

Albemarle County Planning Commission
April 26, 2016

The Albemarle County Planning Commission held a regular meeting on Tuesday, April 26, 2016, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Karen Firehock, Vice Chair; Mac Lafferty, Jennie More, Daphne Spain, Pam Riley, Bruce Dotson and Tim Keller, Chair. Bill Palmer, UVA representative, was present.

Other officials present were Mandy Burbage, Senior Planner; Megan Yaniglos, Principal Planner; Rebecca Ragsdale, Senior Planner; Elaine Echols, Acting Chief of Planning; John Anderson, Civil Engineer; David Benish, Acting Director of Planning; Sharon Taylor, Clerk to Planning Commission and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

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

ZMA-2016-00001 Hollymead Town Center (A2)

MAGISTERIAL DISTRICT: Rio

TAX MAP/PARCEL: 03200000004500, 03200000005000

LOCATION: Hollymead Town Center Area A-2, the southwest quadrant of Seminole Trail (US 29) and Towncenter Drive to the west of Area A-1 in the Hollymead Development Area.

PROPOSAL: Request to amend proffers

PETITION: Amendment to rezoning for 44.29 acres on property zoned Neighborhood Model District zoning district which allows residential (3 – 34 units/acre) mixed with commercial, service and industrial uses.

OVERLAY DISTRICT: EC-Entrance Corridor; AIA-Airport Impact Area; Managed and Preserved Steep Slopes

PROFFERS: Yes

COMPREHENSIVE PLAN: Urban Mixed Use (in Centers) – retail, residential, commercial, employment, office, institutional, and open space. (Sarah Baldwin)

Ms. Echols presented a PowerPoint presentation to summarize the staff report for Hollymead Town Center, Area A-2 - ZMA 2016-00001 - Affordable Housing Proffer Reduction -PC April 26, 2016.

This is a staff report on another kind of proffer reduction; however, it a little bit different than the one you just reviewed. It has to do with a reduction in the amount of affordable housing to be provided in a mixed use development, Hollymead Town Center Area A-2. Unless you have worked with Hollymead Town Center you probably are not aware that there were five rezonings that went into Hollymead Town Center. As shown on the graphic there were five separate rezonings (Areas A-1, A-2, B, C and D) and some of these were by different developers and different property owners when this first began. There are different property owners today. The current request is for Area A2.

History -

- ZMA-2007-00001 – The property was rezoned to Neighborhood Model District (NMD) with the plan for up to 1,222 dwelling units (DUs) and up to 368,700 non-residential sq. ft., mostly commercial but some office uses as well

- ZMA-2010-00006 – In 2010 the applicant came in and asked for an Amended Code of Development, Application Plan, and proffers as they relate to a single block. That is block B. The applicant wanted to have that block revised for a prospective movie theater in Block B. That was approved.
- ZMA-2010-00013 – The applicant followed up with a request to reduce the size of the pocket park in Block B and to change the phases to reduce the number of dwelling units required before a building permit can be issued for any commercial space.

That was something the Planning Commission reviewed and made a recommendation on. The Commission did not support the applicant's request as it was made, and it went to the Board of Supervisors. The Board of Supervisors said yes, we want you to make the changes that the Planning Commission requested; go back to the Planning Commission; and then you can come back to us. The applicant deferred, but he never resubmitted. In the meantime the applicant found a buyer for the residential section of the development and was working on a site development plan for that section. The developer continues to want to proceed with that residential section of the plan, which is not necessarily a problem, and would like to have a reduction in this affordable housing amount as his next step.

Just to show you a little more about where these things are on a specific plan Ms. Echols pointed out Block B where the rezoning took place and the residential area where the applicant is interested in having a site development plan approved.

Proposed Proffer Changes are:

1. Reduce proffered housing amount from 20% of 15%
2. Base calculation on market rate units instead of total units constructed
3. Reduce area for pocket park in Block 1 as it was in the prior rezoning that was never completed.
4. Change phasing plan, which was in the prior rezoning that was never completed.

Staff wondered if maybe the applicant had not modified the proffers in a way that they really intended to because if you look at Attachment D in the staff report as they described they just wanted to reduce the amount from 20% down to 15%. Staff cannot support the proposed proffer changes for 2, 3 and 4. Staff cannot support the way the applicant is proposing the calculation to take place because it is not consistent with the Affordable Housing Policy. Staff does not believe that reducing the area for the pocket park in Block 1 is appropriate because they have not addressed the issues that were raised in the 2010-13 ZMA. Also, changing the phasing plan is also a part of that which needs some more review. What they wanted to do was to go ahead and get just this particular change made, and then come back and follow up with another ZMA that took care of some other things.

Factors Favorable

1. Requested affordable housing reduction from 20% to 15% is consistent with the County's affordable housing policy

Factors Unfavorable

1. The applicant's requested change in the way the affordable units to be provided is inconsistent with other accepted affordable housing proffers and the County's affordable housing policy.
2. A request to reduce the area proposed for a pocket park is premature due to lack of information.
3. A request to change phasing for the project is also premature due to lack of information

or a justification.

Staff had talked to the applicant and they indicated that they had not intended to put those other two items, 2 and 3, in the proffers. The applicant said they would make that change, understood that the calculation needed to be in accord with the Affordable Housing Policy, and they were okay with going back to that. The applicant is here and can speak to this.

Staff Recommendation:

Staff recommends approval of ZMA-2016-00001 Hollymead Town Center (A2) with the change to Proffer 1 to reflect the basis of calculation on the total constructed units (not the market rate units) and removal of changes to the area of pocket park and phasing. In other words, staff can recommend approval of a portion of that proffer change and thinks the applicant is willing to do that. If the Planning Commission wants to approve this staff has recommended language in the staff report, which should say Hollymead Town Center – Area A2.

Mr. Keller invited questions for staff.

Ms. Firehock asked staff to go back to the list of the three proffers and if staff said the applicant did not want to do the second or third changes since those are inadvertently included.

Ms. Echols replied that it was actually the third and fourth proffer changes. The applicant said they will make the change for the second one to be as staff has recommended.

Ms. Firehock said the only thing the Commission is being asked to look at tonight is changing the 20% to 15%. She asked if that was correct.

Ms. Echols replied that is what staff understands the applicant has intended. So if the Commission takes an action you are going to need to cover these other items so that the record is clear for it. However, she thinks we need to hear from the applicant for them to confirm or otherwise say what it is that they are looking for. However, staff looked at the request with what is in the staff report and what I have said about what the applicant wants to do is subsequent to the staff report having been written.

Ms. More asked because of the discussion section when the applicant proffered the 20% if they were hoping to retain the ability to provide cash in lieu and would that be part of the language with the 15%.

Ms. Echols replied no, they are not looking at changing anything right now other than the 20% down to the 15%. A subsequent rezoning request would be brought to you that deals with other aspects of those proffers. However, right now they are just trying to deal with the percentage.

Mr. Lafferty noted that staff said there were several owners and they had gone through a number of steps with different owners. He asked is the current owner the owner that bargained for the 20%.

Ms. Echols said she would back up and talk about the different owners. Of the different areas in Hollymead Town Center, A-1, A-2, B, C and D, all of those were different owners. In this particular case the person who was the applicant for the rezoning for A-1 and A-2 is no longer a part of the project. She suggested the applicant/owner can talk to the Commission more about what that relationship was. However, they retained ownership of Hollymead Town Center Area A-1 and A2 and whether or not they were aware of what the proffer was doing at the time she

can't say. She just knows that the owner of the property signed the proffers and we have what I think may be one of the partners. However, I don't want to say too much because I am not knowledgeable of how those arrangements were made.

Mr. Keller opened the public hearing and invited the applicant to address the Commission.

Nena Harrell, representing the development, said she would answer Mr. Lafferty's question first that it was the prior owner who agreed to the proffers. The economy was raging in 2007 when these proffers were agreed to. Things certainly have changed as we have heard Mr. Foley speak many times lately on the budget meetings after 2007 everybody is looking for funds. So that is part of the reason that we are back now. Nothing really has happened with this project since the proffers were agreed to. Mr. Wood was the owner prior to these proffers and sold the property; the developers went bankrupt, and so he took the property back. Then Mr. Wood had to take the property back subject to the proffers that they had agreed to, which are proffers that economically just will not work.

Ms. Harrell said she would like to confirm what Ms. Echols said on the issue that the pocket park was inadvertent. These proffers have gone through many iterations in the last nine years with many county staff members and so that was not intended to be in there. The second and third one were not supposed to be there regarding the pocket park and the phasing. The phasing will be addressed with another proffer. We had agreed not to address it with this proffer. We will address that later, but not with this proffer. One of the things Ms. Echols addressed, and we will agree to whatever the county proffer policy is for affordable housing; but, it came up when we were discussing reducing it from the 20% that had been agreed to at the time to the current county policy of 15%. The calculation is a little bit of a gray area. When the policy has been addressed with regards to a buyout the 15% has been applied to the net units. But, when it is addressed with regards to rental units it is addressed on the gross units. If you are building an apartment complex of 200 units and you want 15% affordable units that is 30 units. It is simple, 230 units. But, if you have been building 230 units and take the 15% of that it is in essence 5 more units. So it just seems like it has been applied a little bit inconsistently with the for sale units and the for rent units. But, whatever the county proffer policy is would be what we have agreed to. It is a little bit of an oversight in the language, and has led to some discussion. However, we are agreeing to whatever the policy is. She would be happy to answer questions. She thinks that Mr. Lafferty's question was very appropriate because this was agreed to at a totally different time and by a totally different owner since Mr. Wood was not the owner at all at that time.

Mr. Lafferty said it was his understanding that the county says that the 15% is the minimum, and it can be higher than that. He assumed Mr. Wood read over the details of the contract when he bought the land back.

Ms. Harrell replied that Mr. Wood did not buy it back, but protected his interest and took it back. They certainly were aware; but, we basically knew we had no choice and had to protect our interest there. So that is how it all evolved. They would like to eventually come back with a new code of development because what was agreed to in 2007 just can't happen economically. There were many things agreed to at the time. She has been to a lot of the budget meetings lately and that is one of the things Mr. Foley mentioned that things have changed dramatically. So it cannot develop the way the code of development in 2007 said it would develop; and, this is just part of it. We do have a developer now who is interested in doing apartments and affordable housing, but the numbers have to work to do anything.

Ms. Harrell asked to add something totally unrelated in that they did affordable housing voluntarily years before there was an affordable housing policy. She thinks Briarwood Subdivision was one of the most affordable housing subdivisions and still continues to be. In this town there was not an affordable housing policy. It was done because there was a demand and it was the right time and right thing for the county. Many residents still can't afford to live in this county and so we are very proud of the fact that we have done it voluntarily. However, the numbers have to work.

Mr. Lafferty said they certainly appreciate that; but, we are still deficient in affordable housing.

Ms. Harrell agreed that they are and thinks our rules and regulations don't necessarily help us. Having worked with first time homebuyers for years she thinks we are very deficient in affordable housing.

Mr. Keller invited further public comment.

Morgan Butler, with the Southern Environmental Law Center, said he had not planned to speak tonight, but wanted to share a thought. The applicant just mentioned that they are basically going to be coming back and are going to need to come back with an entirely new code of development soon. The staff report mentioned that there is a rezoning already in the works and should be coming before the Commission perhaps in May and this affordable housing piece is just a part of that. So it seems that it does not make a whole lot of sense to view this one in isolation and perhaps it should be put in the context of this apparently much larger and much more substantive application that is coming back before you.

Neil Williamson, with Free Enterprise Forum, said we have no position on this application or this amendment. However, we feel as though Mr. Butler's comments are inappropriate for determining how an application goes forward. You have before you an applicant who has paid a fee who has moved forward following the channel in the chain of command and asking that applicant to do anything but allow you to discuss this specific issue would be a disservice.

The being no further public comment, Mr. Keller invited the applicant for rebuttal.

Nena Herrald said when they had their pre-app meeting they did not discuss it exactly the way maybe we should have. So Ms. Echols thought it better if we do it in two separate amendments and that is why they are doing it separately. They did not really want to pay \$2,688 twice to do it separately; but, it seemed like that was the appropriate way to move it forward after our pre-app meeting. So that is why it is in two sections.

Mr. Keller invited questions for the applicant.

Ms. More said we have looked at the changes in the pocket parks and the phases as things that are going to be addressed in the future. You talked about an entirely new code of development. So are there further changes that will be made and is that something that could all be made at one time or looked at.

Ms. Harrell replied the code of development is going to take some time to do because the county has different ways they like to see it done now. She thinks everybody on staff will agree that this code of development is a mess and can't use any other word to describe it. So it is going to take some time to come back with a code of development. We have a developer right now that would like to do a project. Unfortunately, we can't do it comprehensively because we

will lose the developer if we do. So we are going to have to do it a piece at a time. With regards to the pocket park that has nothing to do with anything now or anything coming in the future since that was when we had a movie theater years ago and the movie theater went by the wayside because it was taking too long to get through the rezoning process. So the code of development will be some months away. However, we have filed for a second amendment with regards to the phasing and a few other things in our current zoning.

Ms. More asked if the goal is a more comprehensive look at changes.

Ms. Harrell replied yes, we would like to do that since it needs to be done because there are way more units in there than can ever be developed. It just will not work or much of the code of development will not work.

Ms. Riley said at least it seems that you are implying through your comments about changing the code of development that there will be a reduction in units overall or that is one of the goals.

Ms. Harrell replied they believe it is a realistic goal. They think what is in the code of development is unrealistic since it would require parking garages and the cost would be unbelievable. So we think it is going to require a lowering in density. We still want to keep as much density as possible; but, the way it is approved now is not going to be the way the property will ultimately develop.

Ms. Riley asked if she had any sense of what the percentage of reduction is.

Ms. Harrell replied no, she would not want to address that tonight.

Ms. Riley said at the end that additional impact would be a further reduction of affordable housing units in essence if you are just reducing the overall number of units.

Ms. Harrell said if you are reducing the overall number of units it goes down in every regard.

There being no further questions, Mr. Keller closed the public hearing to bring the matter before the Commission for discussion and action.

Ms. Firehock said she had a clarifying question for Mr. Kamptner to ensure she understands this properly. The amount of affordable housing that was proffered at 20% was perfectly legal because an applicant at any time can proffer more than the minimum percentage that we request. We want 15% as a minimum, but if a nice developer comes along and wants to give us 20% that is perfectly legal.

Mr. Kamptner replied yes.

Mr. Keller invited further discussion or questions to staff.

Ms. Firehock said they would only be dealing with the change in percentage.

Ms. Echols provided three recommendations for the Planning Commission's action. The first recommendation (A) is for approval as recommended by staff; the second recommendation (B) is for approval as requested by the applicant; and the third recommendation (C) is for denial of the request.

Mr. Keller asked for clarification on C. because there were three parts. If they were to agree with one or two of those, then we need to clarify the ones they agree with and the ones that we don't.

Ms. Echols agreed.

Mr. Keller said that was the pocket park.

Ms. Echols noted A. was the recommendation for approval as staff has recommended.

Mr. Keller said so if they wanted deal with just the affordable housing but not the pocket park.

Ms. Firehock said that she was confused.

Ms. More said staff was saying that A. would be the choice, but, do we need to add language to be clear that we are not addressing the pocket park or the phasing. Or, is A. the way staff has written it to cover that.

Ms. Echols replied yes, she thinks Mr. Benish was saying that we should do that. Are there any questions about the method of calculation? The Commission did not ask that question. But, she would like to offer that when the statement about the cash proffers and being in lieu we have not been able to uncover any projects where there has been a different application than what is with the affordable housing policy. So part of our recommendation is that we stick with the way the affordable housing policy was written in terms of recommending how to accept a proffer.

Mr. Lafferty said it is written as being a minimum.

Ms. Echols replied yes, it is a minimum. But, what she is talking about is the number of units constructed or 15% of the number of units to be constructed.

Ms. More said that is the language of the total residential units.

Ms. Echols replied that was correct.

Mr. Lafferty asked if that would be prorated. If you are going to build 100 units and you have 20% and you build 50 units would you say 10 of those have to be affordable housing.

Ms. Echols replied that they come in on the site plan. So whatever we have on the site plans and however it is the proffers generally set up the mechanism for how 15% will be ensured on every site plan. So as we get site plans in we look for 15% with a little bit of variation in how that gets applied. But, anyway we do it site plan by site plan so we would never be less than 15%.

Mr. Benish said if their build out winds up being less than what is approved by zoning they still have to do 15% of what is built.

Mr. Benish said that is part of the confusion because it is tracked on an ongoing basis up to the time that they don't build any more.

Ms. Firehock said she was willing to make a motion; but, just wanted to make a comment first and then she would like to hear what others think. She remembers when the economy went

south she was starting a nonprofit at the time. It was a dumb time to start a business. However, she was concerned with the notion that everyone who has a project that has not been built since 2006/2007 as it fills up they have a justification to come back and ask for their proffers to be changed. Because that is the basis for this request she thinks by supporting this request we need to be aware of the precedent that we may be setting. In this case she thinks they would be saying that the market just does not support what they offered back then - times are good but now they are not. So for how long will we continue to go ahead and let everyone reduce their proffers since there are quite a few unbuilt units in the county? It was reported to us one day and it is a high number so there is quite a lot of backlog. She was very concerned about the precedence that we would be setting.

Ms. Firehock said the other point is that as we were just alluding to and even the applicant's representative has stated that we are willfully inadequate in our supply of affordable housing. Our current process by which we advertise it is also deficient and we will be talking about that in future work sessions. But, she has a very serious heartburn with the notion. She understands that the buyer does not want to do it at 20%; however, any buyer can say they don't like your proffers, go to the Planning Commission and the Board and get rid of them or reduce them and say that the economy used to be good, but now it is not. So I have a problem with that argument because of the precedent setting nature.

Mr. Lafferty agreed.

Ms. Firehock moved and Mr. Lafferty seconded to recommend denial of the proffer change to reduce the amount of proffered housing from 20% to 15% for ZMA-2016-00001 Hollymead Town Center (A2) for the reason that the proffer was voluntarily offered and was reasonable at the time and meets a serious need in the county for affordable housing which still exists.

The motion passed by a vote of 5:2. (Dotson/Keller nay)

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning)