

Fox Chase Apts., LLC
43403 Coton Commons Drive
Lansdowne, VA 20176
May 2, 2014

Re: Proffer Determination for Fox Chase Commons, SUB1300051

Ms. Susan Blackburn
Zoning Administrator
1300 Courthouse Road P.O. Box 339
Stafford, VA 22555-0339

Dear Ms. Blackburn:

Applicant Fox Chase Apts., LLC, seeks a determination of the meaning of two items in the September 7, 2011, Proffer Statement for the Fox Chase Commons subdivision plan, number 1300051 (Exhibit A).

The issues are:

1. Whether the Applicant is limited to a maximum of 99 units, and
2. Whether 11 per-unit proffers of \$37,837.93 (\$416,217.23 in total) must to be paid if there are fewer than 11 units placed on the former B-1 zoned parcel.

1. Maximum Number of Units

Applicant's property originally consisted of 7.6 acres of R-3 zoned land and 1.5 acres of B-1 zoned land. To consolidate the land, Applicant in 2010 filed to re-classify (rezone) the B-1 zoned land. As part of the rezoning, the County requested that Applicant provide a placeholder GDP for illustrative purposes to show what a typical development plan would look like. The Applicant's placeholder GDP showed 99 units. In 2011, the County approved the rezoning of the B-1 parcel to R-3. The resulting 9.1 acres of R-3 zoned land can, by right, have up to 135 units placed on it.

The proffer statement does not say that Applicant is limited in any way to a maximum number of units, and it was never its intention to limit the number to 99; that is simply the number of units initially contemplated by the placeholder GDP but which would be subject to revision based on the final engineering plans.

In 2013, Applicant filed for Preliminary Approval a plan that ultimately had 102 units. That 102-unit plan was approved by the Director of Planning and Zoning on November 8, 2013 (Exhibit B). However, because Applicant deferred the Planning Committee meeting, the Planning Committee did not vote on the plan until March. Just prior to the March 2014 Planning Committee meeting, the County informed Applicant that it should limit its total units to 99. To prevent further delays in the protracted approval process, Applicant amended the plan to show only 99 units. The Planning Commission approved the plan on March 26, 2014.

The Proffer Statement is silent on a maximum number of units, but paragraph 1(c) states:

“[A]ll parcel lines, parcel sizes, building envelopes, building sizes . . . shown on the GDP may be amended from time to time by the Applicant to fulfill requirements of final engineering Changes consistent with the original intent of the GDP (the original intent of the GDP providing only for the general location of the buildings, parking areas, and entrances to and exits from the development) shall be permitted.”

Applicant believes that the Proffer Statement does not limit it to a maximum of 99 units; by right it can build 135 units. Nevertheless, Applicant will agree that any plan it proposes will have no more than 102 units, and it respectfully requests a determination of whether 102 units can be built.

2. Number of Per-Unit Proffers

As part of the rezoning of the B-1 parcel, referred to as “TM 45-217A,” Applicant agreed to pay per-unit proffers (currently \$37,838.93) for every eventual lot that was on TM 45-217A. Because some of the lots had just a tiny fraction of their total area on the parcel, only lots that had a majority of their area on the parcel were counted. The initial placeholder GDP had 16 lots that had at least part of their area on the parcel (outlined in red in Exhibit C). Of these 16 lots, 11 lots had the majority of their area on the parcel; therefore paragraph 3 of the Proffer Statement states:

“3. Cash Contribution – For purposes of rezoning TM 45-217A only, the Applicant agrees to pay the County the total sum of \$382,283 as cash proffers, which equates to \$34,753 x 11 units, under the County’s current proffer guidelines for townhouses. Cash proffers will be payable prorata to the County upon the issuance of a final certificate of occupancy for each of the 11 residential townhouse units located on TM 45-217A, all as shown on the GDP.”

The Proffer Statement did not fix the minimum or maximum number of units on the parcel, nor did Applicant agree to a minimum or maximum number.

Unlike the situation in paragraph 1(c) above, where the Proffer Statement is silent on the maximum number of units – and therefore there is some ambiguity in interpretation – paragraph 3 explicitly states that the per-unit cash proffers are only to be paid “for each of the 11 residential townhouse units located on TM 45-217A.”

Applicant’s current, approved plan has six units with a majority of their area on parcel TM 45-217A (Exhibit D), so Applicant should be required to pay per-unit proffers on those six units, and not on 11 units, as the County requested in March 2014. Applicant will further agree that any plan it submits will pay for a minimum of six units on parcel TM 45-217A. It respectfully requests a determination of whether it must pay per-unit proffers only for units with a majority of their area on parcel TM 45-217A.

Very truly yours,



Paul-Noel Chretien, Manager
Fox Chase Apts., LLC

Attachments (4)