

# COUNTY OF ALBEMARLE



## MEMORANDUM

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**TO:** Sean Dougherty  
Elaine Echols  
Amelia McCulley  
Jan Sprinkle

**FROM:** Greg Kamptner, Assistant County Attorney

**DATE:** June 19, 2005

**RE:** Belvedere Proffers and Code of Development

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The following are comments to the Belvedere proffers, with some suggested language, including language to be used in the Code of Development for those “proffers” on matters that actually should be addressed in the Code of Development.

- 1.1 This is not a proffer and should be deleted. Zoning Ordinance § 8.3 governs the extent to which the development must be in accord with an approved application plan (“general development plan” in the NMD; in these comments, referred to as the “application plan”). Note also that an application plan (Zoning Ordinance § 8.5.1(d) and § 20A.4) is different from a code of development (Zoning Ordinance § 20A.5).
- 1.2 Only those exhibits that are not part of the application plan or the code of development and that are actually proffered should be included. All of the other exhibits should be deleted from this list.
- 2.1 This proffer is unnecessary because residential density must be provided in the Code of Development. Zoning Ordinance § 20A.5(c) governs what is required for a statement regarding residential density (cross-referencing Zoning Ordinance § 20A.7). Since Table 3 is in the Code of Development, it need not be proffered.
- 2.2 If it is actually intended to phase development so that certain improvements are completed or permits are issued before a subsequent phase may begin, this proffer and/or Exhibit 12 need to be revised. Exhibit 12 merely depicts Belvedere in three sections called “phases,” but there is nothing that actually requires development to be phased.
- 3.1 This proffer does not assure affordable housing, so the heading to sections 3 and 3.1 are misleading. To a great extent, the proffer only identifies a second housing type (See Zoning Ordinance § 20A.5(c)). The second and third sentences’ statements regarding the non-divisibility of the parcels is a proffer, but should be revised to state: “Each carriage unit shall be on the same

parcel as the primary dwelling unit to which it is accessory, and such parcel shall not be subdivided. This subdivision restriction shall be described on the plat creating such parcels and be incorporated into each deed conveying title to such parcels." The statement in the second sentence regarding the right to rent the carriage house units is not actually a proffer, and should be stated in the Code of Development instead. Ron White needs to comment on this proffer, if he hasn't already.

- 4.1 Preservation areas must be addressed in the Code of Development at a block level (Zoning Ordinance § 20A.5(i)(7) and (8)) The proposed language is generally acceptable, but we suggest that the County officials having oversight be limited to the program authority and that the placement of erosion and sediment control measures within the preservation areas be limited. Proposed language for the Code of Development:

The preservation areas shown on Exhibits 2B and 2C to the Code of Development entitled "Block 1 and 2 General Development Plan" and "Blocks 3-10 General Development Plan," dated October 18, 2004 shall remain undisturbed and shall be protected from development impacts to the satisfaction of the County's program authority for the Water Protection Ordinance (Chapter 17 of the Albemarle County Code) (hereinafter, the "program authority"); except that:

- A. Pedestrian paths may be established and maintained in a preservation area if the agent finds that the construction, maintenance and use of the paths will have a minimum environmental impact on the preservation area.
- B. Erosion and sediment control structures and measures shall be permitted within a preservation area solely to address impacts from authorized land disturbing activity within the preservation area.

- 4.2 Conservation areas must be addressed in the Code of Development at a block level (Zoning Ordinance § 20A.5(i)(7) and (8)) With typos corrected, the proposed language is generally acceptable, but we suggest that the County officials having oversight be limited to the program authority, that the disturbance to establish and maintain the improvements be regulated by the proffer, and that the placement of erosion and sediment control measures within the preservation areas be limited. Proposed language for the Code of Development:

The conservation areas shown on Exhibits 2B and 2C to the Code of Development entitled "Block 1 and 2 General Development Plan" and "Blocks 3-10 General Development Plan," dated October 18, 2004 shall remain undisturbed and shall be protected from development impacts to the satisfaction of the program authority; except that

- A. Streets, sanitary sewers, storm drainage outfalls, pedestrian paths, and/or stream mitigation or restoration measures may be placed in a conservation area if the program authority finds that the disturbance is necessary for such a proposed use and the proposed use is shown on the Application Plan. The construction, maintenance and use of the improvements shall have the minimum environmental impact on the conservation areas necessary for the improvements to be established and maintained, and the long-term impacts shall be adequately mitigated. Nothing in this condition shall be construed to obviate the requirements established for stream buffers under Chapter 17 of the Albemarle County Code or shall constitute a waiver of such requirements.

B. Erosion and sediment control structures and measures shall be permitted within a conservation area solely to address impacts from authorized land disturbing activity within the conservation area.

- 5.1 Is this open space different from “green space”? Open space that is green space must be addressed in the Code of Development, as provided by Zoning Ordinance § 20A.5(d). The applicant did not proffer Exhibit 5 that is referred to in the proffer; however, the location of green space and amenities must be shown on the application plan under Zoning Ordinance § 20A.4(c). Note also that, although there is language in the UREF proffers (1996) similar to the last sentence in the applicant’s proffer, it is ineffective because a proffer may not excuse compliance with a requirement of the Zoning Ordinance. The total area for green space is addressed in the Code of Development, not proffers. (Zoning Ordinance § 20A.9) The applicant modeled the open space proffer based on an old version of the North Pointe proffers. This issue needs to be completely revisited in light of Zoning Ordinance § 20A.9.
- 5.2 Generally, the proposed proffer language is satisfactory but we can suggest some alternative language after the following questions are answered. Is the greenway shown on the application plan? Will the pedestrian connection be for the use of Belvedere residents only, or the public at large? Has Parks and Recreation commented on the location and access points of the greenway? Typically, these dedications are made when the County makes a request. Is that the applicant’s intention or do they want to do it in conjunction with the platting of the surrounding area? When the applicant states that they will “bear the cost” of constructing the greenway trail, I assume that means they are proposing a cash proffer and not constructing the trail itself. Do they want to proffer a specific cash amount or is it whatever reasonable amount the County requests? If this is a cash proffer, it needs to provide for the disposition of the cash if it is not used for the path.
- 5.3 The proffer does not state when the cash contribution would be made. Will the County construct the bridge? Has the Dunlora Homeowner’s Association or whoever owns both sides of the waterway to be crossed indicated they will grant permission son for the bridge to be constructed? Who will maintain the bridge? Suggested language: “Upon request by the County, Owner shall make a cash contribution in the amount of \$20,000 for construction of a pedestrian bridge . . .” The proffer needs to provide for the disposition of the cash if it is not used for the bridge.
- 6.1 The first sentence describes the right-of-way as that being shown on Exhibit 2c; the third sentence describes it as “illustrated” on Exhibit 2a. Which is it? How would the appraiser be selected? Proposed language to clarify some issues:
- Owner shall reserve a one hundred (100) foot right-of-way as shown on Exhibit 2c and identified thereon as “100’ Reserved Road ROW” for purchase by the County for the purpose of constructing the North Free State Road. This proposed right-of-way shall be reserved until December 31, 2004 and until such date the County or any other public entity shall have the right to purchase the reserved lands for either the appraised value per acre of the reserved lands at the time of purchase, or \$40,000 per acre of the reserved lands, whichever is less. The appraiser shall be selected by \_\_\_\_\_.
- 6.2 Is the applicant dedicating land or land and improvements? Is the dedication shown on the application plan so that its location is known? When can the dedication take place?
- 6.3 Is the applicant dedicating land or land and improvements? Is the dedication shown on the application plan so that its location is known? When can the dedication take place? If the

dedicated area is in the Phase III section of Belvedere, can we demand it now, or do we have to wait until Phase III is under development?

- 7.1 This proffer appears to be incomplete since it includes only a subsection "a" from an old North Pointe draft proffer that has been revised. Here is the language for overlot grading in the latest North Pointe draft documents:

Overlot grading plan. The Owner shall submit an overlot grading plan meeting the requirements of this section (hereinafter, the "plan") with the application for each subdivision of the single family detached and single family attached dwelling units shown on the Application Plan. The plan shall show existing and proposed topographic features to be considered in the development of the proposed subdivision. The plan shall be approved by the County Engineer prior to final approval of the subdivision plat. The subdivision shall be graded as shown on the approved plan. No certificate of occupancy shall be issued for any dwelling on a lot where the County Engineer has determined the lot is not graded consistent with the approved grading plan. The plan shall satisfy the following:

- A. The plan shall show all proposed streets, building sites, surface drainage, driveways, trails, and other features the County Engineer determines are needed to verify that the plan satisfies the requirements of this condition.
  - B. The plan shall be drawn to a scale not greater than one (1) inch equals fifty (50) feet.
  - C. All proposed grading shall be shown with contour intervals not greater than two (2) feet. All concentrated surface drainage over lots shall be clearly shown with the proposed grading. All proposed grading shall be shown to assure that surface drainage can provide adequate relief from the flooding of dwellings in the event a storm sewer fails.
  - D. Graded slopes on lots proposed to be planted with turf grasses (lawns) shall not exceed a gradient of three (3) feet of horizontal distance for each one (1) foot of vertical rise or fall (3:1). Steeper slopes shall be vegetated with low maintenance vegetation as determined to be appropriate by the County's program authority in its approval of an erosion and sediment control plan for the land disturbing activity. These steeper slopes shall not exceed a gradient of two (2) feet of horizontal distance for each one (1) foot of vertical rise or fall (2:1), unless the County Engineer finds that the grading recommendations for steeper slopes have adequately addressed the impacts.
  - E. Surface drainage may flow across up to three (3) lots before being collected in a storm sewer or directed to a drainage way outside of the lots.
  - F. No surface drainage across a residential lot shall have more than one-half (1/2) acre of land draining to it.
  - G. All drainage from streets shall be carried across lots in a storm sewer to a point beyond the rear of the building site.
8. No comment.

9.1 Historic resources must be addressed, at least in part, in the Code of Development (Zoning Ordinance § 20A.5(g)(8)). From our meeting Wednesday, I understand that the language in this proffer is out of date because some of the work has already been done. The next version of this proffer needs to clarify when the surveys will be conducted (such as before the lands are disturbed), the minimum qualifications of the person(s) conducting the survey, the standards under which the surveys are to be conducted, and a requirement that the surveys will be submitted to the County (to the County’s Historic Resources Planner for example) for review so that we know what is being found in the surveys. Following is language from a James City County proffer. Julie Mahon should review it:

Archaeology. A Phase I Archaeological Study for Master Plan area shall be submitted to the Director of Planning for his review and approval prior to land disturbance. A treatment plan shall be submitted to, and approved by, the Director of Planning for all sites in the Phase I study that are recommended for a Phase II evaluation, and/or identified as being eligible for inclusion on the National Register of Historic Places. If a Phase II study is undertaken, such a study shall be approved by the Director of Planning and a treatment plan for said sites shall be submitted to, and approved by, the Director of Planning for sites that are determined to be eligible for inclusion on the National Register of Historic Places and/or those sites that require a Phase III study. If in the Phase II study, a site is determined eligible for nomination to the National Register of Historic Places and said site is to be preserved in place, the treatment plan shall include nomination of the site to the National Register of Historic Places. If a Phase III study is undertaken for said sites, such studies shall be approved by the Director of Planning prior to land disturbance within the study area. All Phase I, Phase II and Phase III studies shall meet the Virginia Department of Historic Resources' Guidelines for Preparing Archaeological Resource Management Reports and the Secretary of the Interior's Standard and Guidelines for Archaeological Documentation, as applicable, and shall be conducted under the supervision of a qualified archaeologist who meets the qualifications set forth in the Secretary of the Interior's Professional Qualification Standards. All approved treatment plans shall be incorporated into the plan of development for the site and shall be adhered to during the clearing, grading and construction activities thereon.

9.2 Seek comments from Julie Mahon.

9.3 When will the cash contribution be made? At the request of the County? Where will the marker be placed? Is there a standard for these kinds of historical markers that should be referred to? Who would receive the contribution? Proposed language: “Upon request by the County, Owner shall make a cash contribution to \_\_\_\_\_ in an amount sufficient to pay for the installation of a roadside historical marker . . .” The proffer needs to provide for the disposition of the cash if it is not used for the bridge.

9.4 Delete. This is not a proffer.

9.5 This proffer needs to be clarified. What segment of Free State Road is the applicant talking about? Maintenance of a public street is not abandoned, it is “discontinued.” Will VDOT allow pedestrian trails to be established in its right-of-way and, if so, what right does the applicant have to maintain it as a pedestrian trail? What will be the standards of maintenance?