

RESOLUTION

CASE NO. ZA- 0005-2017. THE PROMENADE AT JOHN TYLER -

APPEAL OF A PROFFER INTERPRETATION

WHEREAS, Mr. Vernon Geddy, on behalf of the property owners (the "Appellant"), has appealed the Zoning Administrator's decision of the accepted proffers for The Promenade at John Tyler development to the Board of Supervisors; and

WHEREAS, the Board of Supervisors at its meetings on October 24, 2017, held a public hearing and considered the statements made by the public and also reviewed and considered the materials and testimony offered by the Zoning Administrator and the Appellant; and

WHEREAS, the Board of Supervisors is of the opinion that the decision of the Zoning Administrator is correct and that the Appellant's appeal should be denied.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby uphold the Zoning Administrator's interpretation that the relevant price of a dwelling unit for the purposes of the Housing Opportunities Policy is the total sales price of a unit, inclusive of any options or upgrades as shown on the closing disclosure or HUD-1 settlement statement and in consideration of such decision, the Board of Supervisors makes the following specific findings of fact:

1. Section 15.2-2299 of the *Code of Virginia*, 1950, as amended (the "Virginia Code"), authorizes the Zoning Administrator to administer and enforce proffers attached to a rezoning. Sections 15.2-2301 of the Virginia Code directs the Board of Supervisors to consider any appeal from a decision rendered pursuant to Section 15.2-2299 of the Virginia Code; accordingly, the Board of Supervisors has jurisdiction to hear this appeal.
2. The Board of Supervisors must give deference to the Zoning Administrator's interpretation of this proffer, which has been long-standing and similarly-applied in several other cases.
3. The Board of Supervisors approved rezoning Case No. Z-0001-2016 by resolution on April 12, 2016, rezoning +/- 24.54 acres from MU, Mixed Use with proffers to MU, Mixed Use and accepted amended voluntary proffers.
4. Proffer No. 2 states: "Housing Opportunities. All of the dwelling units permitted on the Property shall be offered for sale or made available for rent at prices determined in accordance with the Housing Opportunities Policy and Housing Opportunities Policy Guide adopted by the Board of Supervisors on November 27, 2012, as provided below for units offered for sale:

Table 1 - 190 units on Parcels 4812200020 and 4812200029


Tier	Percent of Dwelling Units Required	Number of Units
30%-60%	16%	30
61%-80%	64%	120
81%-120%	20%	40

Table 2 - 14 units on Parcels 4812200025, 4812200026, 4812200027 and 4812200028

Tier	Percent of Dwelling Units Required	Number of Units
30%-60%	16%	2
61%-80%	64%	9
81%-120%	20%	3

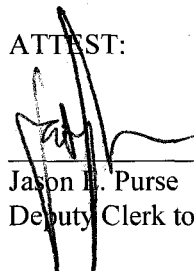
The forgoing affordable/workforce dwelling units shall be provided consistent with the criteria established by the Housing Opportunities Policy adopted by the Board of Supervisors on November 27,2012, and in effect as of the date of approval of the requested rezoning to provide affordable and workforce housing opportunities at different price ranges to achieve the greater housing diversity goal of the 2035 Comprehensive Plan; provided, however, that if the County amends the Housing Opportunities Policy as in effect as of the date of approval of the requested rezoning to increase the targeted income ranges or otherwise make the Policy otherwise less burdensome on the Owner, the Owner shall only be required to comply with the amended Policy.”

- The Board of Supervisors finds the Zoning Administrator’s proffer interpretation that the relevant price of a dwelling unit for the purposes of the Housing Opportunities Policy is the total sales price of a unit, inclusive of any options or upgrades as shown on the closing disclosure or HUD-1 settlement is consistent with the language of the Housing Opportunities Policy and Comprehensive Plan.



Kevin D. Onizuk
Chairman, Board of Supervisors

ATTEST:



Jason E. Purse
Deputy Clerk to the Board

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	✓	—	—
SADLER	✓	—	—
HIPPLE	✓	—	—
LARSON	✓	—	—
ONIZUK	✓	—	—

Adopted by the Board of Supervisors of James City County, Virginia, this 24th day of October, 2017.