Proffer Statement

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