

Application No. PD-44-16, Commonwealth Green, LLLP: Request to amend voluntarily proffered conditions of approval for the Commonwealth Green Planned Development approved in February 2012. The applicant is proposing to amend the proffers to provide that the proffered road connection between George Washington Memorial Hwy (Route 17) and Commonwealth Drive (Route 1839) will be built within two years of the issuance of the first townhouse building permit rather than townhouse or apartment building permit. The properties, located at 501 and 600 Commonwealth Drive and further identified as Assessor's Parcel Nos. 36-1-A and 36-1-A1, are zoned PDMU (Planned Development Mixed Use) and designated Mixed Use in the Comprehensive Plan with a Mixed Use overlay designation. The Mixed Use designation has been applied to the three areas of the County where mixed-use development has been approved and is intended to recognize the planned future use of these properties. The Mixed-Use overlay designation is intended to provide opportunities for a mix of commercial and residential uses, and different types of residential uses (i.e., detached, attached, and apartments) at an unspecified density, within a single, relatively compact development under a unified, coherent master plan. The approved maximum gross density of the development is approximately 9.7 dwelling units per acre and would not change as a result of the proposed amendment. The proffered road connection would be built across a one-acre parcel located at 1629 George Washington Memorial Highway (Assessor's Parcel No. 37-11A) and an adjacent parcel located at 223 Apple Lane (Assessor's Parcel No. 37-27-3). These parcels are zoned GB (General Business) and EO (Economic Opportunity) respectively and designated General Business and Economic Opportunity in the Comprehensive Plan.

Timothy C. Cross, Principal Planner, summarized the staff report dated September 12, 2016, stating that staff recommends the Commission forward the application to the Board of Supervisors with a recommendation of approval through the adoption of proposed Resolution No. PC16-18.

Mr. Myer stated that there are three options available to the County to enforce the existing proffers if the application is not approved. He asked for confirmation that two of those options would require the developer to violate the law and that the third option will be taken care of as part of the site plan review process for Phase 2 of Commonwealth Green.

Mr. Cross said that is correct.

Ms. Magowan asked for clarification that townhouse portion of the development will not be built until the developers receive the wetlands permits.

Mr. Cross responded that since there is a single parcel, they could be issued no more than one building permit for a single townhouse.

Dr. Phillips stated that the townhouse market is the last to recover from real estate slumps, and he noted the recent application for the Marquis that included the elimination of planned townhouses from the project. He asked what would happen if the developer decides not to pursue the development of townhouses for another five years or more.

Mr. Cross responded that it was theoretically possible but not very likely that the project could come to a standstill if the developer decides to wait. He explained that although the proposed units in Phase 2 have been referred to as townhouses, they are really duplex units built as flat,

which is a type of housing that does not currently exist in the County. He added that he and other staff members had visited a community in South Hampton Roads similar to what is being proposed for Phase 2 of Commonwealth Green. Mr. Cross stated that it is a very attractive community and very different from a conventional townhouse development. He added that the developer has an approved preliminary site plan for Phase 2 and does appear to be moving forward with the project.

Dr. Phillips stated that he is concerned about the flexibility given to the developer and asked if the amendment could be modified to require the road to be built within two years of final approval of the application.

Mr. Cross responded that the current condition was not imposed by the County but rather was voluntarily proffered by the developer and that the County only has the ability to approve or deny the proffer amendment that has been proposed by the developer.

Dr. Phillips stated that denying the application would cause the performance surety requirement to take effect immediately rather than upon the issuance of the first building permit for a unit in Phase 2.

Mr. Cross clarified that the performance surety will be required prior to the recordation of a subdivision plat for Phase 2, which has to take place before building permits are issued. He added that while denial of the application would cause the requirement to take effect immediately, the developers still would not legally be able to build the road.

Mr. King asked if it is correct that 90% of the apartments are currently completed.

Mr. Cross stated that the apartments are actually fully completed and that his understanding is that they are fully occupied.

Vice Chair Jons opened the public hearing.

Thomas R. Tucker, 2030 Bush Neck Road, Williamsburg, spoke as the applicant. He stated that Commonwealth Green has been an extremely successful project so far. He stated that the project consists of three phases, the first of which is the apartment complex that was completed last summer and is now fully occupied. He stated that the only problems with the construction of Phase 2, which consists of duplex condominiums, have been regulatory in nature, dating back to 2013 when the initial wetlands permit application was submitted. Mr. Tucker cited various problems encountered with the U.S. Army Corps of Engineers (USACE) and Virginia Department of Environmental Quality (DEQ), the result of which is that the necessary permit still has not been issued. He added that a contract for the construction of the proffered road has been in place for two years while the funding has been in place for three years and that the developers feel they are close to obtaining the permit and intend to move quickly with finishing the road when they are legally able to. He added that a site plan for Phase 3, which is the mixed-use portion of the project, has been submitted to the County for review. He offered to answer questions and said that his engineer, Mr. Donald Davis, was present to answer any technical questions.

Mr. Myer asked for clarification that the jurisdiction of the wetlands had shifted from Norfolk to New York.

Mr. Tucker deferred to Mr. Davis.

Donald Davis, Davis & Associates, 3630 George Washington Memorial Highway, Yorktown, explained that several different wetlands permits have been required for the development of Commonwealth Green, noting that Phase 1 required nearly \$175,000 in mitigation costs. He said that after that, it took about a year for the DEQ and the USACE to agree on the location of the road, which was changed several times to reduce its impact on wetlands. He stated that the developers then had to apply for a separate permit for the wetlands disturbance on the adjacent property where the road was to be built, and that the permit was sent to the USACE's New York office for review and then back to the Norfolk District office, further delaying the project. Mr. Davis stated that he had an on-site meeting today with representatives from the DEQ and the USACE and was informed that there are just three that need to be addressed, all of which, he said, are relatively minor and easily accomplished. He added that they are ready to move forward with the road construction as soon as the permits are obtained, which he feels will be soon.

Dr. Phillips asked Mr. Davis the project's consistency with the Virginia Coastal Zone Management Program has been received.

Mr. Davis responded that it has. He added that confirmation has also been received from the DEQ and the (USACE) and also from the Virginia Department of Transportation (VDOT) with regard to the location and width of the road. He noted that VDOT originally did not approve of the road extension until the purpose and need for it were explained by the County.

Vice Chair Jons asked Mr. Davis to restate the three items that the DEQ and USACE are requesting from the developers in order for them to receive their permit. He stated that he only recalled hearing two of them and wanted to know what the third item was.

Mr. Davis responded that he could not recall specifically what the third item was but noted that it was minor and can be done quickly. He stated that the first item was that they want the wetlands to be re-staked and digitized, and the second was that they wanted an explanation of the need for a fifty-foot (50') right-of-way for a road with a pavement width of 37 feet, and he explained that additional right-of-way is need to accommodate the utilities that run along the roadway, the reason being that it is a standard that York County and VDOT adhere to. He said he would be happy to provide all the information to the Planning staff when it is completed.

Mr. King asked Mr. Davis what the estimated time frame would be to obtain the necessary permits.

Mr. Davis responded that he expects it will be six months at most but that the DEQ and USACE had indicated it could be as soon as the end of this year.

Mr. King asked for confirmation that the developers plan to build the road once they receive the permit.

Mr. Davis said that was correct. He reiterated that not only is the financing already in place, but the layout has been completed and the contractor has already started building the road as far as legally possible.

Ms. Magowan asked if the DEQ or USACE have given any indication that there is anything preventing the construction of the road other than the three items previously mentioned.

Mr. Davis responded they have not.

Mr. Myer asked Mr. Tucker if the developers had considered revising the proffer statement to say that the road will be constructed within twenty four months of the receipt of the wetlands permit rather than within twenty four months of the issuance of the first townhouse building permit.

Mr. Davis responded that they had not. He said they felt that removing the two words “or apartment” from the original proffer statement was the easiest way to accomplish the change. He added that they intend to start construction of the road as soon as all permits are received.

Richard Gullede, 832 Greystone Trace, Newport News (in the Ivystone community on the west side of Commonwealth Drive), expressed concerns about the impact of the Route 17 connection on traffic flow in the area with the addition of through traffic and particularly speeding, which he stated has already become a problem with the construction of the apartments.

There being no one else present wishing to address the Commission on the application, **Vice Chair Jons** closed the public hearing.

Mr. Peterman stated that it appears the developer has tried to get the appropriate permits within the originally proffered time frame but that concerns about whether the road connection was a separate project and led to an eighteen-month delay. He stated that now that all entities agree that it is a single project, he sees no reason not to recommend approval.

Mr. Myer stated that although he would prefer to see the proffer statement worded differently, he has no objections.

Mr. King stated that he believes the road will not be constructed if the request is denied and that it is in the best interest of the County to allow the developer more time. He stated he was in support of the application.

Dr. Phillips stated that he felt that much of the delay resulted from the developer’s desire to have the road reviewed as a stand-alone project. He stated he did not feel that the Commission had many options but that he believed that developer has good intentions to move forward and he would most likely vote in favor of the application.

Ms. Magowan stated that her biggest concern was that the DEQ might deny the permit application after construction of the road had begun, creating a much bigger problem. She said it sounds as if that is not going to happen and that the DEQ had not asked the developer to do anything differently, such as mitigation, in which case she would support the application.

Vice Chair Jons stated that he felt the developers have done all they can to construct the road in a timely fashion but have been hampered by procedural issues and bureaucracy. He stated that they appear to have every intention of completing the road. He stated he would support the application.

Mr. Myer moved the approval of Resolution No. PC16-18.

A RESOLUTION TO RECOMMEND APPROVAL OF AN APPLICATION TO AMEND THE CONDITIONS OF APPROVAL APPLICABLE TO THE PREVIOUSLY APPROVED COMMONWEALTH GREEN MIXED USE DEVELOPMENT LOCATED AT 501 AND 600 COMMONWEALTH DRIVE

WHEREAS, on February 21, 2012, the York County Board of Supervisors approved Application No. PD-31-12 to amend the York County Zoning Map by reclassifying approximately 45.9 acres of land located at the end of Commonwealth Drive (Route 1839) on the east side of the York County-City of Newport News boundary, further identified as Assessor's Parcel Nos. 36-A-A (GPIN S02a-2195-3879), from Economic Opportunity (EO) to Planned Development Mixed Use (PDMU) for the purpose of developing a mixed-use development consisting of a maximum of 334 rental apartments, 94 townhouses, 16 "live-above" condominium or rental units, and a minimum of 40,610 square feet of commercial space; and

WHEREAS, Commonwealth Green LLLP has submitted Application No. PD-44-16 to request to an amendment to the voluntarily proffered conditions of approval for the above-referenced Commonwealth Green development now under construction on two parcels of land located at 501 and 600 Commonwealth Drive (Route 1839), further identified as Assessor's Parcel Nos. 36-1-A and 36-1-A1 (GPINs S02a-2195-3879 and S02a-1858-3769) to allow a two-year extension of the deadline for completion of the proffered road connection to Route 17; and

WHEREAS, said application has been forwarded to the York County Planning Commission in accordance with applicable procedure; and

WHEREAS, the Planning Commission has conducted a duly advertised public hearing on this application; and

WHEREAS, the Commission has carefully considered the public comments with respect to this application;

NOW, THEREFORE, BE IT RESOLVED by the York County Planning Commission this the 12 day of October, 2016, that Application No. PD-44-16 be, and it is hereby, transmitted to the York County Board of Supervisors with a recommendation of approval to amend the voluntarily proffered conditions of approval for the Commonwealth Green development now under construction on two parcels of land located at 501 and 600 Commonwealth Drive (Route 1839), further identified as Assessor's Parcel Nos. 36-1-A and 36-1-A1 (GPINs S02a-2195-3879 and S02a-1858-3769), to allow a two-year extension of the deadline for completion of the proffered road and utility connection to Route 17 by amending the conditions of approval set forth in Ordinance No. 12-1(R) to read and provides as follows:

1. General Layout, Design, and Density

- a) The development shall be designed and constructed in accordance with the provisions of 24.1-361.1, Planned Development Mixed Use district, except as modified herein.
- b) A site plan, prepared in accordance with the provisions of Article V of the Zoning Ordinance, shall be submitted to and approved by the Department of Environmental and Development Services, Division of Development and Compliance prior to the commencement of any land clearing or construction activities on the site. Except as modified herein, said site plan shall be in substantial conformance with the overall development master plan titled "Master Concept Plan of Commonwealth Green," prepared by Davis & Associates, P.C., dated October 25, 2011 and received by the York County Planning Division December 2, 2011, supplemented by the Narrative Description, Residential Design Guidelines, Sign Guidelines, and Building Materials

Palette, with revisions through February 6, 2012, copies of which shall be kept on file in the office of the York County Planning Division.

- c) The maximum number of residential units shall be 444, including 334 rental apartments, 94 townhouses, and 16 “live-above” units. No accessory apartment, as defined by Sections 24.1-104 and 24.1-407 of the Zoning Ordinance, shall be permitted in conjunction with any residential unit in the development.
- d) The development shall include a minimum of 40,610 square feet of commercial/office/civic/institutional (i.e., non-residential) floor area.
- e) Architectural design of all buildings shall be in substantial conformance with the building elevations and “Building Materials Palette” submitted by the applicant, copies of which shall be kept on file in the office of the York County Planning Division, and with the standards set forth in Zoning Ordinance Section 24.1-361.1(f), Planned Development Mixed Use district.
- f) Off-street and on-street parking for the rental apartment buildings shall be provided in accordance with the minimum numerical standards set forth in Section 24.1-606(a) of the Zoning Ordinance (1.5 spaces per unit plus one space for every 3 units for visitor parking). Any proposed deviation from this minimum standard shall be subject to approval by the Zoning Administrator following the submission of a site- and use-specific parking space analysis and plan in accordance with the provisions set forth in Section 24.1-604(b) of the Zoning Ordinance.

2. Signs

- a) Freestanding signage shall be limited to one development identification sign at each entrance to the project. Said signs shall be monument-style and shall not exceed forty (40) square feet in area and six feet (6’) in height. Materials and colors shall be compatible with overall development architecture. In addition, the apartment component of the project may be identified by a monument-style community identification sign at each of its entrances from Commonwealth Drive with such signs not to exceed twenty-four (24) square feet and six (6) feet in height.
- b) In accordance with the Zoning Ordinance standards applicable to development in the LB (Limited Business) district, wall and marquee/canopy signs having a maximum cumulative area of 1.25 square feet for each linear foot of principal building width shall be permitted for the mixed-use and commercial buildings.

3. Streets and Roads

Subject to approval by the Virginia Department of Transportation (VDOT), the developer shall install a 200-foot southbound right-turn lane on George Washington Memorial Highway (Route 17) at the entrance to the project. All public road improvements shall be constructed in accordance with all applicable VDOT standards.

4. Fire and Life Safety

- a) In accordance with Section 503.1.1 of the 2009 International Fire Code, approved fire apparatus access roads shall be provided for every facility, building or portion of a

building hereafter constructed or moved into or within the jurisdiction. The fire apparatus access road shall comply with the requirements of this section and shall extend to within 150 feet of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility.

- b) The roundabout, sidewalks, inside and outside curbs, traffic islands, parking lot islands, etc. shall be designed to accommodate the turning radius (33' inside) of large fire and rescue apparatus.
- c) A water supply shall be established with a minimum of 2500 GPM (gallons per minute) in accordance with Newport News Waterworks requirements.

5. Open Space and Recreation

- a) A minimum of 10.16 acres of common open space shall be provided as depicted on the overall development master plan and in accordance with the provisions set forth in Section 24.1-361.1(g)(2) of the Zoning Ordinance.
- b) Indoor recreational amenities shall consist of, at a minimum, a 1,800-square foot town center with a kitchenette, dining area, exercise area, and restrooms. Said facility shall be available to all property owners and residents of the development and their guests and shall be completed and available to residents.

6. Utilities

The proposed gravity sanitary sewer system shall connect into the existing York County Manhole #039208 at the lowest invert possible. The sanitary sewer pipeline shall be designed with the minimum slope allowed in accordance with York County Standards.

7. Environment

- a) Prior to the approval of any site plans for this development, the developer shall submit a Natural Resources Inventory of the property prepared in accordance with Section 23.2-6 and evidence of all environmental permits.
- b) Any proposed disturbance of wetlands on the property shall require a permit from the U.S. Army Corps of Engineers and/or Virginia Department of Environmental Quality.
- c) Development of the property shall be in accordance with the provisions of the Watershed Management and Protection Area overlay district set forth in Section 24.1-376 of the Zoning Ordinance.

8. Proffered Conditions

The reclassification shall be subject to the conditions listed in the proffer statement titled "Commonwealth Green Proffers" dated October 25, 2011 and amended through February 12, 2012 and signed by Jeanette J. Keener and Thomas R. Tucker, as amended by the proffer statement addendum dated September 26, 2016 and signed by Thomas R. Tucker.

BE IT STILL FURTHER RESOLVED that in accordance with Section 24.1-114(e)(1) of the York County Zoning Ordinance, a certified copy of this ordinance, together with a duly

signed copy of the September 26, 2016 addendum to the proffer statement, shall be recorded at the expense of the applicant in the name of the property owner as grantor in the office of the Clerk of the Circuit Court prior to application for site plan approval.

On roll call the vote was:

Yea: (6) Phillips, King, Myer, Magowan, Peterman, Jons
Nay: (0)
