



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of July 10, 2010**

DATE: July 2, 2010

SUBJECT: Z-2508-03-1 REQUEST FOR PROFFER AMENDMENT to amend the proffers associated with this rezoning application, to permit structures and/or uses in the plaza and/or sidewalk, located at 1025 N. Fillmore Street (RPC #18-024-020)

Applicant:
SHLP ZOSO, LLC

By:
Wendy Buckley (Screwtop Wine Bar) and
Scott Vasko (American Flatbread)
1025 N. Fillmore Street
Arlington, Virginia 22201

C.M. RECOMMENDATION:

Approve the attached resolution accepting the proposed proffer amendment as described in the revised proffer agreement attached to this report to allow outdoor cafes in the public right-of-way by special exception use permit only, and to prohibit outdoor cafes on private property at the ZOSO project.

ISSUES: This is a request to amend a proffer agreement to permit outdoor cafes at the ZOSO building in the public right-of-way subject to a special exception use permit. There was opposition from the community to the original proffer amendment request, which would have permitted an outdoor seating area for American Flatbread in a rear patio area of the property. The revised draft proffer will not permit outdoor seating in this patio area.

SUMMARY: The applicant requests to amend the ZOSO proffers to permit outdoor cafes in the public right-of-way subject to obtaining a special exception use permit. This request is associated with two retail uses (Screwtop Wine Bar and American Flatbread), located in the ground floor of the ZOSO apartment building. The use permits are the subject of separate reports.

The original proffer agreement, approved in 2004, did not address the potential for outdoor cafes

County Manager: MB/GA

County Attorney: _____

Staff: Peter Schulz, Planning Division, DCPHD

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anywhere on the property, even in the public right-of-way. Therefore, outdoor cafes are not permitted at all. Outdoor seating in this area is supported by the *Clarendon Sector Plan 2006*. If the proffer amendment is accepted, both American Flatbread and Screwtop will be able to apply for use permits for the County Board's approval of their proposed outdoor cafes in the public right-of-way. The applicant's proffer amendment will limit the times an outdoor café in the public right-of-way may operate to no later than 9 p.m. on weekdays and Sundays and 10 p.m. on Fridays and Saturdays. The proffer also forbids outdoor speakers, radios, or live entertainment.

The Clarendon-Courthouse Civic Association has voted to support outdoor café seating only on North Fillmore Street, but not on 11th Street North. However, staff believes that the limitations in the proffer amendment, and also the special exception use permit process should mitigate the potential negative impacts of some cafes, and that the review cycles that accompany use permit applications of this nature would allow staff to periodically evaluate the impacts of some of the proposed outdoor café uses. Therefore, staff recommends the County Board approve the attached resolution accepting the proposed proffer amendment as described in the draft proffer agreement attached to this report. A signed proffer will be provided prior to the County Board meeting.

BACKGROUND: On July 13, 2004, the County Board approved a proffer agreement with a rezoning for a mixed-use project with 114 dwelling units and 23,133 square feet of retail. The building is now occupied and is known as the ZOSO Flats.

Screwtop Wine Bar proposes up to eight (8) seats in the public right-of-way along North Fillmore Street, and American Flatbread proposes up to four (4) seats in the public right-of-way on North Fillmore Street and two (2) seats in the public right-of-way on 11th Street North. In order to seek approval of these outdoor cafes, the proposed proffer amendment is necessary.

The following provides additional information about the site and location:

Site: The site is approximately 50,000 square feet, bounded by 11th Street North, North Fillmore Street, the Storage USA building, and single family homes.

- To the north: Across 11th Street North, the Clarendon Park townhouses (SP #339), zoned "R15-30T", and designated "Low" Residential (11-15 units/acre) on the GLUP.
- To the east: Single-family detached homes zoned "R-5", and designated "Low" Residential (1-10 units/acre) on the GLUP.
- To the south: Storage USA self-storage facility with ground floor retail (U-2969-99-1), zoned "C-TH" and designated "Service Commercial" on the GLUP.
- To the west: Across North Fillmore Street, the Clarendon 1021 mid-rise Condominium, zoned "C-R" and designated "Medium Density Mixed Use" on the GLUP.

Zoning: "C-TH" Commercial Townhouse District.

General Land Use Plan: "Service Commercial" (Personal and business services. Generally one to four stories. (A maximum 1.5 F.A.R.).

Neighborhood: The site is located within the boundaries the Clarendon-Courthouse Civic Association area. The Civic Association discussed the issue at their May 24, 2010 meeting, and voted to support outdoor seating along North Fillmore Street, but voted their opposition to outdoor seating on 11th Street North and the rear patio.

DISCUSSION: Two (2) of the retail tenants in the building propose outdoor seating in the public right-of-way, which requires an amendment to the proffers associated with the rezoning of this property. The applicant proffers that outdoor cafés in the public right-of-way be permitted subject to approval by the County Board of a special exception use permit. The applicant's proposed proffer amendment would close all outdoor cafes at 9 p.m. on weeknights, 10 p.m. on Friday and Saturday evenings and would forbid any outdoor live entertainment, speakers, or radios. The revised draft proffer would not permit outdoor seating in a rear patio area, which has been the cause of significant community opposition.

The applicant's proposals are consistent with the requirements of the Zoning Ordinance. The Zoning Ordinance in Section 31.A.11. states:

Outdoor Cafes: Outdoor cafes, including any canopy or cover associated with such a cafe, shall be permitted within the required setback. Outdoor cafes within the required setback shall not be enclosed, except as specified elsewhere in the ordinance. Outdoor cafes may be permitted within public rights-of-way or easements for public use if a use permit is obtained as provided for in Section 36. Unless otherwise required by the County Board, outdoor cafes shall be exempt from any parking requirement. Outdoor cafes located in side or rear yards adjacent to or across an alley from an "R" or "RA" District shall not operate before 9:00 a.m. or after 11:00 p.m.

The *Clarendon Sector Plan 2006* envisions North Fillmore Street as a "Retail and/or Personal/Business Service Frontage" (Map 2.5). Furthermore, a small portion of 11th Street North is identified as "Side Street B" in the urban design guidelines section of the *Plan* (Map 3.2, page 118). A "Side Street B" is a type of frontage that "could accommodate a wide range of ground-floor uses" including cafes (pg. 123). Café seating may be an appropriate accessory use to a business that is otherwise permitted by-right. Both of the applicants' proposals in the use permit application proposed to be heard by the County Board July 10, 2010 will provide a minimum of six (6) foot clear sidewalk path along North Fillmore Street.

Neighboring property owners have stated their concerns that potential noise from the outdoor café uses, specifically American Flatbread's proposed outdoor café on 11th Street North would have a negative impact on their properties. At their May 24, 2010 meeting, the Clarendon-Courthouse Civic Association voted to support outdoor seating on North Fillmore Street, and oppose outdoor seating along 11th Street North and the rear patio.

Staff supports the proffer amendment for the use of public right-of-way, by use permit, subject to the limitations in the proffer amendment. The periodic review of the use permits should ensure that the outdoor café presents no issues for surrounding neighbors.

American Flatbread wishes to use an outdoor patio area at the rear of their business, on the east side of the building, for outdoor seating. Staff does not support use of this patio area for outdoor seating. The area in question was discussed during the public review process on the proffered rezoning to “C-TH” because it abuts “R-5” single-family houses. A buffer area was proposed to address concerns regarding transitions.

Community process:

- Planning Commission: The application was heard at the June 28, 2010 Planning Commission hearing. The Planning Commission voted 9-0 to recommend the County Board accept the revised draft proffer, with the following suggested revisions and clarifications:
 1. That the proffer be amended to permit an outdoor café only on the first 15 feet of the 11th Street North frontage eastward from the North Fillmore Street building line.
Staff response: Staff is recommending a 25-foot limitation, consistent with the depth of the retail frontage as shown on the original 2004 plans for the ZOSO.
 2. That Proffer #1 be amended to amend the date of the plans to update the site plan date.
Staff response: Staff sees no need to amend the date of the building plans approved by the County Board on July 13, 2004. Proffer #1 is identical to standard site plan condition #1, which refers to the final site plan presented to the Board for their approval by the date of that plan. That date is not changed unless the building owner submits a completely new comprehensive site plan for the property, either for a major site plan amendment or total redevelopment of the property. The date of the plans referred to in site plan condition #1/proffer #1 is not changed every time there is a minor amendment or administrative change to some part of the overall site plan.
 3. Clarify what is in the current proffer that prohibits the applicant from applying for a certificate of occupancy for outdoor café seating in the patio area.
Staff response: Proffer #1 limits the applicant to the plans as approved on July 13, 2004 and any other items submitted to the Board on that date and made part of the public record. Since the plans as submitted and the public record are silent on outdoor café seating anywhere on the property, a certificate of occupancy for the outdoor seating area by American Flatbread was rejected by staff in 2009. However, the revised version of the proffer explicitly forbids outdoor seating anywhere on private property.
 4. Clarify what administrative changes are permitted for any proffer and for this proffer in particular.
Staff response: There is no Zoning Ordinance reference to amending proffers by administrative change. However, administrative changes are referenced in Proffer #54 for the ZOSO property (as approved July 13, 2004): “The developer agrees that any structural addition shall be subject to the approval of the Zoning Administrator consistent with Section 36.H.2.c of the Zoning Ordinance. If the Zoning Administrator determines that any proposed improvements have a significant impact on the proffered

development, or otherwise meet the Zoning Ordinance requirements for proffer amendments that go to the County Board, a proffer amendment shall be required.”

CONCLUSION: Outdoor café seating should be available as an option to tenants of the ZOSO building, subject to the limitations specified in the proffer. Staff believes that in addition to the limitations specified in the proffer, potential negative impacts can be mitigated through the use permit process and periodic review of the use permit for compliance with conditions. In addition, the *Clarendon Sector Plan 2006* supports outdoor seating in the public right-of-way at this location. Therefore, staff recommends the County Board approve the attached resolution accepting the proposed draft proffer amendment as described in the revised agreement attached to this report to allow outdoor cafes in the public right-of-way by special exception use permit only, and that furthermore outdoor cafes on private property at the ZOSO project are not permitted. A signed proffer will be submitted prior to the County Board meeting.

PREVIOUS COUNTY BOARD ACTIONS:

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| July 13, 2004 | Approved a rezoning (Z-2508-03-1) of the subject property from “C-3” to “C-TH” subject to certain proffers as set forth in a document entitled “The Fillmore Proffers revised July 6, 2004” (“Proffers”). |
| June 12, 2010 | Deferred a request for a proffer amendment to permit outdoor cafes to the June 28, 2010 Planning Commission and July 10, 2010 County Board hearing. |

**RESOLUTION FOR
PROFFER AMENDMENT
THE ZOSO PROJECT**

WHEREAS, SHLP ZOSO LLC (“Developer”) has requested that the County Board of Arlington County approve an Amended Proffer Agreement to modify the Proffered Rezoning first approved on July 13, 2004 (“Original Proffer”) for the property located at 1025 North Fillmore Street and further identified as RPC #18-024-020 on the County Record (“Property”); and

WHEREAS, the Original Proffered Rezoning was approved for development of 114 apartments and a retail gross floor area of 23,133 square feet and a 210-space garage housed in a 55-foot tall building with a two-level underground garage; and

WHEREAS, Developer requests an amendment to the proffers previously approved to permit outdoor café seating in the public right of way subject to the Amended Proffer Agreement attached to this Resolution as Attachment A and made a part hereof; and

WHEREAS, the County Manager has recommended that the proposed Amended Proffer Agreement be approved; and

WHEREAS, on June 28, 2010, the Planning Commission recommended that the proposed Amended Proffer Agreement be accepted by the County Board; and

WHEREAS, the County Board has considered the foregoing recommendations, the Zoning regulations on the site, including the Original Proffer, the Comprehensive Plan, and the purposes of the Clarendon Sector Plan, and finds that the proposed Amended Proffer Agreement will achieve goals and objectives set forth in those documents, and

WHEREAS, the County Board finds that the proposed Amended Proffer Agreement is required by public necessity, convenience, general welfare, and good zoning practice; and

WHEREAS, the County Board held a duly advertised public hearing on the proposed Amended Proffer Agreement for the Property on July 10, 2010.

NOW, THEREFORE, be it resolved that, based on the aforementioned considerations, deliberations and all public comments, the County Board of Arlington finds that the proposed Amended Proffer Agreement set forth in Attachment A should be, and hereby is approved, and that all other previous proffers remain in full force and effect, and that the site known as 1025 N. Fillmore Street (RPC # 18-024-020) formerly known as 1021, 1025, 1027, 1031, and 1041 N. Fillmore Street (RPC # 18-024-010, 011, 012, 013, 014, 015) shall remain zoned “C-TH” subject to the amended proffers.

ATTACHMENT A

The Fillmore (now known as ZOSO) Amended Proffer Agreement Revised July --, 2010

Pursuant to Section 15.2-2303(A) of the Code of Virginia, 1950, as amended and in accordance with Section 2.G. of the Arlington County Zoning Ordinance, and contingent upon the Arlington County Board's approval of the rezoning application for the site known as 1025 N. Fillmore Street (RPC # 18-024-020) formerly known as 1021, 1025, 1027, 1031, and 1041 N. Fillmore Street (RPC # 18-024-010, 011, 012, 013, 014, 015), the undersigned, the contract purchaser and fee-simple owners of all properties incorporated in the application on behalf of themselves and their successors and assigns, agree to the following amended proffers (the "Proffers"). Shown below is one new proffer and amendments to the current proffers agreed to on the property. All proffers dated July 6, 2004, accepted by the County Board with the approval of Z-2058-03-1 on July 13, 2004, shall remain in full force and effect except as expressly revised as shown below:

[Revised Proffer 17 **bold and underlined** text will be added as shown below to existing Proffer 17]

The developer agrees that the final sidewalk pattern/design and final selection of materials and colors to be used shall be as determined by the County Manager or his designee on the final site development and landscape plan and final engineering plan, in accordance with the Rosslyn-Ballston Streetscape Plan or other applicable urban design standards approved by the County Board and in effect at the time of the site plan approval. The developer further agrees to construct the sidewalk improvements detailed below prior to the issuance of the first Certificate of Occupancy for the site plan. The sidewalks along the street frontages of this development shall be paved with brick or an interlocking concrete paver and shall be placed on a properly-engineered base approved as such by the Department of Public Works. The sidewalk treatments shall continue across all driveway aprons for loading and garage entrances along all frontages of the site plan, and there shall be no barriers to impede the flow of pedestrian traffic. The sidewalks shall contain street trees placed in either tree pits, tree grates or planting strips, consistent with the *Standards for Planting and Preservation of Trees in Site Plan Projects*, and as specified below. Placement, planting and root enhancement options shall be consistent with the *Standards for Planting and Preservation of Trees in Site Plan Project*, and as specified below. Street trees shall not be placed within the vision obstruction area. All public walkways shall be constructed to County Standard. The developer agrees to maintain and replace the street trees and sidewalks for the life of the site plan. The sidewalk sections and street tree species shall be as follows:

A minimum of 13.5-foot wide sidewalk measured from the back of curb, include eight (8) feet clear sidewalk width free from obstructions (**six (6) feet clear width in outdoor café seating areas**), five (5)-foot wide by twelve (12)-foot long tree pits, located a minimum of eight (8) inches from the back of curb, and planted with 4 to 4 ½ inch caliper London Plane street trees and such ground cover as liriopé muscari, hypericum, calycinum (Aarons Beard), or juniperus

conferta (Shore Juniper), consistent with the *Standards for Planting and Preservation of Trees in Site Plan Projects* then placed approximately 30 feet apart on center. The driveway ramp shall not extend beyond the tree pits into the clear sidewalk.

[New Proffer 77, to be added to the existing proffers]

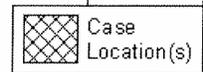
Outdoor cafes shall, subject to special exception use permit approval, be permitted within the public right-of-way adjacent to the entire building frontage on North Fillmore Street and on the first 25 feet of 11th Street North eastward from the build-to line in the areas identified in the diagram attached hereto and incorporated here as Exhibit 1. No outdoor cafes will be permitted on any other part of the development. Any such permitted outdoor cafes shall be open for business no later than 9 p.m. Sundays through Thursdays and 10 p.m. Fridays and Saturdays. Live entertainment, amplification, and the playing of radios or recorded music shall be prohibited at all outdoor cafés.



Z-2508-03-1
1025 N. Fillmore St.
RPC: 18-024-020



Not To Scale



Note: These maps are for property location assistance only.
 They may not represent the latest survey and other information.

Department of Community Planning, Housing and Development

Planning Division