

**COUNTY OF ALBEMARLE
STAFF REPORT SUMMARY**

Project Name: ZMA201200007 5 th Street Commercial and Special Exception	Staff: Elaine Echols
Planning Commission Public Hearing: March 15, 2016 continued to June 21, 2016	Board of Supervisors Public Hearing: TBD
Owner: FTV Investments, LLC	Applicant: FTV Investments, LLC
Acreage: 4.35 acres	Rezoning: Modify plan and proffers for property zoned HC Highway Commercial and LI Light Industrial
TMPS: 0.875 acre portion of 07600-00-00-055A0, 3.041 acre portion of 076M1-00-00-00100, and all of 07600-00-00-055C0	By-right use: Proffers restrict the use to hotels, motels, restaurants, service stations, convenience stores, and gift, craft, or antique shops according to the proffered plan; a proffered plan shows the limits of development, reflecting a special use permit for fill in the floodplain
Magisterial District: Scottsville	Proffers: Yes
Proposal: Amend proffered plan for commercial uses	Requested # of Dwelling Units: None
DA (Development Area): Southern Urban Neighborhood – Neighborhood 5	Comp. Plan Designation: Regional Mixed Use and Parks and Green Systems
Character of Property: Currently vacant with trees.	Use of Surrounding Properties: To the south – the Holiday Inn motel; to the north, Moore’s Creek and a Waffle House restaurant; to the west, the Christian Aid Mission and a motel; to the east, Biscuit Run creek and the new 5 th Street Station development
Factors Favorable: <ol style="list-style-type: none"> 1. The rezoning generally is consistent with recommendations for land use in the Southern and Western Urban Neighborhoods Master Plan. 2. The rezoning is supportive of the County’s desire to expand its tax base. 3. The ARB is satisfied that the applicant’s design that includes the drive through window can meet the EC guidelines. The rezoning generally is consistent with recommendations for land use in the Southern and Western Urban Neighborhoods Master Plan. 	Factors Unfavorable: <ol style="list-style-type: none"> 1. The design does not meet the principles of the Neighborhood Model primarily for relegated parking; however, the Planning Commission may believe that the need for relegated parking is not essential due to the proximity of the project to the interstate interchange. 2. The design on the proffered plan requires a special exception to the front setback and the applicant has not adequately demonstrated why a 74’ front setback is essential for the use. 3. A commitment to locate any gas tank canopies to the rear of the building closest to 5th Street has not been retained from the original zoning, should the applicant decide not to build a drive-through in the location shown on the plan. 4. The rezoning plan does not indicate that retaining walls will be no taller than 6’ without being terraced.
RECOMMENDATION: Staff cannot recommend approval of the zoning as a result of the factors unfavorable to the request. However, should the Commission recommend approval of the special exception for the front setback, then staff believes the plan could be approved if the proffers address the gas tank canopies and the plan indicates that retaining walls will be no taller than 6’ without being terraced.	

STAFF PERSON:
PLANNING COMMISSION:
BOARD OF SUPERVISORS

Elaine Echols
June 21, 2016
TBD

ZMA201200007 5th Street Commercial
SPECIAL EXCEPTION to allow for a maximum 74' front setback

PETITION: Request to amend proffers and application plan of ZMA199900013 for 4.35 acres on property zoned HC – Highway Commercial, which allows commercial and service; residential by special use permit (15 units/ acre) and property zoned LI Light Industrial, which allows – industrial, office, and limited commercial uses (no residential use). No zoning district change and no dwellings proposed. A special exception is also requested to allow for a 74' setback rather than a 30' maximum setback for the proposed building closest to 5th Street.

ENTRANCE CORRIDOR: Yes

AIRPORT IMPACT AREA: Yes

FLOOD HAZARD OVERLAY: Yes

PROFFERS: Yes

COMPREHENSIVE PLAN: Regional Mixed Use (regional serving retail, service and office uses, non-industrial employment centers and residential up to 6.01 – 34 units per acre) and Parks and Green Systems (parks, playgrounds, play fields, greenways, trails, paths, recreational facilities and equipment, plazas, outdoor sitting areas, natural areas, preservation of stream buffers, floodplains and steep slopes adjacent to rivers and streams) in Southern Urban Neighborhood (N5).

LOCATION: The east side of 5th Street Extended just north of its intersection with Interstate 64.

TAX MAP/PARCELS: 0.875 acre portion of 07600-00-00-055A0, 3.041 acre portion of 076M1-00-00-00100, and all of 07600-00-00-055C0

MAGISTERIAL DISTRICT: Scottsville

BACKGROUND

On March 15, 2016, the Planning Commission heard the applicant's request for approval of ZMA201200007, provided comments on, and continued the hearing to June 21, 2016. The continuation was to allow the applicant and staff to address the issues identified in Attachment F of the March 15 staff report and the comments received from the Planning Commission. The Action Memo contained the following information:

DEFERRED ZMA-2012-7, as requested by the applicant, by a vote of 5:0, (More, Lafferty absent) to June 21, 2016 in order to allow the applicant and staff to address the issues identified in Attachment F of the staff report and in line with the comments received from the Planning Commission. The Commission agreed with all of the issues raised by staff with the possible exception of relegated parking and other comments as noted below.

- Relegated Parking: Commissioners favor a design that conforms to the maximum 30' building setback requirement established in the recent ZTA.
- Commissioners believed that the location of the site near an interchange and the existing auto-orientation of the area might allow them to support the applicant's request to provide for a parking area between 5th Street and the building that faces 5th Street.
- Commissioners noted that if the applicant requests a special exception for a greater setback than 30', he would need to make his case based on Section 4.20.a. of the Zoning Ordinance that says a maximum front setback may be increased by special exception to accommodate low impact design, unique parking or circulations plans, or a unique target market design.

**SPECIFICS OF THE APRIL 18, 2016 PROFFERED PLAN, SPECIAL EXCEPTION REQUEST,
AND PROFFERS DATED MAY 31, 2016**

PLEASE REFER TO THE STAFF REPORT FOR MARCH 15, 2016(Attachment A) FOR INFORMATION ON THE CHARACTER OF THE AREA, PLANNING AND ZONING HISTORY, CONFORMITY WITH THE COMPREHENSIVE PLAN, APPLICANT'S JUSTIFICATION FOR THE CHANGE, AND GENERAL IMPACTS OF THE DEVELOPMENT.

Since the Commission's meeting in March, the applicant met with staff twice to discuss the special exception request, changes to the proffers, and changes to the plan. He then submitted an updated plan (Attachment B1), updated proffers (Attachment C1), and a request for a special exception (Attachment D1). No substantive changes were made to the rezoning plan. The applicant has addressed the Commission's comments as follows:

1. **Bike Lane on 5th Street:** Commissioners spoke to the importance of making a commitment to provide for bicycle access to the site.

The applicant provided Proffer 10 which states that he will include bicycle lanes with improvements to the frontage of 5th Street.

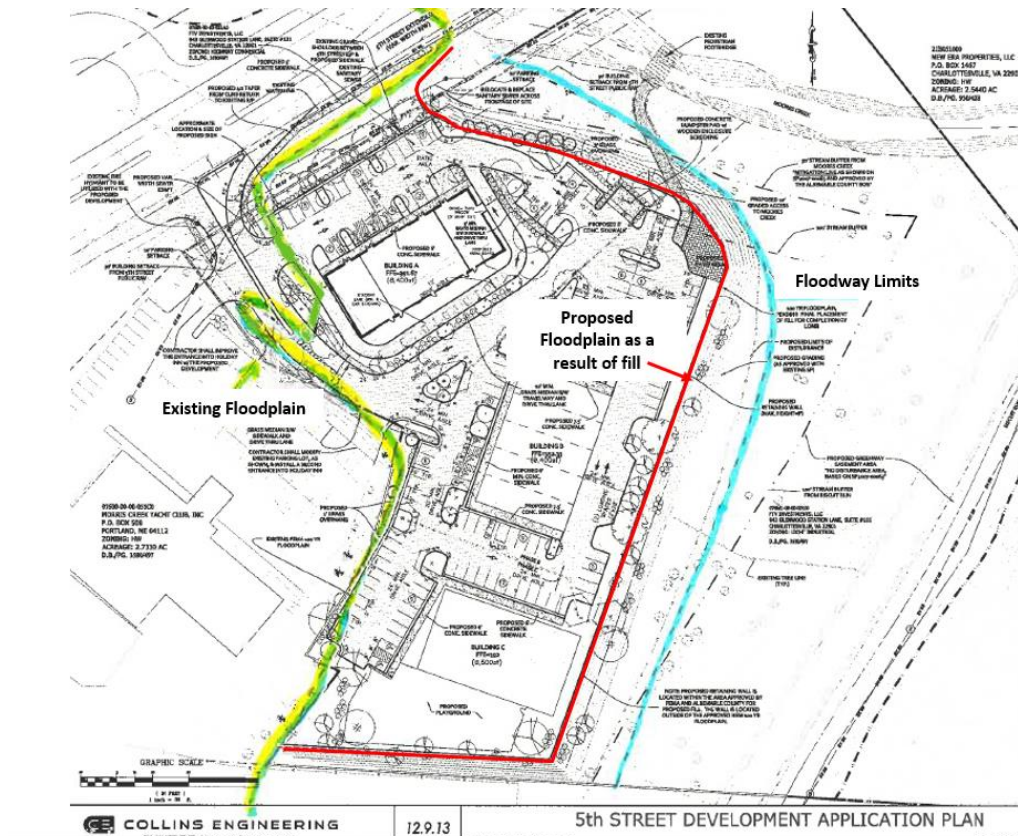
2. **Relegated Parking:** Commissioners were sympathetic to the applicant's desire to have parking in front of the building, but, weren't convinced that a double row of parking in the front or a 74' setback was needed. The Commission suggested that the applicant look at different options including angled parking and having only one parking bay in front of the building. If no suitable design could be created, Commissioners said they would be open to considering a greater setback but, the applicant would need to make his case based on Section 4.20.a. of the Zoning Ordinance. This section of the ordinance states that a maximum front setback may be increased by special exception to accommodate low impact design, unique parking or circulations plans, or a unique target market design. This topic is discussed in a later section of the report.

- **Grading, Slopes, and Retaining Walls:** The Commission asked for a clear designation of slopes that had been previously shown for disturbance in conjunction with the special use permit approved for the site. They wanted a plan that clearly depicts proposed grading, stream buffers, floodplain, and limits of disturbance. Commissioners recommended that terraced walls be used rather than tall retaining walls. They acknowledged that a redesign of the site that conforms to the previously approved special use permit may accomplish this.

The revised plan now clearly shows slope and buffer disturbance as well as the limit of floodplain disturbance which was approved with the prior ZMA and SP. The corrected floodplain, disturbance limits, and grading shown on the plan demonstrate that 15' retaining walls will not be needed. In fact, the plan shows that walls can be built that are no taller than 6'. The plan, however, has the note, "Maximum retaining wall height shall not exceed 8'," which the applicant has provided to allow for a margin of error. Staff asked that the note be changed to bring the maximum height of retaining walls down to 6' since ARB guidelines suggest that walls taller than 6' be terraced as do the standards for grading managed slopes. The note should also indicate that the retaining walls will be built with Phase A of the development.

- **Floodplain:** The Commission said that the applicant should clearly show the floodplain identified by the latest LOMR from FEMA and make sure that development shown on the plan is consistent with that LOMR.

The proposed plan clearly shows the limits of the floodplain and grading which is consistent with the approved special use permit. Prior to approval of grading permits for doing the fill work, the applicant will have to obtain a Conditional Letter of Map Revision (CLOMR) from FEMA. Additionally, prior to approval of the site plan, a mitigation plan for the stream buffer disturbance must be approved by the County Engineer and bonded with the grading permit. Once site development is completed and prior to release of bonds, the applicant will have to apply for and receive a final LOMR upon completion of the site development before release of bonds.



**Applicant's Proposed Plan Showing Existing and Proposed Floodplain
(approved with SP2007-63)**

- **Walkway from bridge over Moore's Creek to sidewalk along 5th Street to this development:** The Commission agreed that this addition would be desirable; however, it may be difficult to achieve in the location discussed in our staff report. The applicant was asked to consider ways in which the sidewalk might be connected to the greenway and make a commitment to provide for that connection.

The applicant's plan shows a parking lot at the top of the hill created by fill in the floodplain but no additional trail connection. The applicant has indicated that grades will not allow for the connection in the area suggested by staff in the original staff report. However, if the applicant were to redesign according to Alternative A or B (see section on Special Exception), though, such a connection might be possible.

- **Monticello Viewshed:** Identify whether the property is in the Monticello Viewshed.

The applicant and staff have both reached out to Monticello to determine whether the property is in Monticello's viewshed. Maps indicate the property might be in the viewshed; however, staff at Monticello are unable to confirm that it is visible. The applicant has proffered to coordinate with the Thomas Jefferson Foundation (TJF) when the leaves are off the trees and, if they determine the site is visible, the applicant will select a roof color that is consistent with the TJF guidelines.

- **Gasoline Canopies:** The proffers were to be modified to address technical and substantive changes. These changes included proffering out gasoline sales.

Most of the technical and substantive changes identified in the March 15 report have been made; however, one substantive issue still exists. When ZMA1999-013 was approved, the proffered plan honored the ARB's strong preference for gasoline canopies to be located behind buildings along the Entrance Corridor, rather than in front of them. Over the course of review of this project, the applicant has indicated that there will be no service stations at the site and Proffer #5, "All fuel islands shall be located behind a building as generally shown in the Conceptual Site Plan" was not needed. However, the owner has recently said that he does not want to proffer out gasoline sales as a use. Service stations and convenience stores continue to be in the list of uses available for this property. If the applicant opts to not build the building requiring the drive-through at this location, then nothing would prevent him from proposing fuel pumps with canopies in front of the building closest to 5th Street. If the applicant wishes to retain this use, then retaining Proffer #5 would ensure the most appropriate placement of fuel islands in the Entrance Corridor. Alternatively, the applicant could remove service stations from the list of uses available AND remove Proffer #5.

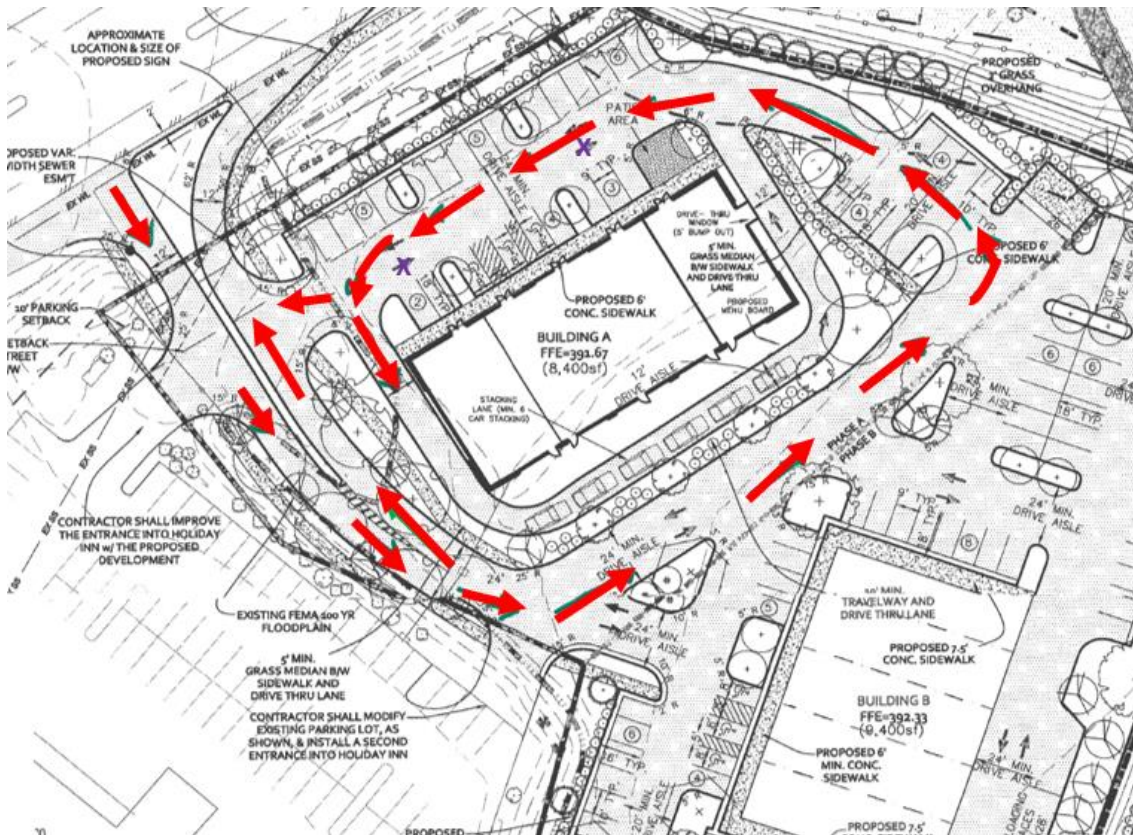
SPECIAL EXCEPTION REQUEST FOR INCREASED FRONT SETBACK

As indicated earlier in this report, the applicant has asked for a special exception to increase the maximum setback from 30' to 74' to accommodate a two-lane drive aisle with parking on both sides that will also serve as access to a drive-through business. The Board of Supervisors adopted the requirement for a maximum 30 front setback on June 3, 2015 and updated it to provide corrections on March 2, 2016. The requirement allows for special exceptions to accommodate any of three circumstances: 1) low impact design; 2) unique parking or circulation plans; or 3) unique target market design.

With his request for a special exception (Attachment D1), the applicant asserted that two of the three criteria can be met: a unique target market and unique parking and circulation. For the target market design, the applicant said his design is essential to provide convenience to the travelling public and would be in keeping with the design of all other businesses along 5th Street near the interstate.

Staff researched the staff reports and minutes from the various meetings related to the ZTA for greater clarity on what "unique target market design" means. Though not fully described in the reports and minutes, the description might imply one of the County's economic development targets which are: information technology, defense, and security; agribusiness and food processing. It also could imply a design such as porte-cochere in front of an assisted living facility where an expanded area for dealing with mobility needs might exist. A broad interpretation of a unique target market might include interstate interchange customers looking for convenience uses at interstate interchanges. However, this broad interpretation might also support future requests for special exceptions for any business where customers and clientele typically drive to receive service. Because any business might make the same claim that customers typically drive to receive service, staff does not believe that the use is so unique as to qualify as a target market.

The applicant also made a case for an increased setback based in unique parking or circulation plans. In its research on the ZTA, staff found that drive-throughs clearly were considered a possible reason for a special exception. The applicant has stated that the circulation required for a drive-through at this site creates the need for a double row of parking in front of the building closest to 5th Street. To address the Commission's request for design alternatives, the applicant provided four design options, three of which show angled parking. None of these, however, showed whether a single row of parking in the front might be achieved.



Applicant's Proposed Plan and Circulation

In an effort to see what might be possible, staff also worked on design alternatives. As part of its design work, staff attempted to develop an alternative to the applicant's circulation layout which creates a spiral movement causing drive-through customers to circle into the parking lot before circling through the drive-through lanes.

Staff came up with two different designs (Alternatives A & B on Attachment E1) which both show how a lesser setback could be achieved and prevent the spiral movement. In Alternative A, the front two buildings are switched. This layout allows for circulation across the front of the lot with minimal parking and an approximate 45' setback. Provision of angled parking might further reduce the width of the travelway. If there were no "convenience" uses in the front building, parking and a driveway across the front of the building facing 5th Street might not even be necessary.

Alternative B shows a drive-through lane in front of the building closest to 5th Street, rather than behind the building. Layout in Alternative B is similar to the Chick-Fil-A on Pantops. This design could be achieved without any front setback reduction.

When staff showed the alternatives to the applicant, though, he said Alternative A would not work because his prospective major tenant wants/requires visibility along 5th Street. He said that signage

to a drive-through would not be sufficient. He said that Alternative B design, “works great for a single tenant (such as Chick Fil A). When you add a multi tenant building to our already challenging site, your concept just doesn't work with tenant demands.”

Staff believes that a setback reduction based on unique parking and circulation is not warranted and cannot support the special exception because other alternatives exist that would not require an additional 34' setback. However, based on the Planning Commission's meeting of March 15, staff understands that the Commission may disagree and find that one or two of the three criteria can be met and can recommend approval of the special exception to the Board of Supervisors. Recommending approval of the special exception would support approval of the proffered plan.

COMMENTS FROM AVON-5TH COMMUNITY ADVISORY COMMITTEE (CAC)

In early May, the Avon-5th CAC asked for information on the proposed project and how relegated parking was viewed for the development. One of the owners, Randall Ralston, and staff attended the meeting to review the applicant's proposal and the Planning Commission meeting of March 15, 2016. The applicant had held a community meeting on the project several years earlier before the CAC was formed. At the meeting, committee members debated the merits of relegated parking at this interstate location and asked to discuss the project at their June 20, 2016 meeting. A report from the CAC is expected at the Commission's meeting to convey the Committee's input and any recommendations.

SUMMARY

Staff has reviewed the applicant's most recent rezoning plan and proffers for conformity with the Comprehensive Plan and the Planning Commission's requests.

The following factors are viewed as favorable to the request:

1. The rezoning generally is consistent with recommendations for land use in the Southern and Western Urban Neighborhoods Master Plan.
2. The rezoning is supportive of the County's desire to expand its tax base.
3. The ARB is satisfied that the applicant's design that includes the drive through window can meet the EC guidelines.

The following factors are viewed as unfavorable to the request:

1. The design does not meet the principles of the Neighborhood Model primarily for relegated parking; however, the Planning Commission may believe that the need for relegated parking is not essential due to the proximity of the project to the interstate interchange.
2. The design on the proffered plan requires a special exception to the front setback and the applicant has not adequately demonstrated why a 74' front setback is essential for the use.
3. A commitment to locate any gas tank canopies to the rear of the building closest to 5th Street has not been retained from the original zoning, should the applicant decide not to build a drive-through in the location shown on the plan.
4. The rezoning plan does not indicate that retaining walls will be no taller than 6' without being terraced.

RECOMMENDATION

As indicated in the staff report of March 15, 2016, staff cannot recommend approval of the zoning as a result of the factors unfavorable to the request. However, should the Commission recommend approval of the special exception for the front setback, then staff believes the plan could be approved if the proffers address the gas tank canopies and the plan indicates that retaining walls will be no taller than 6' without being terraced.

PLANNING COMMISSION MOTION – ZMA201200007 5th Street Commercial:

A. Should a Planning Commissioner choose to recommend approval of this zoning map amendment:

Move to recommend approval of ZMA201200007 5th Street Commercial with proffers.

B. Should a Planning Commissioner choose to recommend denial of this zoning map amendment:

Move to recommend denial of ZMA201200007 5th Street Commercial with reasons for denial.

Should a commissioner motion to recommend denial, he or she should state the reason(s) for recommending denial.

PLANNING COMMISSION MOTION – SPECIAL EXCEPTION TO SECTION 18.4.20 OF THE ZONING ORDINANCE:

A. Should a Planning Commissioner choose to recommend approval to increase the maximum front setback to 74':

Move to recommend approval of a 74' maximum front setback in conjunction with ZMA201200007 5th Street Commercial for the reasons of a unique target market and/or unique parking and circulation patterns.

B. Should a Planning Commissioner choose to recommend denial of the special exception in conjunction with ZMA201200007 5th Street Commercial:

Move to recommend denial of ZMA201200007 5th Street Commercial with reasons for denial.

Should a commissioner motion to recommend denial, he or she should state the reason(s) for recommending denial.

Attachments

A1: [Staff report from March 15, 2016](#)

B1: [Rezoning Plan dated April 18, 2016](#)

C1: [Proffers dated May 30, 2016](#)

D1: [Request for Special Exception dated April 18, 2016](#)

E1: [Engineering Comments dated 5-19-16](#)