

**AN ORDINANCE
APPROVING A REQUEST TO REZONE LAND FRONTING ON CHERRY AVENUE, 5TH STREET SOUTHWEST,
AND 6TH STREET SOUTHWEST
FROM CHERRY AVENUE MIXED USE CORRIDOR (CH) AND RESIDENTIAL SMALL LOT (R-1S) TO B-3
(COMMERCIAL) WITH PROFFERS**

WHEREAS, Woodard Properties is the owner (“Landowner”) of certain land fronting on Cherry Avenue, 5th ST SW, and 6th ST SW, designated on the City Tax Map and Parcel (TMP) as 290179000, 290178200, 290177000, 290178100, and 290178000 (collectively, hereinafter, the “Subject Property”), and the Landowner is seeking to change the zoning classifications of the Subject Property from CH and R-1S to B-3 with proffers hereinafter referred to as the “Proposed Rezoning”; and

WHEREAS, a public hearing on the Proposed Rezoning was conducted by the Planning Commission and City Council on August 8, 2023, following notice to the public and to adjacent property owners as required by Virginia Code §15.2-2204 and City Code §34-44, and following the public hearing, the Planning Commission voted to recommend that City Council should approve the Proposed Rezoning; and

WHEREAS, this City Council has considered the matters addressed within the Landowner’s application (ZM23-0001), the NDS Staff Report, public comments, the Planning Commission’s recommendation, and the Comprehensive Plan; 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 and the proposed zoning classification 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 the Zoning District Map Incorporated in Section 34-1 of the Zoning Ordinance of the Code of the City of Charlottesville, 1990, as amended, be and hereby is amended and reenacted as follows:

Section 34-1. Zoning District Map. Rezoning the property designated on City Tax Map and Parcel (TMP) 290179000, 290178200, 290177000, 290178100, and 290178000 (“Subject Property”), containing, in the aggregate approximately 1.36 acres (approximately 59,241 square feet), from CH (Cherry Avenue Mixed Use Corridor) and R-1S (Residential Small Lot) to B-3 (Commercial) with the following Proffers:

1. AFFORDABLE HOUSING:

City of Charlottesville Zoning Ordinance Section 34 -12 governs the requirement for affordable dwelling units in the event that a rezoning such as ZMA 23-0001 is approved. Ordinance Section 34-12 would require the Owner to provide five (5) affordable dwelling units to households with an income less than 80% of the area median income.

- a.** Owner will engage in good faith negotiations with Piedmont Housing Alliance (PHA) to co-develop a minimum of 60 residential units within the Project with a goal to sell all such units to PHA under terms mutually agreed upon between Owner and PHA. Under such a sale, the unit mix and affordability rates will be solely determined by PHA. It is expected that PHA will finance its portion of the Project through Low-Income Housing Tax Credits and an investment from the City of Charlottesville, or a combination thereof.
- b.** If a binding sales agreement between Owner and PHA is not executed by December 31, 2023, or if an agreement is entered into but PHA defaults thereunder, then Owner shall, in lieu of the proffer contained in section 1.a. above, cause five (5) dwelling units constructed within the Project to be For Rent Affordable Dwelling Units (the “Required Affordable Dwelling Units”). The five (5) affordable dwelling units shall remain affordable for a term of six (6) years from the date that a certificate of occupancy is issued for such unit (“Affordable Period”). For the purposes of this Proffer, the term “For Rent Affordable Dwelling Unit” means a dwelling unit that is i) affordable to households with income at not more than 60% of the area median income, or ii) leased to an individual or household that employs a Section 8 Housing Choice Voucher.
- c.** 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 Property (“Initial Designation”). The Owner reserves the right, from time to time after the Initial Designation, and subject to approval by the City, to change these unit(s), and the City’s approval shall not unreasonably be withheld so long as a proposed change does not reduce the number, size, or make-up of the affordable dwelling units, does not result in an Affordability Period shorter than required by these proffers with respect to any of the affordable dwelling units, and should avoid segregation of the affordable dwelling units.
- d.** Owner or PHA shall submit to the City’s Office of Community Solutions prior to the certificate of occupancy a marketing plan on how it will market the Required Affordable Dwelling Units. The marketing plan shall provide detailed information on how the Owner will target lower-income residents.
- e.** On or before February 1st of each calendar year, or an alternate date mutually agreed upon by the Owner and the City, the then current owner of each Required Affordable Dwelling Unit shall submit an Annual Report to the City on a template provided by the City’s Office of Community Solutions, identifying each Required Affordable Dwelling Unit by address and location, and verifying the household income of the occupant(s) of each Required Affordable Dwelling Unit.
- f.** The obligations regarding Required Affordable Dwelling Units referenced above shall be set forth within one or more written declaration of covenants recorded in the land records of the Charlottesville Circuit Court, in a form approved by the Office of the City Attorney, so that Owner’s successors in right, title and interest to the

Property shall have notice of and be bound by the obligations. The Required Affordable Dwelling Units shall be provided as for-rent units throughout the Rental Affordability Period.

2. NON-PROFIT USES:

Owner agrees to offer to sell commercial condominium space at the Property to two local non-profit organizations, namely Twice Is Nice and the Music Resource Center prior to offering for sale the space to any third parties. If Twice Is Nice does not purchase condominium space within sixty (60) days of the issuance of any certificate of occupancy for the Project, and provided that proffer section 1.b. is in effect, then Owner will increase the number of Required Affordable Dwelling Units referenced in proffer section 1.b. by two (2) units. Similarly, if the Music Resource Center does not purchase condominium space within sixty (60) days of the issuance of any certificate of occupancy for the Project, and provided that proffer 1.b. is in effect, then Owner will increase the number of Required Affordable Dwelling Units by two (2) units. If, however, Owner is able to sell commercial condominium space to any non-profit organization that is qualified as tax-exempt under the applicable regulations of the Internal Revenue Code, other than Twice Is Nice or the Music Resource Center, within one-hundred twenty (120) days of the issuance of certificate of occupancy, then Owner shall be relieved of the obligation to provide two (2) additional Required Affordable Dwelling Units for each qualified non-profit that purchases condominium space in the Property, as outlined in this paragraph. If proffer section 1.a. is in effect, and Owner is unable to sell the commercial space to non-profit organizations, then Owner will be released of the requirement for the additional affordable dwelling units referenced in this Section 2 above.

3. GROCERY USE:

Owner agrees to reserve a minimum of 5,000 square feet of commercial space at the Property for lease to a small grocery store or neighborhood grocery store that sells fresh produce. The space will be reserved exclusively for a grocery store use until the issuance of any certificate of occupancy for the Project.

4. PROHIBITED USES:

The following permitted by right land uses shall be excluded from the Property under B-3 Zoning Section 34-480:

Non-Residential: General and Misc. Commercial Uses: Gas station; Repair/servicing business (automobile); Car wash; Crematorium (independent of funeral home); Dry cleaning establishments; Drive-through windows; Taxi stand; Towing service, automobile.

Non-Residential: Industrial: Industrial equipment: service and repair; Wholesale establishments.

5. MAXIMUM BUILDING HEIGHT:

Notwithstanding the by-right seventy-foot (70') building height allowance in the B-3 District, the maximum building height permitted on the Property shall be sixty-five feet (65') or five stories. A five-foot step back shall apply to any story above the 4th story for the Cherry Avenue building frontage.

The maximum building height permitted within 40' of the Property's northern boundary, or rear property line, is further restricted to forty-five (45') feet or three (3) stories and is referred to herein as the "residential height zone." The

building height permitted in the residential height zone shall be a maximum of forty-five (45') feet and no more than three (3) stories measured from 457 feet above sea level for structures adjacent to 6th Street SW and from 454 feet above sea level for structures adjacent to 5th Street SW.

6. MIXTURE OF USES:

Development on the Property shall be mixed use. For the purposes of this proffer, "mixed use" means that no one type of use, such as residential, commercial, or institutional, may exceed 80% of the gross square footage on the Property.

and the City's Zoning Administrator shall update the Zoning District Map to reflect this reclassification of the Subject Property.

Approved as to form:

Jacob P. Stroman

Jacob P. Stroman
City Attorney