

CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	April 18, 2022
Action Required:	<b>(1) Ordinance (Rezoning and Critical Slope Waiver) (2<sup>nd</sup> 2 readings)</b>  <b>(2) Ordinance (Infrastructure Funding) (2<sup>nd</sup> 2 readings)</b>
Presenter:	Michael C. Rogers, City Manager (Sidewalk Project) Matt Alfele, AICP, City Planner (Rezoning/CS Waiver)
Staff Contacts:	Sam Sanders, Deputy City Manager; James Freas, NDS Director; Krisy Hammill, Sr. Budget and Mgmt. Analyst; Lisa Robertson, City Attorney
Title:	<b>Stribling Avenue Planned Unit Development (Rezoning and Related Matters)</b>

Belmont Station, LLC (by Charlie Armstrong) has submitted an application seeking a rezoning of approximately twelve (12) acres of land, identified within City tax records as Tax Map and Parcel 18A025000 (“Subject Property”). The purpose of the rezoning is to subdivide and develop a 170-unit Planned Unit Development, in twenty (20) construction phases. The Subject Property has some frontage on Stribling Avenue, as shown following below:



The Planning Commission reviewed the rezoning application that is now before City Council and it recommended that City Council approve the rezoning only if a sidewalk for pedestrians will be constructed along Stribling Avenue. (The planning commission also expressed concern about tree removal associated with the development; however, a significant amount of tree removal will also be associated with any sidewalk project).

### **City Manager Office Recommendations**

For the reasons set forth within this Agenda Memo, the City Manager's Office recommends that Council take the following action(s):

- (1) Approve the Rezoning, and
- (2) Approve the Infrastructure Funding Agreement for a Stribling Sidewalk Project.

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### **City Manager Recommendation (1): City Council should approve the rezoning and critical slope waiver, consistent with the Planning Commission's recommendation**

The NDS Staff Report for the rezoning is Attachment 3 to this Agenda Memo (including the Final Proffer Statement and the proposed PUD Development Plan).

Since the first reading conducted by City Council, the applicant has amended the proffered development conditions to provide a clear definition of "low- and moderate-income household". See Proffer 1.a.(ii).

### **City Manager Recommendation (2): City Council should approve the proposed Infrastructure Funding Agreement**

- a. The Stribling Sidewalk Project is advisable, to enhance pedestrian safety

The City should upgrade this existing public street, and add sidewalk improvements to Stribling Avenue. Existing conditions are already challenging for pedestrians/ residents along this existing City street. Topography and natural systems are dramatic: Moore's Creek and its tributaries interlace with a rolling topography. This existing topography may explain why no sidewalk construction was included when Stribling Avenue was originally improved. Further, there exists a floodplain where Stribling Road travels up to Fontaine Avenue; drainage challenges may further explain the lack of sidewalk improvements along this existing public street.

- b. The Funding Agreement is in the City's best fiscal interests.

A copy of the voluntary Funding Agreement is attached to this Agenda Memo. The Funding Agreement proposes an advance of \$2.9 million by Belmont Station LLC to the City for Stribling sidewalk construction, repayable in future years (with interest) from the new real estate tax revenues generated by the PUD development. Future repayments by the City would be classified as "debt service". It has been estimated that the cost of establishing sidewalk along Stribling Avenue will be at least \$2.9 million, but possibly up to \$4.0 million. This ballpark estimate is based upon information shared by Belmont Station, LLC, and the City Engineer's familiarity with this general area—in particular, the difficult topography and drainage issues.

1. ***Since this matter was last before City Council, the proposed agreement has been revised, to state that the repayment amounts would be calculated based on sixty percent (60%) of new real estate revenues attributable to the development, to avoid double-committing the new real estate tax revenues to be received from the development.*** The premise of this arrangement is that the tax revenues realized by the City from the new construction, sale and occupancy of each new housing unit can be used to cover

the debt service. Sixty-percent (60%) of new real estate revenues received by the City would be earmarked for repayment of the debt to Belmont Station, LLC during the repayment period (which can be up to a total of 15 years). With this change, the proposed Funding Agreement now takes into account the City's longstanding practice of committing the first forty percent (40%) of all new real estate tax revenues every year for the School's operational budget.

**Alignment with Council Vision Areas and Strategic Plan:**

The proposed PUD itself, as represented within the Application Materials and Proffered Development Conditions, is consistent with the City's vision to provide housing that includes a mixture of incomes and housing types.

**Community Engagement:** community engagement has occurred via the public hearing process on the rezoning application.

**Attachments (3):**

- ACTION ITEM 1: Proposed Ordinance Approving the Stribling Planned Unit Rezoning

*Suggested motion: " I move the ORDINANCE amending and re-enacting the Zoning Map for the City of Charlottesville, Virginia, to reclassify property from R-1S and R-2 to Planned Unit Development for the "240 Stribling PUD", and granting a critical slope waiver for the 240 Stribling PUD*

- ACTION ITEM 2: Proposed Ordinance for an Infrastructure Funding Agreement

*Suggested motion:*

**Approve:** *"I move the ORDINANCE approving a voluntary infrastructure funding agreement in the amount of \$2.9 million, upon terms offered by Belmont Station, LLC for construction of sidewalk along Stribling Avenue"*

- **Background Materials: NDS Staff Report for the Rezoning and Critical Slope Waiver**

# **ACTION ITEM 1: REZONING ORDINANCE (INCLUDING CRITICAL SLOPE WAIVER)**

## **ORDINANCE**

### **Amending and Re-enacting the Zoning Map for the City of Charlottesville, Virginia, to reclassify property from R-1S and R-2 to Planned Unit Development for the “240 Stribling PUD”, and granting a critical slope waiver for the 240 Stribling PUD**

**WHEREAS**, Belmont Station, LLC (“Landowner”) submitted rezoning application ZM20-00002 (“Application”) seeking a change in the zoning district classification for approximately twelve (12) acres of land identified by City Real Estate Tax Parcel Identification No. 18A025000 (“Subject Property”), from R-1S (Residential Small Lot) and R-2 (Residential Two-Family) to Planned Unit Development (“240 Stribling PUD”), with such rezoning made subject to certain development conditions proffered by the Landowner (“Proffers”); and

**WHEREAS**, the purpose of the rezoning application is to allow a specific development project (“Project”) identified within a written PUD Development Plan, dated June 11, 2021, as revised through March 21, 2022, and the Statement of Final Proffer Conditions signed by the Landowner on November 11, 2021 for the “240 Stribling PUD”. The PUD Development Plan identifies the general or approximate location of the following housing types to be constructed: 20 rows of townhouses, two multifamily dwelling units, and two single-family attached dwellings. The PUD Development Plan also depicts two central greens, protection of a wooded area between the development and Moore’s Creek, a shared use path constructed to City Standard Detail TR-1, a public street connection to Morgan Court, and six (6) private streets intended for rear loading of the townhouses within the development. Structured parking will be provided within the multifamily dwelling units, and sidewalks will be constructed on both sides of all new public streets within the development, and along one side of each private street within the development. The development of the Subject Property will further be subject to the conditions of a critical slope waiver approved by City Council, as requested in Application P20-0079. (Collectively, all of the foregoing materials describe the specific “Project”); and

**WHEREAS**, a joint public hearing on the proposed rezoning of the Subject Property was held before the Planning Commission and City Council on September 14, 2021, after notice to the public and to adjacent property owners as required by law; and

**WHEREAS**, on November 9, 2021, following the joint public hearing, the Planning Commission voted to recommend that City Council should approve the proposed rezoning for the Project, subject to certain qualifications; and

**WHEREAS**, City Council has considered: the details of the specific Project, as represented within the Landowner’s various application materials, the Staff Reports relating to the application materials, the comments received from the public, and the Planning Commission’s recommendation; and

**WHEREAS**, this Council finds and determines that the public necessity, convenience, general welfare and good zoning practice require the proposed rezoning; that both the existing zoning classification (R-1S) and the proposed PUD zoning classification (subject to the proffered development conditions) are reasonable; and that the proposed rezoning is consistent with the Comprehensive Plan; now, therefore,

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia that, in order to allow the development of the Project described above within this Ordinance, the Zoning Map incorporated in Section 34-1 of the Zoning Ordinance of the Code of the City of Charlottesville, 1990, as amended, shall be and hereby is amended and reenacted as follows:

*Section 34-1. Zoning District Map.* Rezoning from R-1S and R-2 to 240 Stribling PUD, all of that certain land identified within the City of Charlottesville’s real estate tax records by Real Estate Parcel Identification Number 18A025000, consisting of approximately 12.07 acres (approx. 525,769 square feet), subject to the PUD Development Plan dated June 11, 2021, as revised through 3/21/2022, and also subject to the Proffers dated November 11, 2021, which were tendered by the Landowner in accordance with law and are hereby accepted by this City Council as set out below

within this Ordinance.

### **Approved Proffers**

The use and development of the Subject Property shall be subject to the following development conditions voluntarily proffered by the Landowner, which conditions shall apply in addition to the regulations otherwise provided within the City's zoning ordinance:

1. The Owner shall establish affordable housing within the Property, as follows:

a. For the purposes of this Proffer:

- i. The term "Affordable Dwelling Unit" means a dwelling unit reserved for occupancy by a Low- and Moderate-Income Household.
- ii. "Low-and Moderate-Income Household" means a household that pays no more than thirty percent (30%) of its gross income for housing costs, including utilities, provided that the annual gross income of the household/occupant is sixty percent (60%) or less of the Area Median Income (AMI) for the City of Charlottesville, as said AMI is established annually by the federal Department of Housing and Urban Development (HUD).

b. Fifteen percent (15%) of all dwelling units constructed within the area of the Subject Property shall be Affordable Dwelling Units. ("Required Affordable Dwelling Units") The Required Affordable Dwelling Units shall be identified on a layout plan, by unit, prior to the issuance of any certificate of occupancy for a residential unit within the PUD ("Initial Designation"). The Owner reserves the right, from time to time after the Initial Designation, and subject to approval by the City, to change the unit(s) reserved as Affordable Dwelling Units, and the City's approval shall not unreasonably be withheld so long as a proposed change does not reduce the number of Required Affordable Dwelling Units and does not result in an Affordability Period shorter than required by these proffers with respect to any of the Required Affordable Dwelling Units.

- i. Thirty percent (30%) or more of the Required Affordable Dwelling Units shall be reserved for rental to low- and moderate-income households ("Rental Affordable Dwelling Units"). Each of the Rental Affordable Dwelling Units shall be reserved as such throughout a period of at least ten (10) years from the date on which the unit receives a certificate of occupancy from the City's building official ("Rental Affordability Period"). All Rental Affordable Dwelling Units shall be administered in accordance with City regulations adopted pursuant to the provisions of City Code 34-12(g) as such regulations are in effect on the date of Owner's signature, below. For the purposes of this section and section 1.b.ii., below, if City regulations adopted pursuant to the provisions of City Code 34-12(g) are amended by the City after the date of Owner's signature, below, the Owner may elect in writing to the Zoning Administrator to instead be bound by the amended regulations.
- ii. Thirty percent (30%) or more of the Required Affordable Dwelling Units shall be reserved for ownership by low- and moderate-income households ("For-Sale Affordable Dwelling Units"), throughout a period of thirty (30) years from the date on which the unit receives a certificate of occupancy from the City's building official. The For-Sale Affordable Units shall be administered in accordance with City regulations adopted pursuant to the provisions of City Code 34-12(g), as such regulations are in effect on the date of Owner's signature, below. During construction the For-Sale Affordable Dwelling Units shall be constructed incrementally, such that at least five (5) Affordable Dwelling Units shall be either completed or under construction pursuant

to a City-issued building permit, prior to the issuance of every 30th building permit for non-affordable for-sale dwelling units.

- c. The land use obligations referenced in 1.b.i, 1.b.ii, and 1.b.iii shall be set forth within one or more written declarations of covenants recorded within the land records of the Charlottesville Circuit Court, in a form approved by the Office of the City Attorney, so that the Owner's successors in right, title and interest to the Property shall have notice of the obligations. In the event of re-sale of any of the Required Affordable Rental Units that reduces the number of Required Affordable Dwelling Units below the thresholds set forth in this proffer, the declaration of covenants shall provide a mechanism to ensure that an equivalent Affordable Dwelling Unit is created within the City of Charlottesville, either on or off of the Subject Property, that satisfies the requirements contained herein for the remainder of the Affordability Period.

### **Critical Slope Waiver**

**BE IT FURTHER ORDAINED by the Council of the City of Charlottesville, THAT** a waiver of the critical slopes requirements for the Subject Property, to allow for construction of the specific 240 Stribling PUD Project that is the subject of this Ordinance, is hereby granted subject to the following conditions (each, a "CS Waiver" condition):

CS Waiver condition #1: site Plans (VESCP Plans) shall include, at a minimum, 4 stages/phases of erosion and sediment control measures: the first shall be "Initial/Preliminary Controls" and outfall construction, and the second shall include the establishment of sediment traps and conveyances. The sequence shall dictate that no disturbance of the slopes can occur, other than to facilitate trap/conveyance construction, until after the establishment of the trap, conveyances and permanent outfall (until Stage/Phase III)

CS Waiver condition #2: "Super Silt Fence" (chain linked backing) shall be installed where perimeter silt fence is specified.

CS Waiver condition #3: Any disturbance occurring outside of conveyances to the trap, in either sequence or space, planned or unforeseen, shall be immediately stabilized with sod (for pervious areas, utilities should have other "same day stabilization).

CS Waiver condition #4: The proposed trail shall be a non-erodible surface (asphalt/concrete or similar) and provisions shall be made in the stormwater management plan to ensure runoff from the trail is conveyed in a non-erosive manner, and concentrated flows shall not be discharged above slopes, or flow along the toe of slopes, on or offsite the property.

CS Waiver condition #5: Trees removed from areas of critical slope(s) shall be replaced within those areas, at a three-to-one ratio ("Habitat Replacement Trees"). The Habitat Replacement Trees shall be locally native tree species appropriate for the site conditions. The specific number and species of Habitat Replacement Trees will be determined by the applicant and the City based on available space and site conditions, and the size, location and species of all Habitat Replacement Trees shall be specified within the landscaping plan required by Sections §§34-861 et seq. of the Charlottesville City Code, as amended.

CS Waiver condition #6: No tree(s) planted in any area(s) that contain buildings, parking lots, sidewalks, or other built improvements shall be counted as any Habitat Replacement Tree(s).

## **ACTION ITEM 2: ORDINANCE FOR INFRASTRUCTURE FUNDING AGREEMENT**

### **ORDINANCE**

#### **APPROVING A VOLUNTARY INFRASTRUCTURE FUNDING AGREEMENT IN THE AMOUNT OF \$2.9 MILLION UPON TERMS OFFERED BY BELMONT STATION, LLC FOR CONSTRUCTION OF SIDEWALK ALONG STRIBLING AVENUE**

**BE IT ORDAINED** by the Council of the City of Charlottesville, Virginia, that the following voluntary funding agreement offered to the City by Belmont Station, LLC, is hereby approved for a capital project to be undertaken by the City to construct public sidewalks on Stribling Avenue, and the Mayor is authorized to execute said agreement on behalf of the City:

**THIS INFRASTRUCTURE FUNDING AGREEMENT** (“Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 2022, by and among the **City of Charlottesville, Virginia (the “City”)**, a municipal corporation and political subdivision of the Commonwealth of Virginia, and, **Belmont Station, LLC, a Virginia limited liability company (the “Developer”)**.

#### Recitals

**R-1.** The Developer’s purpose and intent is to invest a significant amount of money into real estate and improvements, described as: All that certain tract or parcel of land situated in the City of Charlottesville, Virginia (the “City”) on the south side of Stribling Avenue, containing 11.053 acres, more or less, according to the City land records, and currently shown as City Tax Map Parcel 18A025000, and as further **(the “Investment”)** described and depicted on **Exhibit A** hereto **(the “Property”)**, where Developer intends to design and develop a Planned Unit Development containing approximately 170 newly-constructed residential dwellings (the “PUD Project”), which will promote the safety, health, welfare, convenience or prosperity of the inhabitants of the City by promoting appropriate housing density and affordability within an area of the City, enhance the tax base in the City, create more housing opportunities, and promote other economic development in the City. The Developer’s Investment and the amounts and other requirements included in such Investment are set forth in part as **Exhibit B**.

**R-2.** The City has a documented need for pedestrian sidewalk improvements and related stormwater and utility infrastructure along Stribling Avenue in the City of Charlottesville, as noted in the City’s “Complete Sidewalks Projects List”, page 209 of the *Charlottesville Bicycle & Pedestrian Master Plan Update 2015*, as well as in the “Proposed Fiscal Year (YR) 2022 Capital Improvement Program (CIP) Revenue and Expenditure Description Summary”, page 8, and, the “Capital Improvement Program Final Request Form, 5-Year Program Span: Fiscal Year 20-24, Project Title: Stribling Sidewalk + Drainage Improvements” (“Sidewalk Improvements”). The Sidewalk Improvements will be made on both sides of Stribling Avenue from the intersection with JPA and ending in proximity to the City limits.

**R-3.** The Sidewalk Improvements are separate from the Developer’s Property; however, Developer acknowledges and agrees that, although a need for the Sidewalk Improvements already exists, the PUD Development will increase use of Stribling Avenue by both vehicular and pedestrian traffic, and the Developer desires to make a financial contribution that will facilitate the City’s commencement of the Sidewalk Improvements on an expedited basis.

**R-4.** The Developer has offered to enter into a funding agreement with the City, to provide

certain monies to the City through cash escrow or letter of credit, which may be utilized by the City under the terms and conditions set forth within this Agreement to construct the Sidewalk Improvements.

**WHEREAS**, the Developer and the City desire to set forth their understanding and agreement as to these matters in this Agreement.

**NOW, THEREFORE**, for and in consideration of the premises, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. The recitals are incorporated as part of this Agreement.

2. The Developer:

a. Shall make and maintain the Investment described on Exhibits A and B attached to this Agreement;

b. Shall have **\$2,900,000** in a pledged account (cash escrow), ~~or Letter of Credit, or other drawable fund or account~~ (“Funding”) which shall be made available to the City for ~~use in constructing~~ the Sidewalk Improvements, ~~:(i) prior to the date on which the City issues a land disturbing permit for the PUD Project, or (ii) by December 31, 2026, whichever first occurs.~~ The Funding shall be made available for the City to draw upon to pay costs of constructing for the Sidewalk Improvements. In the event that the City’s final budget for the Sidewalk Improvements, based on bid(s) received, is less than \$2,900,000 then the Funding under this Agreement shall be amended and reduced to the actual budgeted amount based on the accepted bid(s).;

c. At the request of the City, the Developer shall request that its contractor for the PUD provide a bid to the City for the construction of the Sidewalk Improvements, to assist the City’s efforts to achieve any efficiencies that may be possible if the Sidewalk Improvement can be worked on contemporaneously with the contractor’s construction of sidewalks within the PUD Project. The Developer shall give the City at least 60 days advance written notice of the date on which the Developer’s contractor will commence construction streets and sidewalks within the PUD Project;

d. Shall provide the City with the engineering and surveying work that the Developer has caused to be completed to date, and the cost of such work may be deducted by the Developer from the \$2,900,000 to be made available to the City~~City agrees to reimburse the Developer for the cost of that work;~~

e. Shall make its commercially reasonable efforts to obtain approvals of the Final Site Plan for the PUD from the City, and commence land disturbing activities, no later than **December 31, 2026 (“Commencement Date”)**, which may be extended due to force majeure or other administrative reasons approved by the City;

f. Shall make its commercially reasonable efforts to complete construction and equipping of the PUD Project, in accordance with the Site Plan for the PUD approved by the City, no later than **December 31, 2036 (“Completion Date”)**, which may be extended due to force majeure or other administrative reasons approved by the City.



g. Shall comply with all applicable federal, state and local laws and secure all plans, approvals, bonds and permits as may be necessary or appropriate for the construction and completion of the PUD Project and the occupancy thereof.

3. **The City:**

a. Shall be responsible for preparing its own final construction plans to be used for the City's construction of the Sidewalk Improvements, ~~and complete right-of-way acquisition, on or before the Commencement Date;~~

b. ~~Shall use its best efforts to coordinate construction of the Sidewalk Improvements with the infrastructure construction schedule for the PUD Project, if that is possible with the same contractor(s) and if it will achieve any economies; May, but no earlier than the date on which the City issues a land disturbing permit for the PUD Project, submit a drawdown request, to obtain reimbursement from the Funding for the City's documented expenditures associated with planning and design-for-construction of the Sidewalk Improvements.~~

e.b. Upon commencement of construction of the Sidewalk Improvements, the City shall be responsible for preparing periodic drawdown requests from the Funding to pay for construction of the Sidewalk Improvements pursuant to the City's contract with a the contractor(s) for the Sidewalk Improvements. The City, or other designee, and the Developer shall each promptly complete all paperwork necessary to process the drawdown requests on a timely basis. ~~complete draw requests.~~

4. The City, subject to the availability of public funds and the annual appropriation of such funds by the Council, and subject further to the Developer's fulfillment of all of its obligations under this Agreement, shall reimburse the Funding to the Developer, as described herein. Reimbursement of the Funding shall be paid in annual installments, beginning on September 30 of the first Tax Year following the date of the City's issuance of the first building permit for a residential dwelling within the PUD Project ("Initial Reimbursement Installment") and continuing annually thereafter, on or before September 30<sup>th</sup> of each successive Tax Year, but ending on the later of: December 31, 2036, or 20 45 years after the issuance of the first building permit, in either case regardless of whether the Funding has been fully reimbursed to Developer.

a. Each annual reimbursement payment shall be equal to (and shall not exceed) sixty one hundred percent (60100%) of the total of the annual real property taxes actually received by the City attributable to the incremental increase in the assessed value of the Property ("**Incremental Increased Value**") over the value of the Property on the City's Land Book for the Tax Year 2022, which is \$1,198,000 ~~(2021 in which the land disturbing permit for the PUD Project is issued by the City (\$1,041,700) (the "Base Value"))~~. An example of the calculation of the annual Funding reimbursement payment required by Paragraph 4, above, is attached as **Exhibit C** to this Agreement.

b. For the purpose of this Agreement, (i) the Incremental Increased Value shall be the assessed value of the Property, inclusive of all lots resulting from any subdivision(s) thereof, as set forth within the City's Land Book for each Tax Year subsequent to 2021 the Base Value Tax Year, without regard to the ownership of the Property, and (ii) the Land

Book is the official record of real estate assessments for a given Tax Year, as referenced in City Code Section 30-66.

c. Notwithstanding the foregoing, no reimbursement payment shall be due or owing by the City to the Developer within any Tax Year in which the value of the Property on the City's Land Book does not exceed the Base Value.

d. To the extent that the assessed value of the Property is decreased for any reason during the term of this Agreement, the amount of Funding shall be reduced by the tax decrease based on the decrease in Incremental Increased Value.

5. The City shall pay interest to the Developer on the Funding ~~drawn by it for~~ ~~utilized by it to pay for construction~~ of the Sidewalk Improvements, at an ~~adjustable~~ rate equal to 1.5%, or the "true" interest cost (as defined by City Council resolution titled "\$18,000,000 Million [sic] Bond Issue" dated May 3, 2021) of Charlottesville's most recent General Obligation Bond issuance preceding the Commencement Date, whichever is higher. Interest shall begin accruing on the Commencement Date and continue until the earlier of: (i) the entire amount of interest and Funding utilized by the City for the Sidewalk Improvements has been reimbursed to the Developer, or (ii) the latest date established in Paragraph 4, being December 31, 2036 or 20 ~~45~~-years after the issuance of the first building permit.

6. Developer acknowledges and understands that the City is not empowered under Virginia law to make any binding contractual obligation committing payment of City funds beyond the current fiscal year of the City. However, so long as public funding is available to support the City's performance of this Agreement in subsequent fiscal years, it is the current intention of the Charlottesville City Council to make sufficient annual appropriations to fund the reimbursement obligations of the City hereunder. To that end, the Council has directed the City Manager or other officer charged with the responsibility of preparing the City's budget to include in the City Manager's proposed budget for each fiscal year subsequent to the date of this Agreement a request that the Council appropriate the amounts due under this Agreement during such fiscal year. If at any time the City or the Developer determines that the amount appropriated in any fiscal year budget is insufficient to support the City's performance under this Agreement, then, if sufficient public funding is available, then the City Manager shall submit to the Council at the next scheduled meeting of the Council or as promptly as practicable, a request for a supplemental appropriation sufficient to cover the deficit.

7. This Agreement shall not create any joint venture, any agency, or any employer-employee relationship between the parties hereto.

8. The City reserves the right to approve in advance any assignment of this Agreement by the Developer to any individual or entity while any of the Developer's obligations under this Agreement are outstanding. The ownership interests of such entity must be disclosed to the City. The consent to any such assignment shall not be unreasonably withheld. After the completion of the Developer's obligations under Section 2 of this Agreement, the repayment of the Funding obligations may be sold, assigned, or transferred by the Developer, with the approval of all parties, which consent shall not be unreasonably withheld. All parties to any assignment, sale or transfer under this Section 8. shall be bound by all the terms and conditions of this Agreement.

9. The City may terminate this Agreement at any time if funds have not been drawn from the Developer's Cash Escrow or Letter of Credit. The City may terminate this Agreement after funds have drawn, by repaying all outstanding Funding amounts plus applicable interest.

There is no prepayment penalty if the City chooses to repay Funding in full sooner than otherwise called for under the Agreement. The City will provide written notice to the Developer of its decision to terminate the Agreement pursuant to this section, or if repayment funds sent from the City to the Developer are intended as the prepayment in full of all outstanding amounts, along with the corresponding notice of Agreement termination. The Agreement terminates without any action needed by the City or the Developer if no funds have been drawn by the City under this Agreement upon the earlier of: December 31, 2034, or, the receipt by the City of the increased cumulative tax increment revenues of \$4,833,333 (\$2,900,000 / 60%), in excess of the Base Value, from the PUD Project commencing after the rezoning.

10. This Agreement shall not be interpreted to establish any pledge, security interest, lien, or other encumbrance on property of the City or the Developer.

11. This Agreement shall be governed in all aspects by the laws of the Commonwealth of Virginia, without reference to conflict of laws provisions. In the event of litigation, jurisdiction and exclusive venue shall be in the Circuit Court of the City of Charlottesville, Virginia, and all legal actions involving this Agreement shall be brought only in such court. Each of the parties to this Agreement have standing to enforce the terms, conditions and obligations set forth herein.

12. This Agreement sets forth the entire agreement between the parties hereto. There are no promises, agreements, conditions, or understandings between the parties respecting the subject matter hereof, other than those expressly set forth herein, and the provisions of this Agreement supersede all prior and contemporaneous negotiations, conversations, discussions, correspondence, memoranda, and agreements between the parties concerning the subject matter of this Agreement.

13. This Agreement may be modified by mutual agreement of the parties. The City Manager is designated as the City's agent to approve and execute amendments to this Agreement involving procedural or administrative matters. By way of example and not limitation, such procedural or administrative changes can include: date changes relating to any force majeure, changes in the scope of work necessary for the Sidewalk Improvements, or, approvals required by Section 8 of this Agreement.

14. Notices and communications relating to this Agreement shall be given in writing, and shall be deemed to be received by a party hereto (i) five (5) business days after being mailed by U.S. mail, first class, postage prepaid, return receipt requested, or (ii) one (1) business day after being placed for next day delivery with a nationally recognized overnight courier service, or (iii) upon being delivered by hand to a party, addressed as follows:

if to the City, to:

The City of Charlottesville, Virginia  
Attention: City Manager  
605 East Main Street, City Hall, Second Floor (P.O. Box 911)  
Charlottesville, VA 22092

if to the Developer, to:

Belmont Station, LLC  
142 South Pantops Drive  
Charlottesville, VA 22911  
ATTN: Frank T. Ballif, Manager

with a copy to:

Lois A. Haverstrom, General Counsel  
142 South Pantops Drive  
Charlottesville, VA 22911

15. This Agreement may be executed, via facsimile or email and, in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument. This Agreement shall be binding upon and inure to the benefit of the parties hereto. If any provision of this Agreement is determined to be unenforceable, then the remaining provisions of this Agreement shall be interpreted as in effect as if such unenforceable provisions were not included therein. Each of the parties to this Agreement represents that it is fully authorized to enter into this Agreement, and that it will be bound by this Agreement in accordance with its terms.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement to be effective as of the date first written above.

**CITY OF CHARLOTTESVILLE, VIRGINIA**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

**DEVELOPER**

**BELMONT STATION, LLC on its behalf and as Manager of Belmont Station LLC**

By: \_\_\_\_\_

Frank T. Ballif, as Manager

Date of Execution: \_\_\_\_\_

# EXHIBIT A TO VOLUNTARY INFRASTRUCTURE FUNDING AGREEMENT

## (Description of Property)

All that certain tract or parcel of land situated in the City of Charlottesville, Virginia (the “City”) on the south side of Stribling Avenue, containing 11.053 acres, more or less, according to the City land records, and currently shown as City Tax Map Parcel 18A025000, and as further described within the Proposed Planned Unit Development (the “Investment”) described and depicted on Exhibit A below (the “Property”)

Property to be developed into a 170+/- Unit PUD



## EXHIBIT B TO VOLUNTARY INFRASTRUCTURE FUNDING AGREEMENT

### Investment

This Agreement only relates to the \$2,900,000 Cash Escrow or Letter of Credit posted by the Developer in favor of the City, and the reimbursement of amount(s) drawn by the City from of that Cash Escrow or Letter of Credit. Developer plans to construct 170+/- residential dwelling units within the PUD Project, with an estimated completed value after home construction averaging \$275,000, more or less.

## EXHIBIT C VOLUNTARY INFRASTRUCTURE FUNDING AGREEMENT

### Funding Calculation of Incremental Increased Value (Examples based on Estimated Assumptions below)

Sample Calculations are for Illustration Purposes Only: The Dates, Assessed Values, and Real Estate Tax Rates are not actual and are for Illustration Purposes Only. Calculations assume that the City has drawn funds that are to be repaid by real estate taxes received by the City and generated directly from the Developer's PUD after the issuance of the first Building Permit.

#### Example 1 - Issuance of First Building Permit

	<b>1 Unit Averaging \$275,000 upon completion and 169 lots at \$65,000 each</b>	<b>Prior to Project (Based 2022<del>1</del> AV)</b>	<b>Estimated Annual Tax Increment Repayment w/ Issuance of First Building Permit @ 60%</b>
Assessed Value of Real Estate	\$11,260,000	\$1,198,000 <del>041,700</del>	
Real Estate Tax Collected	\$106,970	- (\$11,381,009 <del>,896</del> )*	<b><math>\frac{\\$95,589 \times 60\%}{=}</math> <b>\$57,353<del>97,074</del></b></b>

#### Example 2 - Complete Project Build Out

	<b>Estimated After Project Completion 170 Units Averaging \$275,000 upon completion</b>	<b>Prior to Project (Base 2022<del>1</del> AV)</b>	<b>Estimated Annual Tax Increment Repayment at the end of the Project</b>
Assessed Value of Real Estate	\$46,750,000	\$1,198,000 <del>041,700</del>	
Real Estate Tax Collected	\$444,125.	- (\$11,381 <del>9,896</del> )*	<b><math>\frac{\\$432,744 \times 60\%}{=}</math> <b>\$259,646<del>434,229</del></b></b>

\*Based on real estate tax rate \$0.95 per \$100.

**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL REZONING STAFF REPORT**



Agenda Date(s): March 21, 2022 and April 18, 2022

Presenter and Staff Contact: Matt Alfele, AICP, City Planner

**Title: 240 Stribling PUD – ZM20-00002 & P20-0079**

**Summary of The Proposed Planned Unit Development:**

Southern Development on behalf of the landowner, Belmont Station, LLC, has submitted an application seeking a rezoning of approximately twelve (12) acres of land, identified within City tax records as Tax Map and Parcel 18A025000 (“Subject Property”). The Subject Property has frontage on Stribling Avenue. The application proposes to change the zoning district classifications of the Subject Property from R-1S (Residential Small Lot) / R-2 (Residential Two-Family) to PUD (Planned Unit Development) subject to certain proffered development conditions (“Proffers”) and development plan. The rezoning would allow a PUD referred to as “240 Stribling PUD” containing no more than one-hundred and seventy (170) residential units divided between single-family attached, townhomes, and multifamily buildings at a density of fifteen (15) dwelling units per acre (DUA), with open space in the amount of 4.76 acres, and the following unique characteristics/ amenities per the development plan: approximately two (2) single-family attached style units, approximately sixty-nine (69) townhome style units, three (3) multifamily buildings, central green space, nature trail, four (4) new City standard public roads, pedestrian and vehicular access to Morgan Court, and six (6) new private roads built to City private road standards. The proposed development is intended to be completed in approximately twenty (20) phases. In order for the Landowners to implement the PUD Plan, they will need to disturb areas within Critical Slopes; this application also presents a request for a Critical Slopes Waiver (P20-0079) per City Code Sec. 34-516(c). The Comprehensive Land Use Map for this area calls for Low Density Residential (15 DUA or less). See Attachment A for proffered conditions.

**Discussion:**

The Planning Commission held a virtual joint Public Hearing with City Council on September 14, 2021 on this matter. The Director of Economic Development (Mr. Chris Engle) gave an update on a proposed draft agreement between the City and the applicant to fund installation of sidewalks along Stribling Avenue. The City’s Engineer (Mr. Jack Dawson) provided insight into issues with calculating funding needed to provide improvements (such as sidewalks) to Stribling Avenue given limited project information. Increased density and the safety of Stribling Avenue were the main discussion points. The

Commission liked the innovation of the design, the affordable units, and the proposed density of the development, but did not believe the development should happen unless Stribling Avenue was improved, and sidewalks provided. The Commission was also concerned with the number of trees along Stribling that would be removed.

Due to the apprehension from Planning Commission as it related to the condition of Stribling Avenue, the applicant requested and was granted a deferral. The applicant made the following adjustments to the development and Planning Commission continued their discussion on November 9, 2021.

Critical Slope Waiver Application P20-0079

No Changes

Rezoning Application ZM20-00002

The applicant made the following two (2) changes to the PUD Development Plan:

Update the setback requirements on page 4:

The original plan stated:

Minimum Building setbacks:

Front: 0'

Side: 0'

Rear: 0'

Adjacent to outside properties: 5'

The new setbacks are:

Front: 0'

Side: 0'

Rear: 0'

Adjacent to outside properties: 5'

Maximum front setback: 10'

(Stribling Ave, Frontage Excluded)

Updates to Phasing and Open Space Requirements on page 5:

No information provided in the original plan

New information on page 5:

A minimum of 1.00 acre of Open Space shall be dedicated in Phase 1. At least 20% total Open Space area shall be provided with each phase thereafter.

During the November 9, 2021 meeting, Planning Commission focused on duration of construction, conditions on the Critical Slopes, and funding of the sidewalk improvements to Stribling Avenue.

**Alignment with City Council's Vision and Strategic Plan:**

If City Council approves the rezoning request, the project could contribute to *Goal 3: A Beautiful and Sustainable Natural and Built Environment, 3.1 Engage in robust and context sensitive urban planning and implementation*, and the City Council Vision of *Quality Housing Opportunities for All*.

**Community Engagement:**



On August 3, 2020 the applicant held a virtual community meeting with the public. The meeting can be viewed at:

<https://protect-us.mimecast.com/s/1ZeKCL9YA0tR7ymYCBFkm5?domain=us02web.zoom.us>

The applicant gave an overview of the project as it related to the need for a rezoning. Seventy-two (72) members of the public attended the meeting and voiced the following concerns:

- PUDs is not appropriate and will not give the City what it needs.
- PUDs are only used to pack in more houses without taking into account infrastructure.
- The land should be developed by-right.
- The development should not be connected to Morgan Court. Morgan Court is too narrow and cannot handle the increased traffic.
- Traffic will be a problem.
- Stribling Avenue lacks sidewalks and will not be safe if the development is approved.
- FSNA could support the project only if Stribling Avenue is improved.
- Stribling Avenue will not be able to handle construction trucks for such a large and long-term development.
- The City's infrastructure will not support this development.
- Stribling Avenue lacks lighting.
- Stribling Avenue needs draining improvements.
- Stribling Avenue does not have enough right of way to accommodate all the improvements it needs.
- The development will double the units on Stribling.
- Critical Slopes on the site should not be disturbed.
- Stribling Avenue on the county side is not improved and cannot support the development.
- People that live in this development will have to drive cars and cannot walk to places.
- There is a playground near the proposed connection of Morgan Court to the development and the connection could impact it.
- Stribling Avenue is a shared street with a lot of bicycle, pedestrians, and cars sharing the road. This development would change that.

On September 14, 2021 the Planning Commission held a virtual joint Public Hearing with City Council. eighteen (18) members of the public spoke and expressed the following:

- The proposed development will make conditions for pedestrian and cyclists worse on Stribling Avenue and the intersection of JPA.
- Safety on Stribling Avenue is the biggest issue with the proposed development.
- The City needs more housing and this will provide much needed affordable housing.
- The trees on the site need better protection.
- Stribling Avenue needs to be improved.
- How will the section of Stribling in the county be impacted?
- The proposed development will have negative impacts to Sunset Avenue.

Any emails received by staff regarding this project have been forwarded to Planning Commission and City Council.

### **Planning Commission Recommendation:**

The Planning Commission took the following action:

#### **Rezoning Application (ZM20-00002)**

Ms. Russell moved that subject to sidewalk improvements on Stribling Ave. being prioritized appropriately in City Capital Improvement Program (CIP), I move to recommend that City Council should approve ZM20-00002, on the basis that the streets proposed within the PUD Development are laid out in a manner substantially in accord with the Comprehensive Plan, and approval of the proposed PUD Development is consistent with the Comprehensive Plan and will serve the public necessity, convenience, general welfare and good zoning practice.

Mr. Mitchell seconded the motion

Mr. Lahendro, Yes

Mr. Solla-Yates, Yes

Mr. Stolzenberg, Yes

Mr. Habbab, Yes

Mr. Mitchell, Yes

Ms. Russell, Yes

Ms. Dowell, Yes

The motion passed 7 - 0 to recommend approval of the rezoning application to City Council.

#### **Critical Slope Waiver (P20-0079)**

Ms. Russell moved to recommend approval of the critical slope waiver for Tax Map and Parcel 18A025000, as requested, with conditions as recommended by staff.

Recommended Conditions:

1. Site Plans (VESCP Plans) should include, at a minimum, 4 stages/phases of ESC controls, the first shall be “Initial/Preliminary Controls” and outfall construction, and the second shall include the establishment of sediment traps and conveyances. The sequence shall dictate that no disturbance of the slopes can occur, other than to facilitate trap/conveyance construction, until after the establishment of the trap, conveyances and permanent outfall (until Stage/Phase III).
2. “Super Silt Fence” (chain linked backing) shall be installed where perimeter silt fence is specified.
3. Any disturbance occurring outside of conveyances to the trap, in either sequence or space, planned or unforeseen, shall be immediately stabilized with sod (for pervious areas, utilities should have other “same day stabilization”).
4. The proposed trail shall be a non-erodible surface (asphalt/concrete or similar) and provisions shall be made in the stormwater management plan to ensure runoff from the trail is conveyed in a non-erosive manner, and concentrated flows shall not be discharged above slopes, or flow along the toe of slopes, on or offsite the property.
5. Trees removed from areas of critical slope(s) shall be replaced within those areas, at a three-to-one ratio (“Habitat Replacement Trees”).

6. The Habitat Replacement Trees shall be locally native tree species appropriate for the site conditions.
7. No tree(s) planted in any area(s) that contain buildings, parking lots, sidewalks, or other built improvements shall be counted as any Habitat Replacement Tree(s).
8. The specific number and species of Habitat Replacement Trees will be determined by the applicant and the City based on available space and site conditions, and the size, location and species of all Habitat Replacement Trees shall be specified within the landscaping plan required by Sections §§34-861 et seq. of the Charlottesville City Code, as amended.

Mr. Mitchell seconded the motion

Mr. Lahendro, Yes

Mr. Solla-Yates, Yes

Mr. Stolzenberg, Yes

Mr. Habbab, Yes

Mr. Mitchell, Yes

Ms. Russell, Yes

Ms. Dowell, Yes

The motion passed 7 – 0 to recommend approval of the Critical Slope Waiver application to City Council.

**Attachments:**

A. Signed Proffer Statement

B. PUD Development Plan

Link to the Public Hearing materials.

<https://charlottesvilleva.civicclerk.com/Web/Player.aspx?id=1221&key=-1&mod=-1&mk=-1&nov=0>

September 14, 2021 materials start on page 6.

<https://charlottesvilleva.civicclerk.com/Web/Player.aspx?id=1286&key=-1&mod=-1&mk=-1&nov=0>

November 9, 2021 materials start on page 54.