



Albemarle County

Legislation Details (With Text)

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Title: APPEAL: Route 29 LLC Appeal of Zoning Administrator's Determination of Proffer Violation.
Sponsors:
Indexes:
Code sections:
Attachments: 1. Att.A NOV, 2. Att.B 5-20-16 Proffer Request Letter and Invoice, 3. Att.C 5-7-18 Proffer Request Letter, 4. Att.D Kamptner Letter 12-1-15, 5. Att.E Route 29 9-6-18 Petition for Appeal, 6. Att.F Resolution Denying Appeal and Affirming ZA Determination

Date	Ver.	Action By	Action	Result
12/5/2018	1	Board of Supervisors	adopted	

AGENDA DATE: 12/5/2018

TITLE:

Route 29 LLC Appeal of Zoning Administrator's Determination of Proffer Violation

SUBJECT/PROPOSAL/REQUEST: Appeal of Zoning Administrator's Determination that Route 29 LLC's ZMA 2012-005 Hollymead Town Center A1 Violated Proffer Regarding Cash Payment of Transit Operating Expenses

ITEM TYPE: Regular Action Item

STAFF CONTACT(S): Richardson, Walker, Kamptner, Herrick, Graham, McCulley, Ragsdale

PRESENTER (S): Amelia McCulley

LEGAL REVIEW: Yes

REVIEWED BY: Jeffrey B. Richardson

BACKGROUND: Hollymead Town Center A1 (ZMA 2005-15) was originally rezoned to Planned Development Mixed Commercial on September 12, 2007. The rezoning was amended by Route 29 LLC twice: on January 12, 2011 with ZMA 2010-014 and most recently with ZMA 2012-005 on December 11, 2013. The relevant proffer was provided with the original rezoning and was not changed with the two amendments. Proffer #4 of ZMA 2012-005 states: "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 \$50,000 cash to the County to be used for operating expenses relating to such service, and shall contribute \$50,000 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 Five Hundred Thousand Dollars (\$500,000). The cash contribution in years two through ten shall be paid by the anniversary date of the first contribution."

Public transit service was established to the site on May 2, 2016 and is ongoing. The service is operated by

JAUNT. On May 20, 2016, Rebecca Ragsdale, Senior Planner, requested payment of the first \$50,000 cash contribution be made payable to the County by June 20, 2016 (Att B). Subsequent to this, Route 29 LLC filed litigation relating to the transit proffer to seek relief. On May 7, 2018, Rebecca Ragsdale requested payment of \$150,000 be made by June 18, 2018 to satisfy the three proffer payments that are past due (Att C). On August 7, 2018, the Zoning Administrator issued Route 29 LLC an official determination of violation (NOV) for failure to pay the transit proffer (Att A). On September 6, the appellants filed this appeal (Att E).

STRATEGIC PLAN: Quality Government Operations: Ensure County government's capacity to provide high quality service that achieves community priorities.

DISCUSSION: A commuter bus run by JAUNT on behalf of Charlottesville-Albemarle Transit (CAT) constitutes "public transportation service." That is the trigger for the transit proffer payment. All other contentions the appellant makes are more appropriate considerations as amendments to the proffer. Proffer amendments are processed through a rezoning application rather than an appeal. These and other considerations have been discussed with the appellant although a proffer amendment has not been fully pursued.

Greg Kamptner, in his role as Deputy County Attorney, sent a letter to the appellant's attorney, Pete Caramanis, stating that the transit proffer had been triggered because "JAUNT provides 'public transportation service' within the meaning of Proffer 4." His letter further stated "Unless, and until, Proffer 4 is amended, it is an enforceable obligation of Route 29 LLC. Failure to comply with the proffer will be a zoning violation. Amending Proffer 4 would have to be accomplished through the rezoning process and ultimately be subject to approval by the Board of Supervisors" (Att D).

BUDGET IMPACT: Proffers are intended, among other things, to provide mitigation of impacts and public benefits without increasing the financial burden on the locality. The owner's failure to meet its proffer obligation results in a \$50,000 revenue loss per year, or \$500,000 over the 10-year life of the proffer.

RECOMMENDATION:

Staff recommends that the Board adopt the attached Resolution (Attachment F) to deny Route 29 LLC's appeal and to affirm the Zoning Administrator's August 7, 2018 determination.

ATTACHMENTS:

Attachment A: Notice of Violation: August 7, 2018

Attachment B: First letter requesting transit proffer payment: May 20, 2016

Attachment C: Second letter requesting transit proffer payment: May 7, 2018

Attachment D: Letter from Greg Kamptner to Pete Caramanis regarding Transportation Proffer: December 1, 2015

Attachment E: Appellant's letter of Appeal: September 6, 2018

Attachment F: Resolution Denying Appeal and Affirming Zoning Administrator's Determination