

December 19, 2016

BY HAND DELIVERY

JT Newberry
Senior Planner
Albemarle County Department of Community Development
401 McIntire Road, North Wing
Charlottesville, Virginia 22902

**Re: ZMA 2016-00015 (Oakleigh)
Resubmittal Materials for Board of Supervisors Feb. 8th Public Hearing**

Dear JT:

In connection with the captioned rezoning application, I enclose the following documents for the proposed February 8th, 2017 Board of Supervisors public hearing:

1. Three (3) copies of ZMA 2016-00015's updated Application Plan
2. One copy of the revised Proffer Statement, and
3. One copy of a redline showing the revised Proffer Statement changes against the November 2, 2016 draft.

The following revisions have been made to the Application Plan in response to the Planning Commission's recommendations:

1. The Development Block Summary on Sheet 4 of the Application Plan now contains two additional columns labeled "Min. Dwelling Units Scenario A" and "Min. Dwelling Units Scenario B" with 14 and 53 minimum units for each, respectively. This was added to ensure that if the property is developed pursuant to Scenario B, a minimum of 53 dwelling units would be constructed.
2. We have added a note under the Development Block Summary on Sheet 4 of the Application that reads "In the event that Block V is not developed as an Assisted Living Facility, it shall be developed in general accord with Scenario B as shown on Sheet 6B; and in general accord with the Code of Development on Sheet 5 herein."
3. Permitted Uses on Sheet 5 of the Application Plan no longer includes "Outdoor Amphitheater", "Fast Food Restaurant", and "Department Store" as permitted uses. Indoor Theaters have never been a permitted use.
4. The emergency access through Berkeley Subdivision is no longer shown on the Application Plan.

The following revisions have been made to the Proffer Statement:

1. The first proffer regarding Affordable Housing was modified to allow for the election to construct Affordable Dwelling Units, pay the equivalent cash in lieu for such units, or to provide some combination thereof. Only the cash in lieu payment was allowed under the prior draft. Since the Housing Director has expressed a preference for cash, we are hesitant to preclude that as an option.
2. The third proffer regarding tree preservation now more clearly states that should Scenario B be constructed, the Tree Plan approved with ZMA-2007-00004 will apply.
3. The proffer for enhanced erosion and sediment control measures has been reinserted.

By-Right Lot Yield Credit:

Prior to the Oakleigh's original approval in January, 2008 as ZMA 2007-00004, the property was zoned R-6 Residential with a by-right development yield of 52 dwelling units. With the approval of Oakleigh in 2008 to Neighborhood Model Development, the property was approved for 109 dwelling units. During the review of ZMA 2007-00004, the Owner requested credit against the cash proffers for the "by-right lot yield" of 52 units, but that request was not granted. However, since that time, the Board of Supervisors has approved a number of projects that included cash proffers subject to a by-right lot yield credit. The most recent example is the Brookhill project, which included a by-right lot yield credit for the property's previous R-1 Residential zoning, equal to 269 units. At the Oakleigh Planning Commission meeting, Ms. Echols stated that Oakleigh's request is distinguishable from Brookhill and other projects due to the higher percentage of credits that would be afforded to Oakleigh compared to the other projects. However, we contend that the fact that Oakleigh would receive a larger percentage by-right lot yield credit than other projects does not change the merits of the request that it be treated the same as other projects and be given such credit for the by-right units that it already had prior to the rezoning process.

The reason for the higher percentage is simple and factual: Oakleigh started with R-6 zoning, and Brookhill started with just R-1 zoning -- Oakleigh started with the right for a larger percentage of by-right units per acre than Brookhill did. We see no logical correlation between the size of the percentage of the by-right lot yield credit and the merits of granting the credit. If the property had a by-right lot yield prior to the rezoning, then it is logical and just that the applicant and Owner only be required to pay cash proffers for those units that are in excess of the existing by-right lot yield. This position is consistent with the legal purpose of cash proffers, that they mitigate the impacts of residential development. If the owner or applicant already has the right to a certain number of units by-right, then additional impacts from those by-right units are not being created by the rezoning, thus it would not be proper for the County to accept cash proffers for them.

Furthermore, we note that a second significant reason that the size of the percentage of the credit is so high is that a large number of the residential units at Oakleigh are proposed to be replaced by the Assisted Living Facility. The Oakleigh property originally had a by-right lot yield of 52 units, then it was rezoned to permit up to 109 units in 2008, and now we are proposing to replace up to 87 of those units with an Assisted Living Facility, such that Oakleigh could have a minimum of 22 units under Scenario A on the Application Plan. This results in the size of the percentage being higher than with other projects, but that higher percentage has no impact on the merits of the credit. By its recent actions in granting several other projects by-right lot yield credits against the cash proffers, the Board of Supervisors has confirmed the merits of this position. As such, our proffer statement continues to include the credit for the 52 unit by-right lot yield, and we respectfully request the Board to grant the credit for the reasons stated herein.

Finally, our proffer statement also includes the cash proffer figures recommended by the County-appointed Fiscal Impact Advisory Committee (the "FIAC"), as adjusted to reflect the most recent CIP. These adjusted figures were provided to us by the County staff. These cash proffer figures are the same amounts that were recently approved for the Brookhill project. That, combined with the facts that that these figures were provided by the County appointed FIAC, and recently updated by the County staff, demonstrates that they are the closest thing the County has to current "approved" proffer rates. The fact that the County repealed its proffer policy in June of this year does not mean that the County cannot accept cash proffers using these adjusted FIAC rates. Rather, the history of these rates provides the Board of Supervisors with a reasonable basis to accept these proffers. As you know, the Oakleigh project is not subject to the requirements of the new Virginia Proffer Reform Bill enacted as Virginia Code Section 15.2-2304.4, since the Oakleigh application was submitted prior to July 1, 2016. As such, the Board of Supervisors is not faced with the burden of demonstrating that the proffer figures comply with the new state law. For all of these reasons, we contend that it is prudent and appropriate to include these adjusted FIAC proffer figures in the Oakleigh proffer statement.

Thank you for your time and effort on this application. If you have any questions or need anything further please do not hesitate to contact me.

Very truly yours,

Valerie W. Long

Enclosures

cc: George W. Ray, Oakleigh Albemarle, LLC
Steve Edwards, Edwards Design Studio
Alan Franklin, Alan Franklin Engineering

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