

Albemarle County Planning Commission
DRAFT Minutes May 28, 2019

The Albemarle County Planning Commission held a public hearing on Tuesday, May 28, 2019, at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair; Julian Bivins, Vice-Chair; Daphne Spain; Pam Riley, Vice-Chair; Karen Firehock; Bruce Dotson; Jenie More; and Luis Carrazana.

Members absent: none.

Other officials present were Rebecca Ragsdale, Rachel Falkenstein, David Hannah, Cameron Langille, Lea Brumfield, Andy Herrick, David Benish, Carolyn Shaffer.

Call to Order and Establish Quorum

Mr. Keller called the regular meeting to order at 6:00 p.m. and established a quorum.

ZMA 20190002 Hollymead Town Center Area A-1 Proffer Amendment

Mr. Benish reported that this is a proposal to amend the proffer to reduce the cash contributions towards transit operating expenses provided as Proffer 4 for ZMA 2012-00005. He said the cash proffer that was approved amounts to a total of \$500K to be paid over 10 years. He said that the applicant is proposing to reduce that proffer to \$250K paid over 10 years or a \$200K total amount payable in a lump sum within 14 days of the approval of this application.

Mr. Benish stated that the applicant has also provided for an alternative proposal, which would require the submittal of an additional ZMA and modifying the proffers associated with ZMA 2016-0001 Hollymead Town Center Section A-2, which proposes to pay the full amount of the transit proffer associated with the ZMA 2012-0005 proffers, but deletes the cash proffers with the ZMA 2016-0001 rezoning and amends the code of development for A-2 to reduce the total number of units from 1,222 to 800.

Mr. Benish showed the location of the property, which is on the corner of Town Center Drive and Route 29 and is bounded on the west by Berkmar Drive. He said that regarding the proposal and the reference to areas A-1 and A-2, the original rezoning for this portion of the Hollymead Town Center was done as one zoning: Hollymead Town Center Area A, and was subsequently divided into A-1 and A-2, and that's why they are somewhat associated with one another.

Mr. Benish stated that the rezoning was originally approved in 2005 and was approved for both A-1 and A-2, and in 2010, the applicant made a rezoning request to request relief from obligations of proffers for completing Meeting Street, to allow for a Kohl's certificate of occupancy. He said there was also a request to place a sunset on the public transit proffer for two years after that date. He stated that at that meeting, the request to reduce the transit proffer was brought up and discussed by that Planning Commission at that time -- and the Commission recommended a reduction to \$250K a year, at \$25K per year.

Mr. Benish said they set a more extensive sunset clause in July 2018, and the Planning Commission recommended change to the proffer but it was not fully reviewed by the Board of Supervisors. He stated that the request was deleted from the applicant's proposal at the request of the Board, so that the remaining aspects of the proposed proffers at that time could be reviewed at the public hearing and acted upon. He noted that the next most relevant history is with the JAUNT service, as the 29 Express began operation in May 2016, and the applicants were requested to provide for the cash proffers at that time.

Mr. Benish reported that the applicant's justification for the amendment request is that there is insufficient nexus and rough proportionality between the proffer as written, in any reasonably expected condition or impact caused by the project. He stated that the JAUNT commuter service does not address any impacts caused by the subject development, and significant improvements have been made in the area, which reduce transportation concerns. He said that staff has addressed those reasons and believes that the transit proffer addresses transportation traffic and impacts generated by A-1 and A-2, rezonings that amount to more than 730K square feet of commercial use and 1,222 dwelling units. He noted that the A-1 area specifically would generate approximately 9,400 vehicle trips through the area over a 24-hour period, and the transit service would provide another modal option and a potential means to mitigate traffic impacts created by these rezonings.

Mr. Benish said that staff opinion is that the JAUNT service does provide transit alternatives to vehicular travel to the area that provide and make capacity available on the roads for transportation generated by these uses. He stated that the improvements in the area were improvements identified as needed at the time of the rezonings to address the impacts of those rezonings.

Mr. Benish stated that regarding the alternative proposal, which essentially is a request to modify the cash proffers related to residential development, those requests for reductions for previously accepted cash proffers for residential development area not consistent with the Board's policy regarding changes to those cash proffers. He noted that the Board has not agreed to make those changes, and the reduction in density from 1,200 to 800 units as a general rule is not encouraged in the development areas, so there isn't a significant benefit to the county to provide for that. He said that eliminating the cash proffers for the remaining units in A-2 would result in an approximate loss of \$2.5-\$5, depending on the number of units the density proposed.

Mr. Benish said that staff found no factors favorable to this request, and the unfavorable factors are that the applicant/owner agreed and signed the proffer forms, agreeing that the conditions were voluntarily proffered as part of the request to rezone, and acknowledged that the conditions were reasonable. He stated that there is sufficient nexus and rough proportionality between the proffers as written, and the reasonably expected conditions are impacts caused by the development. He said that the alternative proposal is not consistent with the county's policy for requesting changes in the cash proffers, and it would also require submittal of a revised application -- and without further paperwork and processing, the application couldn't be approved at this time.

Mr. Benish stated that staff recommends denial of the request, and he had discussed with the applicant the possibility of deferring this item, and the applicant had wanted to discuss possible other options to better address the county needs and considerations for this amendment. He said that in the end, staff agreed it might be best to hold this conversation and discussion with the Planning Commission to hear their input, as other ideas might arise from that discussion.

Ms. Spain said the staff report indicates the JAUNT service began in 2016, and no payments have been received in the last three years and a zoning violation has been issued. She asked what sort of weight a zoning violation carried.

Mr. Herrick asked what she was referring to specifically in terms of weight carried.

Ms. Spain responded that she was referring to penalties to the owner, who was not meeting the proffers.

Mr. Herrick explained that any failure to comply to the existing proffer is grounds for a zoning violation, and the zoning administrator has cited the owner for failure to make the payments under the existing proffers. He said that finding of violation was appealed to the Board of Supervisors, who upheld the decision of the zoning administrator -- and that has been appealed to circuit court, where the case is currently pending.

Ms. Spain asked if there was a point where a violation imposed a financial penalty.

Mr. Herrick responded that every violation of the ordinance had a \$200 penalty for the first violation, with subsequent violations subject to a \$500 penalty.

Mr. Dotson asked if each day was considered a violation.

Mr. Herrick responded that every 10 days was considered a violation.

The Chair opened the public hearing.

Mr. Pete Karamanis addressed the Board on behalf of the applicant and said he wanted to clarify a few things in the staff report. He stated that Mr. Benish had mentioned that the Planning Commission in 2011 made a recommendation to the Board for the \$25,000 for 10 years, which is what the applicant is proposing tonight. He said that the staff report makes it sound like the Board didn't support that, but at the Board meeting the following night -- January 12, 2011 -- they never really reached that issue.

Mr. Karamanis stated that it was clear that some Board members favored it and some didn't, but what was determined was because this proposal arose at the Planning Commission meeting and was not noticed publicly, the Board did not have the authority to grant it. He said that this left the applicant with a dilemma of either not getting the other amendments that were on the table that night or just removing this and revisiting it in the future. He stated that it wouldn't be accurate to characterize it as the Board just dismissing what the Commission had said, as there was conversation and it's uncertain what the Board would have done that evening.

Mr. Karamanis stated that in the discussion section of the report, it talks about the JAUNT service, and one of the justifications for keeping things the way things are is that the Board of Supervisors approved this service with the understanding that the proffered funds would be available to help fund the service. He said that it's very relevant to point out that during that conversation, prior to any vote being taken by the Board, the applicant came forward in multiple meetings and expressed the applicant's belief that the proffer was not properly triggered by this JAUNT route and this was not a proper application of the proffer. He state that the Board proceeded anyway, but to use that as justification for not hearing this matter is inappropriate.

Mr. Karamanis said that he also wanted to clarify that the applicant was not there to oppose public transit or weigh in on its use, and his point is what the developer should pay for and whether or not the transit service addresses an impact that this development created. He stated that the staff report says there is sufficient nexus and rough proportionality between this proffer as written and any reasonably expected condition or impact caused by this project, which is presented to the Board as a fact -- but the matter is before the circuit court to determine, and it would be entirely inappropriate to use that as the basis for a decision. He added that the applicant's position is that there is not rough proportionality and nexus.

Mr. Karamanis stated that there were other proffers associated with this project -- widening Route 29, creating Town Center Drive -- and those things have happened and have alleviated traffic to the point where if they were to review traffic when the proffer was put in place versus now, they could likely not say there is a need for this public transit in particular, which takes them over to the practical side. He said that this bus is a commuter route that runs in the morning before the shopping center is open and comes back in the evening, and it is built to take people from north of town into town to work.

Mr. Karamanis stated that it is not built to bring people to and from the shopping center and is not eliminating any cars that would otherwise be going to and from the shopping center. He said that if you were to take it from town up to Hollymead Town Center in the evening, which is the only time you could do that during operating hours, you would have no way to get home. He emphasized that it is not designed any particular cars and traffic that are serving the shopping center. He added that regarding rough proportionality, it was basically serving single digit numbers of people every day to bring them to and from work, and the question of whether or not that is worth asking a developer to pay \$1/2 million is a very relevant question.

Mr. Karamanis stated that staff has indicated no favorable factors to this request, and the applicant finds this unfair. He said that favorable factors were that it would be consistent with prior Planning Commission approvals -- as they had supported this proposal many years ago, and that was before all the other traffic improvements were made to alleviate traffic in other ways. He said that there was a dispute going on for some time now and was pending in the circuit court, and this would resolve that and provide outcomes for both parties.

Mr. Karamanis emphasized that the applicant was not trying to avoid legitimate obligations and was before them to offer more than what he feels he is legally required to provide. He said that as Mr. Benish mentioned, the applicant is open to conversation -- and what they would like was some feedback on how to resolve this dispute and not just looking the other way. He noted that there were even more favorable factors now, and he hoped the Commission would agree.

Mr. Keller opened the public hearing.

Mr. Bivins invited speakers to come forward.

There being no public speakers, Mr. Keller invited the applicant to address the Commission again and asked Mr. Herrick if there were any ground rules for this proposal.

Mr. Herrick explained that Mr. Benish had referenced the possibility of a deferral, and they have a scheduled court date for this matter in July -- so staff would ask that the Commission consider and decide this tonight with a recommendation one way or another.

Ms. Firehock asked if the original proffer for the transportation was only ever intended to serve the shopping center.

Mr. Karamanis responded that the proffer language states that once the transit service served the shopping center, that would trigger the proffer -- and what is before the Commission is the original proffer language, which has not changed.

Ms. Firehock stated that the applicant had mentioned that the transit service did not operate when the stores were open, and asked if a remedy would be to change the hours of the shuttle.

Mr. Karamanis responded that this was out of the applicant's control, and his understanding from what he has read about the route was that it was a commuter route for people living north of town and working in town.

Ms. Firehock stated that the original owner entered into the proffer and must have made it because there was some relationship between the proffer and the development, so she was having a hard time following the line of logic that a proffer was freely and voluntarily offered that had nothing to do with the development. She asked him to elaborate.

Mr. Karamanis said that it's not that this proffer couldn't theoretically have a relationship with the development, and if the data supported that this development had created a significant amount of traffic that was alleviated by the public transit that served it, this would be a completely different situation -- but that's not the situation they are in. He added that when this was originally proposed with the proffer, there was a much greater level of development anticipated with this property that now will not come to fruition. He said that the reason they proposed the alternative was that staff indicated it would be well-received, but there had been inconsistent feedback overall.

Mr. Bivins asked to reference the map of the property and said he hoped they could create a nexus between where this proposed density would be and where it won't be, if in fact this was allowed.

Mr. Karamanis stated that this proffer applied to A-1 -- the commercial property with the Kohl's on it -- and the correlating property is Block A-2, which has residential on it. He said that if the alternative were favorable, it would require an additional application to be filed, which the applicant had hoped to do prior to this meeting.

Mr. Benish pointed out the concentration of residential in the development and the mixed-use area.

Mr. Bivins asked if the homes were in the area off of Dickerson Road.

Mr. Benish responded that A-2 is undeveloped at this point, and Abingdon Place is another part of the Hollymead Town Center, with minimum and maximum units -- and the 1,222 is the maximum for this area.

Mr. Dotson stated that he would offer comments on proportionality, which was a complicated question but one for which they had some guidelines and ideas. He said that the proffers were stated in 10 equal installments, and no one imagined that the need itself would happen that way -- which suggests to him that proportionality and the sequence of contribution were at best very loosely linked.

Mr. Dotson said that when this was before the Board of Supervisors, Mark Graham advised the Board not to make the mistake at looking at this proffer in isolation from the other proffers -- as they were considered in their totality in the approval. He stated that the Commission needs to continue to heed that advice, and in thinking about schools they don't look at proportionality, as people who no longer have children in schools still contribute. He said that a family with many children in school does not necessarily contribute proportionality, and looking at proportionality in a simplistic and literal way doesn't really apply when operating a community.

Mr. Dotson stated that he felt there was transit service, and this application did not request a trigger date because the service has already begun, so he concluded that this was not requested as it had been previously. He added that when starting something new, and this northern area of the county was new and thus would take a while to build transit ridership. He stated that initially there were expected investments with marketing and gaining comfort and experience with the route -- and if the applicant had been paying the proffers, they would have met their full amount, and the cost of transit might have gone up by the time they were done paying. Mr. Dotson said that he would likely follow staff's suggestion and for the reasons outlined in the staff report and presentation, which would be a vote against this.

Ms. Firehock concurred with Mr. Dotson.

Mr. Bivins stated that there were no conditions of performance on the proffer statement, Attachment B, and the individuals who entered into the original proffer agreement were very sophisticated in the way they approached this 11-point proffer. He said that the real estate market tanked in 2007/2008, and he was struck that when this piece of property was purchased that there had to be some trading that happened there. He said that he had read the proffer was for the entire piece, so when the transaction took place, they could have placed things on individual pieces of property.

Mr. Bivins stated that he was not sure why at this stage this was now being subject to another level of interpretation of schedules, busses, and whether the transit is functioning well with the property, because the decision was made for the proffer at a certain amount over a certain time period. He said that this transit route was part of a larger package presented when this was done and accepted by the county, and if this is going to the circuit court, they should decide if the clause should be null and void -- and it is not the role of the Commission to circumvent the litigation.

Mr. Dotson **moved** to recommend denial of ZMA201900002 Hollymead Town Center Area A-1, Proffer #4 amendment to the Board of Supervisors, for the reasons as articulated in the staff report and explained in the presentation, as well as the comments he offered regarding proportionality and the fact service has begun. Ms. Firehock **seconded** the motion, which passed unanimously (6-0).