

relative intensity of the district for appropriateness and determined that some of the by-right uses are as intense.

Mr. Higgins stated that the Planning Commission agreed with staff's recommendation and unanimously recommended approval of the proposed ZTA.

The Chair opened the public hearing. No one came forward to speak and the public hearing was closed.

Mr. Thomas moved for approval of ZTA-2010-00007. Mr. Snow seconded the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dorrier, Ms. Mallek, Mr. Rooker, Mr. Snow and Mr. Thomas.
NAYS: None.

(The adopted ordinance is set out in full below:)

ORDINANCE NO. 10-18(2)

AN ORDINANCE TO AMEND CHAPTER 18, ZONING, ARTICLE III, DISTRICT REGULATIONS, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 18, Zoning, Article III, District Regulations, is hereby amended and reordained as follows:

By Amending:
Sec. 24.2.2 By special use permit

Chapter 18. Zoning

Article III. District Regulations

Sec. 24.2.2 By special use permit

The following uses shall be permitted by special use permit in the HC district:

17. Body shops.

**Agenda Item No. 10. PUBLIC HEARING: ZMA-2010-00014, Hollymead Town Center (A-1)
(Signs #33,36&37).**

PROPOSAL: Rezone 59.162 (portions) acres from Planned Development-Mixed Commercial (PD-MC) zoning district which allows large-scale commercial uses; and residential by special use permit (15 units/acre) to Planned Development-Mixed Commercial (PD-MC) zoning district which allows large-scale commercial uses; and residential by special use permit (15 units/acre), in order to amend the existing proffers.

PROFFERS: Yes.

EXISTING COMPREHENSIVE PLAN LAND USE/DENSITY: Town Center-compact, higher density area containing a mixture of businesses, services, public facilities, residential areas and public spaces, attracting activities of all kinds. (6.01-34 dwelling units per acre) in Hollymead Development Area.

ENTRANCE CORRIDOR: Yes.

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

TAX MAP/PARCEL: 032000000042A0, 04600000000500, 03200000004400 (portion), 03200000004500 (portion)

MAGISTERIAL DISTRICT: Rio.

(Advertised in The Daily Progress on December 27, 2010 and January 3, 2010.)

Mr. Cilimberg reported that this item was originally scheduled to be heard by the Commission in December but due to a staff error it was not heard until last night, so to accommodate the applicant the item is now before the Board. He said that the amendment would be to existing proffers related to road improvements and public transit operating expenses, noting that Hollymead's original approval had several areas, but the purview of the Board's consideration tonight are the proffers associated with area A-1, which went to Planned Development/Mixed Commercial when it was approved. Mr. Cilimberg stated that the area encompasses the parcels on the south side of Town Center Drive west of Route 29 where the Kohl's is currently under construction, and A-2 is Planned Development/Neighborhood Model. He explained that the request regarding the road is in the A-1 area and for part of Meeting Street south of the traffic circle that ultimately would extend to become part of Berkmar Drive Extended. The current proffers required this section to be built as of December 31, 2010 based on the plan approval for the Kohl's store on December 31, 2008. Mr. Cilimberg said that the proffers specifically state that the road be built within two years of that site plan approval, and the new proffer language would have the road to the boundary of A-1 built within one year of the County requesting that to be built. He emphasized that the road is not necessary to serve the A-1 area and Kohl's as there is access from Town Center Drive and from Route

29, but when A-2 is developed the road will need to be built to the point where access is provided for A-2 at the theater and into Kohl's. Mr. Cilimberg said the proffer language would have that construction of Meeting Street to the south boundary of A-1 within one year of the County requesting it.

Mr. Rooker pointed out that technically the road was supposed to be built last year. Ms. Mallek commented that it has already been requested.

Mr. Cilimberg responded that Mr. Rooker is correct, noting that the ramifications of that are that Kohl's cannot get a certificate of occupancy until that road is built. He said that because it is not a necessary road in association with this particular development, having it constructed would leave it without any VDOT acceptance.

Ms. Mallek said that it would be a matter of months before it is needed for the next project - the movie theatre complex. Mr. Cilimberg responded that it is the same owner, but a different set of proffers.

Mr. Davis pointed out that it would be required for A-2 by the site plan requirements, rather than by this proffer.

Mr. Cilimberg mentioned that the proffers are different in terms of what was provided in the Board's packets in terms of the wording of this road's construction and for the transit. He presented the new language in the proffers as signed today, with the construction of Meeting Street within one year of the County accepting it.

Ms. Mallek asked what the trigger would be for the County to accept it and why it was agreeable to the applicant when they got permission to build Kohl's and now it suddenly is not.

Mr. Cilimberg replied that he cannot speak to the applicant's intent previously, but he does know where things stand now as far as certificates of appropriateness for Kohl's when they will be open as it is known that the road is not necessary to serve that building.

Mr. Rooker said that he wants to make sure Meeting Street is open before the certificate of occupancy is granted.

Mr. Graham explained that Town Center Drive is the road that runs vertically coming off of Route 29 and going up. The proffer requires that it be completed all the way to Dickerson Road. He said that the applicant is aware that no certificate of occupancy would be granted for Kohl's until the road is ready for VDOT acceptance, and similarly Meeting Street north of Town Center Drive also must be completed prior to the issuance of a certificate of occupancy for Kohl's. Mr. Graham added that the applicant is aware that those issues must be resolved.

Mr. Thomas asked if there was any flexibility granted because paving cannot be done in winter weather. Mr. Graham responded that there is not, but the applicant/owners informed him today via email that the final course of pavement has been put on Town Center Drive.

Mr. Boyd asked why Meeting Street would not be accepted by VDOT if it were completed now.

Mr. Cilimberg explained that the only part that would be accepted would be the stretch from Meeting Street south to the entrance that would serve the theatre as well as the entrance to Kohl's. He said that it is not required to have access off of Meeting Street to Kohl's, but it will have access once the theatre is developed as part of another site plan, essentially serving as a second entrance to theatre.

Mr. Boyd asked about the timeframe for the theatre. Mr. Cilimberg responded that he did not know, but added that the applicant does have a site plan in and another rezoning for A-2 that would likely come to the Board in March. That request is scheduled to go to the Commission in February.

Mr. Rooker asked if staff is satisfied that the road system would be built, with these modified proffers.

Mr. Cilimberg responded that one assurance is that the Kohl's certificates of occupancy are contingent on completion of Town Center Drive and Meeting Street North. He added that Kohl's is advertising its opening for March.

Mr. Graham stated that staff has been meeting with the applicant, who is highly motivated to get this completed because of the acceptance by VDOT of the roads prior to the issuance of a certificate of occupancy for Kohl's.

Mr. Rooker said that without those connector roads this never would have been approved. He added it was extremely material to approval of this rezoning. Mr. Rooker stated the applicants would not have had the votes, clearly, and they know that, if this whole connector road situation, which was carefully worked out by staff, had not been proffered at the time of the development.

Mr. Snow stated that he does not have a problem with going forward as long as the other two roads are done and approved by VDOT.

Ms. Mallek asked who would build from the Kohl's/theatre junction to the property line, because it was supposed to go to the property line in the original agreement.

Mr. Cilimberg responded that the proffer reads that within one year of the County requesting the owner would need to build the road to the property line, but the County would not request it unless VDOT would take it in for maintenance. He added that with A-2, construction of the rest of the road should be revisited and it can be tied to any subdivision or development that occurs in the lower portion of the property. Mr. Cilimberg pointed out that there is a proffer in A-2 for a public area for a transfer station or some other public use, and if that use was to be established the road would need to be further built and maintained by VDOT.

Mr. Rooker commented that he is comfortable with what staff has worked out, but he just wants to be certain that Berkmar is not brought north without a connection there.

Mr. Thomas asked what the trigger mechanism would be for one year. Mr. Cilimberg responded that the County would establish when the road would need to be built, whether for Berkmar or for other reasons.

Mr. Davis said that it could be triggered in order to establish use of the proffered public use parcel.

Ms. Mallek asked if the location of the road has already been established. Mr. Cilimberg stated that it was established with the Kohl's site plan. Mr. Graham said that it is partially in right now and is well-established.

Mr. Cilimberg said there was a second proffer that came in regarding public transit.

Ms. Mallek said that she would like the consideration for the new public transit proffer to be separate from the new road proffer.

Mr. Davis explained that it is a package because it is a proffer amendment that needs to be accepted or not.

Mr. Boyd said that he does not understand that approach, as staff has said they support the Meeting Street proffer but not the transit proffer.

Mr. Davis stated that that would require a new signed proffer.

Mr. Rooker asked if a new, revised proffer could be signed tonight. Mr. Davis replied that it could.

Mr. Rooker said that he supports staff's recommendation for the new road proffer, but he does not support what would essentially mean cutting out \$250,000 contribution in transit money. He noted that the proffers are different with every approval, and it seems that all of the sudden the County is saying it would give back what was promised to be public money. He thinks the Board is being very accommodating to deal with this request the night after the Planning Commission dealt with it, but he does not support that change.

Mr. Cilimberg said that the current proffer does not have a sunset, with an agreement of \$50,000 for ten years. When the applicant made his proffer re-submittal reflecting the change on the road as well as this change he proffered a July 1, 2012 sunset which staff felt was practically going to remove any possibility for funding public transit. Mr. Cilimberg said that staff recommended \$50,000 for 10 years with a January 1, 2021 sunset, as it seemed more reasonable to consider transit possibilities for the future in that area. Last night, the Commission recommended \$25,000 per year for 10 years with a July 1, 2018 sunset to reflect seven years from a certificate of occupancy granted this year on Kohl's. Mr. Cilimberg said that staff tried to provide comparables, but none of the proffers from other developments are really the same and the conditions are different depending on location.

Mr. Boyd commented that he does not understand the language of the sunset provision.

Mr. Cilimberg explained that the sunset is based on when the first year's proffer is contributed, adding that it is a 10-year commitment that needs to start within that time period.

Ms. Mallek stated that this was a contract made with citizens who were mostly very concerned that there was a lot of cost associated with this project and not much being put forth except for their tax dollars. She added that a commitment has been made to the County and to the citizens and she does not think this proffer should be changed.

Mr. Boyd commented that the proffer system has been inequitable across the Board.

Ms. Mallek emphasized that the per-unit proffer for this facility was \$300 per unit, and that went to \$3,000 per unit for North Pointe and \$17,000 for Albemarle Place. She stated that proffers are floating, but the County made that commitment.

Mr. Cilimberg mentioned that this rezoning came along two or three years after the first three rezonings at Hollymead Town Center. He added that it was probably three years after this rezoning that the cash proffer policy was adopted. He added it has been a work in progress over 10 years.

Mr. Rooker said that the applicant has a terrific deal when compared to other developments. This development was less than \$1,000 per unit.

Ms. Mallek pointed out that Orange County was using a \$30,000 proffer while the County was figuring all this out.

Mr. Rooker noted that the only reason this is even before the Board is because the applicant cannot meet the street requirements, and it is not really fair for the developer to tack on a provision to get out of contributing \$250,000 to public transit. He just does not support it.

Ms. Mallek stated that the Board was also convinced at the time that there would be millions of dollars in tax revenue coming in every year to help offset all of the County's expenses.

Mr. Davis explained that this is an application to amend a proffer and under normal proffer rules a signed, written proffer has to be received by the Board prior to opening the public hearing. That signed proffer was submitted today but with a version that relieves the commitment to transit. After the public hearing begins, no material changes can be made to the proffer without another public hearing being advertised and held. Mr. Davis added that the General Assembly has amended State law regarding proffer amendments that allows Boards of Supervisors to waive the required public hearing necessary for an amended proffer if the proffer amendment does not involve a change in use or change in density. This particular proffer does not involve a change in use and a change in density. If the Board opens the public hearing on this particular proffer amendment and determines that a change to the proffer is required before it would be willing to approve it, the process would allow the Board tonight to waive the additional public hearing and accept a changed proffer before it took action. He added that is a discretionary decision of the Board.

Mr. Rooker said that he does not think another public hearing should be required. He added that changes could be made before the public hearing is opened so that the public is commenting on the actual proffers.

Mr. Davis responded that the applicant would have to make the decision on whether he wants the Board to consider a changed proffer prior to the public hearing opening or roll the dice.

Mr. Rooker suggested that the Board take a break to give time for staff to speak with the applicant.

The Board then recessed at 7:27 p.m., and reconvened at 7:49 p.m.

Mr. Davis reported that the applicant has now made a change to the proposed amended proffer so that the transit funding proffer is back to the original language of the proffer. The only change before the Board at this time is the change to the road proffer, which is the same as what staff presented earlier. He added that it is now appropriate to open the public hearing on the proffer which is amending only the proffer related to the road.

At this time, the Chair opened the public hearing.

Mr. Wendell Wood, the applicant, said that he finds what just happened very disturbing. He signed off on the proffers with the understanding that he has the right to come back at a later date to present his case. Mr. Wood said that he is disturbed at statements Board members made that are not correct. He did not make these proffers but the previous owner did who went broke because of the proffers. He stated that he does not agree that this project has not paid its fair share, noting that he himself has paid \$11.0 million for offsite improvements. The night this project got approved, it was approved for a secondary road from behind Harris Teeter to Dickerson Road with Meeting Street as a two-lane road with that approval. Mr. Wood said that the County subsequently requested that Meeting Street be converted into a four-lane divided road, which is in place today. He pointed out that Mr. Rooker's condition on approving the rezoning was to extend Town Center Drive to Dickerson Road, which he agreed to doing. Mr. Wood said that road today is built as an entirely different structure, curb, gutter, sidewalk, and 60-foot right of way. He added the road got changed at a later date at an additional cost of \$1.5 million.

Mr. Rooker commented that his memory is a little bit different than what Mr. Wood is stating here. He said that he does not think that the profile of the road was approved that night one way or another.

Mr. Wood replied that it was approved as a secondary road, with no curb and no gutter, and no sidewalks. He added the road got changed.

Mr. Wood also said that Albemarle Place is paying \$7,000 a year for transit for five years, a total of \$35,000; North Pointe is paying \$250,000 for 10 years, and Martha Jefferson Hospital is paying a total of \$50,000. He said that when \$500,000 is added to a project without a business assessment done and when no one else around the project is paying a penny - nothing else in Hollymead Town Center has an assessment to contribute anything - that puts a burden on this portion that makes rent go up \$1.10 per square foot. The bus service to this project would have to bring in \$3,600 per day just to support paying for it. Mr. Wood said that is okay if everybody else is in the same ballpark. Everyone should be on a level playing field, but the tenants beside this project are not having to paying these costs. He added that Ms. Mallek contends that this project has \$300 proffered per residential unit, but he thinks it is closer to \$17,000 per residential unit.

Ms. Mallek commented that the \$300 was presented at the public hearing in 2004. Mr. Wood said he never heard that number.

Mr. Rooker said that Albemarle Place is \$3,000 per unit and his recollection is that this development is about a one-third of that. He added that every development has different impacts and every development has different road connections necessary to serve it. He asked for the total commercial square footage of this property. Mr. Wood said the area has 250,000 square feet of commercial. Mr. Rooker said that the cost for transit is about \$1 per square foot as a one-time cost.

Mr. Wood said that it is a cloud on the title when you try to get financing. He stated that the cost increase is based on revenue, and just to stay neutral it has to be additional revenue.

Mr. Rooker pointed out that raising the rent \$1 per square foot would pay for it in one year.

Mr. Wood attempted to explain that the cost for transit would not come from rent, but would instead come from the revenue. It would take sales revenue of approximately \$1.5 million for the store to cover it. He also said that the County should not air this type of attitude toward Kohl's. The Board's position has put Kohl's in jeopardy.

Mr. Rooker responded that this has nothing to do with Kohl's. It has to do with giving back \$250,000 of public money that was proffered with respect to this and is not necessary for Kohl's to open its doors in March. He added they are not going to get this money.

Mr. Wood said that this is not giving him money back. He did not agree to these proffers, but he got the property back from the previous owner and is trying to fulfill these obligations. He added there has not been one project in this County that has moved forward since the Board instituted these proffers; they do not work.

Mr. Rooker stated that Mr. Wood's project was approved and moved forward, Albemarle Place is getting ready to break ground, and a number of other smaller projects have been approved with higher proffers than this property carries.

Mr. Wood contended that this is one section of commercial, and there is no residential in this section, whereas Albemarle Place is twice as large and only paying \$35,000 total for transit.

Mr. Rooker pointed out that they are also paying \$3,000 per residential unit and are contributing to have an extra lane on Route 29.

Mr. Wood responded that he spent \$11.0 million on offsite.

Mr. Jeff Werner, speaking on behalf of Piedmont Environmental Council, said that PEC has worked for years on getting transit built without having the community fund all of it. He said that the Board has spent the past several weeks talking about a growth area expansion in this area, and a key argument Board members have made is that it would send a message to developers and encourage them to help, or even construct entirely, the Berkmar Extension. Mr. Werner stated that the trigger to have the road with the development in question tonight developed was pulled when Kohl's was started, and now that they need a certificate of occupancy the County is being asked to be accommodating and establish a new trigger. He said that this proffer provision was in place before the construction of Kohl's so if they cannot get its occupancy because that provision was not met that is not a matter between Kohl's and the residents of Albemarle County; that is a matter between Kohl's and the developer that did not build the road. Mr. Werner urged the Board to go ahead and get the road built even if it does not connect with anything yet. He added that this portion of Berkmar Extension is critical.

Mr. Morgan Butler, speaking on behalf of the Southern Environmental Law Center, thanked the Board for its resolve in this matter. He stated that the County needs to enforce the proffers because to do otherwise shifts the burden to the taxpayer. He encouraged Board members not to proceed this way in the future, as this project is getting pushed through in the dark without the public having adequate time to review the new proffers and respond. These type situations need to be avoided at all costs.

There being no further public comment, the public hearing was closed and the matter placed before the Board.

Mr. Thomas asked if Mr. Wood was the original applicant on this piece of property. Mr. Davis responded that Octagon Corporation was the applicant for the proffers that are being amended, and an entity that Mr. Wood owned sold the property to Octagon, and then Route 29 LLC purchased the property back.

Mr. Rooker clarified that when the original rezoning was done, there was a requirement that Meeting Street north be completed. There is somewhat of a combination of what was originally proffered and what was proffered when A-2 was approved. Mr. Rooker said he has no problem with what the Board has done tonight to accommodate the request to make certain that the certificate of occupancy goes forward.

Mr. Thomas said that he supports the road. He asked if the proffers transfer with sales of the property. Mr. Davis explained that proffers run with the land, not the owner of the land.

Mr. Boyd asked if this proffer only pertains to A-1. Mr. Davis responded that the proffer is a requirement of the A-1 development. The County does not know how the costs get shared, but before the A-1 can happen the proffers must be complied with.

Mr. Graham added that this section of Meeting Street was only proffered with A-1. Mr. Davis added that there is an interrelation between the different sections.

Ms. Mallek said that one of the things that was praised back in 2004 was the fact that there were four landowners who came together and did this joint application.

Mr. Thomas commented that he is leaning towards \$25,000 in proffer money for transit.

Mr. Davis explained that it cannot be done that way, as the proffer is proposed at \$50,000. The applicant has withdrawn his request to amend proffer #4 which dealt with the transit funding. He added that Mr. Wood can make another application to come back and amend the proffer at a separate date.

Mr. Rooker said that the proffer tendered tonight includes the transportation component as presented by staff earlier tonight.

Mr. Thomas moved for approval of the proffers pertaining to ZMA 2010-00014 as signed and dated January 12, 2011, incorporating the changes made tonight. Ms. Mallek seconded the motion. Roll was called and the motion carried by the following recorded vote:

AYES: Mr. Boyd, Mr. Dorrier, Ms. Mallek, Mr. Rooker, Mr. Snow and Mr. Thomas.

NAYS: None.

(The proffers are set out in full below:)

Amended Proffer: X
Amendment: 1

PROFFER FORM

Date: January 12, 2011
ZMA #: ZMA 2010-00014 Hollymead Town Center Area A-1
Tax Map Parcel Numbers: 32-42A, 32-44 (portion), 32-45 (portion) and 46-5

59.162 Acres to be rezoned from PD-MC to PD-MC

Tax Map Parcel Numbers: 32-42A, 32-44 (portion), 32-45 (portion) and 46-5, comprising approximately 59.162 acres are subject to rezoning application ZMA 2010-00014 and to this Proffer Statement (the "Property"). The Property is described with more particularity on a plan entitled "ZMA Application Plan for PD-MC Portion of Hollymead Town Center Area A, Sheets A1, A2, A3, A4, A5, Exhibit A, and Exhibit B," approved September 12, 2007, hereinafter referred to as "the Project," prepared by Dominion Development Resources LLC, (the "Application Plan"). The Owner of the Property is Route 22, LLC, a Virginia limited liability company (the "Owner").

The Owner hereby voluntarily proffers that if the Albemarle County Board of Supervisors acts to rezone the Property to Planned Development Mixed Commercial (PD-MC) as requested, the Owner shall develop the Property in accord with the following proffers pursuant to Section 15.2-2303 of the Code of Virginia, 1950, as amended, and pursuant to Section 33.3 of the Albemarle County Zoning Ordinance. These conditions are voluntarily proffered as part of the requested rezoning, and the Owner acknowledges that the conditions are reasonable. These proffers supersede those accepted in conjunction with ZMA 2005-015 provided that, if rezoning application ZMA 2010-00014 is denied, these proffers shall immediately be null and void and of no further force and effect, and the proffers accepted in conjunction with ZMA 2005-015 shall remain in full force and effect.

1. **Road Improvements** - To the extent not currently completed, the Owner shall design, construct and dedicate to public use for acceptance by VDOT the roads listed in Proffer 1(b) as provided herein:
 - A. **Design and construction** - The roads shall be constructed in accordance with road plans submitted by the Owner and approved by the Virginia Department of Transportation ("VDOT"). All of the foregoing improvements shall be constructed to VDOT design standards pursuant to detailed plans agreed to between the Owner, the County and VDOT.
 - B. **The roads and the time of their completion** - The following roads shall be designed and constructed by the milestones provided herein:
 1. **Within two years from the date of approval of the first site plan or subdivision plat** - The road plans for the following roads will be submitted to VDOT and the County with the first site plan or subdivision plat, and the following roads shall be will be constructed and accepted by VDOT within two years from the date of approval of the first site plan or subdivision plat:
 - a. A continuous right turn lane on Route 29 southbound from the intersection of Town Center Drive to the southern boundary of Area A. This proffer, identified as Proffer 1A from ZMA 2005-00014, has been satisfied.
 - b. An entrance to Route 29 southbound (right in / right out only) in the area to the south

of building B, as shown on the Application Plan. This proffer, identified as Proffer 1C from ZMA 2005-00015, has been satisfied.

2. Within one year after the date of approval of ZMA 2005-00015. Within one (1) year after the date of approval of ZMA 2005-00015, the following roads shall be completed:
 - a. Meeting Street from the intersection of Town Center Drive to the northern boundary of Area A. Meeting Street will have two northbound and two southbound travel lanes, one northbound and one southbound bicycle lane. Initially, one lane in each direction may be utilized as on-street parking.
 - b. Town Center Drive (previously Access Road A) from the eastern edge of the NMD zoning boundary at the intersection of Meeting Street to its intersection with State Route 606, also known as Dickerson Road. This section of Town Center Drive shall be constructed to accommodate two travel lanes, with a cross section approved by the County and VDOT in a minimum 60-foot wide right-of-way.
3. Within one year after request by the County. Within one (1) year after request by the County, Meeting Street from the intersection of Town Center Drive to the southern boundary of the Property.
- C. When construction deemed complete. For purposes of Proffer 1(B)(2) and (3), construction of each street shall be deemed complete when it is ready to be recommended by the Albemarle County Board of Supervisors for acceptance into the state-maintained system, and the owner has obtained from the County Engineer a written determination that the street is safe and convenient for traffic.
2. Regional Transportation Study - The Owner shall contribute \$59,000.00 cash to the County or VDOT for the purposes of funding a regional transportation study for the Route 29 corridor. The \$59,000.00 cash contribution shall be made, prior to the first site plan approval for Area A-1. This proffer, identified as Proffer 2 from ZMA 2005-00015, has been satisfied.
3. Public Transit Stop Construction - The Owner shall construct one public transit stop within Hollymead Town Center Area A-1. The location of the public transit stop shall be identified on the approved Application Plan and retained in the County files. The location shall be approved by the Director of Planning, prior to approval of the first subdivision plat or site plan for Hollymead Town Center Area A-1. Construction of the public transit stop shall occur in conjunction with improvements for the first site plan or the public street plans which include the area for the transportation stop. The design of the public transit stop shall be subject to approval by VDOT and the County Engineer, and shall include no less than 200 square feet of paved surface and two benches. \$59,000
4. Public Transit Operating Expenses - Within thirty days after demand by the County after public transportation service is provided to the Project, the Owner shall contribute ~~\$25,000~~ cash to the County each year thereafter for a period of nine (9) additional years, such that the cash contributed to the County pursuant to this Proffer 4, shall total ~~Two Hundred Fifty Thousand Dollars (\$250,000)~~. The cash contribution in years two through ten shall be paid by the anniversary date of the first contribution. ~~If public transit service is not provided to the Project by July 1, 2020, this proffer shall be null and void.~~ \$50,000
five
5. Intersection Analysis - The Owner shall submit an analysis of the Conner Drive and Town Center Drive intersection with the first site plan for the Project. The analysis shall be prepared by a qualified traffic engineer for the purpose of determining when the intersection would need to be signalized. The analysis should take a five (5) year projection to determine, based on the submitted site plan, when the intersection would require a signal. The analysis shall be submitted for review and approval by the County Engineer. If that analysis concludes the need for the intersection to be signalized within the five (5) year projection period, the Owner shall pay for the cost of the signal and synchronization when VDOT determines the signal is needed. This proffer, identified as Proffer 5 from ZMA 2005-00015, has been satisfied.
6. Community Development Authority - Upon the request of the County, the Owner shall petition for and consent to a Community Development Authority ("CDA") established pursuant to Section 15.2-51:52, *et seq.* of the Code of Virginia ("Code") to be created for the purpose of financing, funding, planning, establishing, constructing, reconstructing, enlarging, extending, or maintaining (except to the extent VDOT maintains any public improvements) Route 29, and roads and other improvements associated therewith.
7. Critical Slopes, Erosion and Sediment Control and Stormwater Management
 - A. Critical Slopes. The Owner shall apply for critical slope waivers for any roads located in critical slopes governed by § 18-4.2 *et seq.* of the Albemarle County Code.

- B. **Erosion and Sediment Control.** The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional erosion and sediment controls to achieve a sediment removal rate of eighty percent (80%) for the Property. (As a reference, current regulatory structural measures achieve a 60% optimal removal rate.)
- C. **Revegetation.** Within nine (9) months after the start of grading under any erosion and sediment control permit, permanent vegetation shall be installed on all the denuded areas, except for areas the Program Authority determines are otherwise permanently stabilized or are under construction with an approved building permit. A three (3) month extension for the installation of permanent vegetation may be granted by the Program Authority due to special circumstances including but not limited to weather conditions.
- D. **Stormwater.** The Owner shall, to the maximum extent practicable as determined by the County's Program Authority, provide additional stormwater management to achieve a removal rate 20% better than would otherwise be required by the Water Protection Ordinance (Albemarle County Code § 17-100 *et seq.*) up to a maximum of an eighty percent (80%) removal rate for each phase.
8. **Greenway Dedication** - The Owner shall dedicate in the simple a minimum 4.5 acre "Greenway" to Albemarle County. The land to be dedicated as the Greenway is identified on the Application Plan as "Greenway Area dedication to Albemarle County," and shall include all flood plain area along Powell Creek. The Owner shall complete the improvements shown on the Application Plan and shall dedicate the Greenway to the County at the time of the first site plan or subdivision plat approval. The Owner shall be responsible for the cost of a survey and preparing the deed to convey the Greenway to the County.
9. **Greenway Connection** - Upon the request of the County, the Owner shall contribute \$50,000 cash to the County to provide pedestrian access to and costs for a signalized, at-grade pedestrian crossing across Route 29 to connect Hollymount Town Center with Hollymount Drive. The final location and construction elements for the walk shall be determined by the Director of Parks and Recreation in consultation with the County Engineer. The location for the at-grade crossing and signal shall be determined by the County Engineer in consultation with the Director of Parks and Recreation and VDOT. This proffer, identified as Proffer 9 from ZMA 2005-00015, has been satisfied.
10. **LEED Standards for Core and Shell Development** - The Owner shall cause the commercial buildings in the Project to be designed and constructed to meet minimum standards for certification (twenty-three (23) credit points) under LEED Green Building Rating System for Core and Shell Development as set forth in the U.S. Green Building Rating System, Version 2.0, July 2006. Prior to the issuance of a building permit, the Owner shall submit a certification from a LEED certified architect to the Director of Community Development that the buildings meet LEED standards. Before the Owner requests that a certificate of occupancy for any building for which a licensed architect rendered such a certificate, the Owner shall submit to the County's Director of Community Development a written statement from the architect that the building was built to the plans on which the certificate was based.
11. **Additional Public Space** - The Owner shall construct a plaza area, as identified as "Plaza Amenity" on the Application Plan, within the Project of no less than 5,000 square feet for the purpose of public gathering and passive outdoor recreation. The plaza shall contain areas of permanent outdoor seating, a water feature, and landscaping, the design and construction which shall be subject to final site plan review and subject to the satisfaction of the Director of Planning.

WITNESS the following signature:

ROUTE 29 LLC

By: 
Wendell W. Wood
Operating Manager

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF Albemarle, to-wit:

The foregoing instrument was acknowledged before me this 12th day of January, 2011, by Wendell W. Wood, Operating Manager for Route 29, LLC.

My Commission expires: April 30, 2013 
Notary Public

Notary registration number: 112181