

**County of Fairfax, Virginia  
Planning Commission Meeting  
February 26, 2020  
Verbatim Excerpt**

*RZ/FDP 2019-SP-014 – BRIGHTVIEW SENIOR LIVING DEVELOPMENT LLC – Appls. to rezone from R-1 and WS to PDH-4 and WS to permit additional land area for an independent living and assisted living facility with no increase in density or intensity and approval of the final development plan. Located on the S. side of Lee Hwy. approx. 450 ft. W. of Summit Dr., on approx. 0.16 ac. of land. Comp. Plan Rec: Residential at 1-2 du/ac with an option for independent/assisted living at 4 du/ac. Springfield District. Tax Map 55-4 ((1)) 36B. (Concurrent with PCA/CDPA/FDPA 2017-SP-017). (Springfield District)*

*PCA 2017-SP-017/CDPA 2017-SP-017/FDPA 2017-SP-017 – BRIGHTVIEW SENIOR LIVING DEVELOPMENT LLC – Appl(s). to amend the proffers, conceptual development plan, and second final development plan for RZ 2017-SP-017, previously approved for independent living and an assisted living facility, to permit independent living and an assisted living facility and associated modifications to proffers and site design at a density of 15.16 dwelling units per acre (du/ac) and a Floor Area Ratio (FAR) of 0.21. Located on the S. side of Lee Hwy. approx. 450 ft. W. of its intersection with Summit Dr., on approx. 5.62 ac. of land zoned PDH-4 and WS. Comp. Plan Rec: Residential at 1-2 du/ac with an option for independent/assisted living at 4 du/ac. Springfield District. Tax Map 55-4 ((1)) 31A. (Concurrent with RZ/FDP 2019-SP-014). (Springfield District)*

During Commission Matters:

Commissioner Murphy: Thank you very much. We had the public hearing on this application last week for senior citizen housing on the – on Lee Highway in the Springfield District. I was about to make a – a motion to approve it, but we got word from the county attorney there was a legal problem, which since then has been worked out, and you got – you received new proffers this evening. And for them, as the Planning Commission, we have added proffer eight, which discusses the reason why this application was deferred and the remedy is in that – in that development – in that proffer. So, therefore Mr. Chairman I – this is a straightforward application to amend and already approved independent and assisted living facility and to add 16 – a 16-foot wide strip of land through the western boarder of the property. This was originally approved in January of 19 – January 18<sup>th</sup>.

Commissioner Sargeant: Mr. Chairman?

Commissioner Murphy: 1918.

Commissioner Sargeant: You need to reaffirm the affidavit.

Commissioner Murphy: 2018. Well, wait a minute. Yeah, okay...(inaudible)

Commissioner Sargeant: Go ahead.

Commissioner Murphy: 2018. There are no structures proposed in this addition – additional area and it will contain only the required transitional screening, plantings, and barrier requirements. There is no increase in unit count or FAR proposed with this application. There are no change in

the building footprint or height. The previously adopted proffers from the original approved application in 2018 are being brought forward, such as a commitment to affordable units, significant frontage improvements on Lee highway, a contribution to the Fairfax Center Area Road Fund, contributions to the Park Authority, and a contribution for a signal preemptive device, which is needed throughout the county for our Fire Department. With the addition of this land area, the application continues to fit within the character of the neighborhood and continues to be in harmony with the recommendations of the Comprehensive Plan for the property. I want to make sure that everyone understands this application has received the approval from – recommendation from the staff, and also from the Springfield District Land Use Committee, and the Citizens who attended the rezoning application in January 2018, where most of them were present for the public – to the Land Use Committee meeting we had this time and they all moved to – to support the application. Therefore, will the applicant please come forward? Before I move on this application – these applications, I request that the applicant confirm for the record their agreement to the proposed final development plan – development conditions for FDP 2019-SP-014 and FDP 2017-SP-017 dated February 5<sup>th</sup>, 2020.

Lori Greenlief, Applicant's Agent, McGuireWoods: Yes, on behalf of Brightview, we agree with those conditions.

Commissioner Murphy: Thank you very much. Therefore Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS TO APPROVE RZ 2019-SP-014 AND ITS ASSOCIATE CDP 2019-SP-014, SUBJECT TO PROFFERS DATED FEBRUARY 12<sup>TH</sup>, 2020.

Vice Chairman Ulfelder: I think it's – is it the 26<sup>th</sup> or the 12<sup>th</sup>?

Mary Ann Tsai, Zoning Evaluation Division, Department of Planning and Development: 26<sup>th</sup>.

Vice Chairman Ulfelder: It should be – it should be the proffers dated February 26<sup>th</sup>.

Commissioner Murphy: I'm sorry.

Commissioner Niedzielski-Eichner: Second.

Vice Chairman Ulfelder: Second. It's been seconded by Commissioner Niedzielski-Eichner.

Commissioner Murphy: Okay. Thank you very much.

Commissioner Sargeant: All in favor?

Commissioner Murphy: All in favor.

Vice Chairman Ulfelder: All in favor? Say aye.

Commissioners: Aye.

Vice Chairman Ulfelder: Okay. Next motion.

Commissioner Murphy: Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE PCA 2017-SP-017 AND ITS ASSOCIATED CDPA 2017-SP-017, SUBJECT TO PROFFERS DATED DECEMBER 30, 2019.

Commissioner Niedzielski-Eichner: Second.

Commissioner Murphy: Where am I getting these dates?

Vice Chairman Ulfelder: No that's – it should be February 26<sup>th</sup>, I believe.

Commissioner Murphy: I've got – I'm sorry. I've got too many papers up here with motions on them. FEBRUARY 26<sup>TH</sup>, 2020.

Vice Chairman Ulfelder: Is there a second? Seconded by Niedzielski – Commissioner Niedzielski-Eichner.

Commissioner Sargeant: Discussion?

Vice Chairman Ulfelder: All in favor?

Commissioners: Aye.

Vice Chairman Ulfelder: All right, that motion Carries.

Commissioner Murphy: I MOVE THE PLANNING COMMISSION APPROVE FDPA 2017-SP-017, SUBJECT TO THE DEVELOPMENT CONDITIONS DATED FEBRUARY 5<sup>TH</sup>, 2020.

Commissioner Niedzielski-Eichner: Second.

Vice Chairman Ulfelder: Again. Seconded by Mr. Niedzielski-Eichner. All – All in favor, say aye.

Commissioners: Aye.

Vice Chairman Ulfelder: Opposed? That motion carries.

Commissioner Murphy: I MOVE THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE THE MODIFICATIONS AND WAIVERS FOR RZ/FDP 2019-SP-014 AND PCA FDPA 2017-SP-017 LISTED IN THE HANDOUT DATED FEBRUARY 26, 2020 THAT WAS APPROVED – PROVIDED TO YOU TODAY, WHICH WILL BE MADE PART OF THE RECORD IN THIS CASE.

Commissioner Niedzielski-Eichner: Second.

Vice Chairman Ulfelder: Also Seconded by Mr. Niedzielski-Eichner. All in favor, say aye.

Commissioners: Aye.

Vice Chairman Ulfelder: Opposed? That motion carries.

Commissioner Murphy: And again, I want to thank Kelly Atkinson, who is with us this evening as the staff person. She does – did an outstanding professional job. Lori Greenlief and the people from the applicant, we appreciate your efforts and this is well, a great – a great asset to our community since it addresses some of the problems we are having with the escalation of a – of the highest demographic rising in Fairfax County, the senior citizens. And these kinds of facilities are needed and we appreciate what you're doing. Thank you very much.

The motion carried by a vote of 11-0. Commissioner Clarke was absent from the vote.

KAS



# County of Fairfax, Virginia

## MEMORANDUM

**DATE:** February 26, 2020

**TO:** Chairman Murphy, Planning Commission  
Members of the Planning Commission  
Marlae Schnare, Supervisor Herrity's Office

**FROM:** Kelly M. Atkinson, AICP (703-324-1259)  
DPD - Zoning Evaluation Division

**SUBJECT:** RZ/FDP 2019-SP-014 concurrent with PCA/FDPA 2017-SP-017

### Planning Commission Public Hearing February 26, 2020

The Applicant has provided revised proffers for RZ 2019-SP-014 and PCA 2017-SP-017, dated February 26, 2020. Specifically, for the RZ, it acknowledges that the site improvements shown on the CDP/FDP pertaining to Tax Map 55-4((1))36B will not be implemented until the complaint is adjudicated in favor of the Applicant or is otherwise withdrawn. Additionally, for the RZ and PCA, it acknowledges that a PCA will be required in the event the Court finds the adjacent property owns holds a property right to Tax Map 55-4((1))36B. The revised proffers are below and attached in full to this memorandum:

#### RZ 2019-SP-014

8. Implementation. Until the complaint filed by the owner of Fairfax County Tax Map 55-4((1))33 that is currently pending in the Fairfax County Circuit Court with respect to that owner's alleged property rights pertaining to the Property is adjudicated in favor of the Applicant or is otherwise withdrawn, the site improvements shown on the CDP/FDP on Lot 36B will not be implemented. In the event the Court were to determine that the owner of Fairfax County Tax Map 55-4((1))33 has a property right to any portion of the Property, the Applicant will use its best efforts to apply for and diligently pursue a PCA to the extent needed to remove any encumbrances that would hinder the owner of Fairfax County Tax Map 55-4((1))33's exercise of its rights on the Property as prescribed by the determination of the Court.



PCA 2017-SP-017

2. Implementation. In the event the Fairfax County Circuit Court or an appellate court were to determine that the owner of Tax Map 55-4((1))33 holds a property right to any portion of Tax Map 55-4((1))36B, as alleged in a complaint filed by that owner, the Applicant will use its best efforts to apply for and diligently pursue a PCA to remove any encumbrances that would hinder the owner of Tax Map 55-4((1))33's exercise of its rights on the Tax Map 55-4((1))36B as prescribed by the determination of the Court.

If you have specific questions about these comments, please feel free to contact me at (703) 324-1259. Thank you.

Cc: William O'Donnell, AICP, Branch Chief, Zoning Evaluation Division

**Proffered Conditions**  
**Brightview Senior Living Development, L.L.C.**  
**RZ 2019-SP-014**  
**November 26, 2019**  
**December 30, 2019**  
**January 29, 2020**  
**February 12, 2020**  
**February 26, 2020**

Pursuant to Section 15.2-2303(A), Code of Virginia, 1950 as amended, the undersigned Owner and Applicant, in this rezoning proffers that the development of the parcel under consideration and shown on the Fairfax County Tax Map as Tax Map Reference 55-4((1))36B (hereinafter referred to as the “Property”) will be in accordance with the following conditions (the “Proffered Conditions”), if and only if, said rezoning request for the PDH-4 Zoning District is granted. In the event said rezoning request is denied, these Proffered Conditions shall be null and void. The Owner and the Applicant, for themselves, their successors and assigns hereby agree that these Proffered Conditions shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with applicable County and State statutory procedures. The Proffered Conditions are:

1. Substantial Conformance. Subject to the provisions of Section 18-204 of the Fairfax County Zoning Ordinance (hereinafter referred to as the “Zoning Ordinance”), development of the Property must be in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP), prepared by BC Consultants, dated September 3, 2019 revised through November 26, 2019.
2. Density. Tax Map Reference 55-4((1))36B will not be utilized in the calculation of the maximum permitted density associated with the independent living/assisted living facility located on Tax Map Reference 55-4((1))31A.
3. Landscape Pre-Inspection Meeting: Prior to installation of plants to meet requirements of the approved landscape plan, the Contractor/Developer must coordinate a pre-installation meeting on site with the landscape contractor and a representative of the County Urban Forest Management Division (UFMD). Any proposed changes to the location of planting, size of trees/shrubs, and any proposed plant substitutions for species specified on the approved plan will be reviewed at this time and must be approved prior to planting. The installation of plants not specified on the approved plan, and not previously approved by UFMD, may require submission of a revision to the landscape plan or removal and replacement with approved material.
4. Landscaping: All landscaping provided must be native to the middle Atlantic region to the extent feasible and non-invasive as determined by UFMD.
5. Soil Remediation. Soil will be restored for the establishment and long-term survival of the landscape plantings shown on the CDP/FDP. Soil in planting areas that either contains road debris and rubble, is compacted, or is unsuitable for the establishment and long-term survival of landscape plants, will

be the subject of remedial action to restore the planting areas in accordance with the soil remediation specifications as shown on the CDP/FDP.

6. Right-of-Way Dedication, Lee Highway. At the time of record plat approval, the Applicant must dedicate, at no cost to Fairfax County and in fee simple, without encumbrances to the Board of Supervisors, right-of-way along the site frontage of Lee Highway (Rt. 29) one hundred and seventeen (117) feet from the centerline and any associated ancillary easements, as shown on the CDP/FDP.
7. Escrow for Service Drive Completion. Prior to the time of site plan approval, the Applicant must place in escrow an amount to be used by Fairfax County or VDOT for the continuation of the service drive and shared use path across the Property to its western lot line. Such amount must be determined prior to final site plan approval utilizing the County's Unit Price List in effect at that time. At such time as is necessary for the completion of the service drive and shared use path to the western lot line by others, the Applicant must provide the temporary grading and/or construction easements necessary for the construction of the road improvements and path.
8. Implementation. Until the complaint filed by the owner of Fairfax County Tax Map 55-4((1))33 that is currently pending in the Fairfax County Circuit Court with respect to that owner's alleged property rights pertaining to the Property is adjudicated in favor of the Applicant or is otherwise withdrawn, the site improvements shown on the CDP/FDP on Lot 36B will not be implemented. In the event the Court were to determine that the owner of Fairfax County Tax Map 55-4((1))33 has a property right to any portion of the Property, the Applicant will use its best efforts to apply for and diligently pursue a PCA to the extent needed to remove any encumbrances that would hinder the owner of Fairfax County Tax Map 55-4((1))33's exercise of its rights on the Property as prescribed by the determination of the Court.

### **Successors and Assigns**

These proffers shall bind and inure to the benefit of the Applicant and his/her successors and assigns.

### **Counterparts**

These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one and the same instrument.

TITLE OWNER AND APPLICANT SIGNATURE TO FOLLOW ON THE NEXT PAGE:



Brightview Fair Oaks Outlet Road, LLC  
Owner of 55-4((1))36B

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

Name: David D. Carliner

Title: Executive Vice President

Brightview Senior Living Development, LLC  
Applicant

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

Name: David D. Carliner

Title: Executive Vice President

**Proffered Conditions**  
**Brightview Senior Living Development, L.L.C.**  
**RZ 2019-SP-014**  
**November 26, 2019**  
**December 30, 2019**  
**January 29, 2020**  
**February 12, 2020**  
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8. Implementation. Until the complaint filed by the owner of Fairfax County Tax Map 55-4((1))33 that is currently pending in the Fairfax County Circuit Court with respect to that owner's alleged property rights pertaining to the Property is adjudicated in favor of the Applicant or is otherwise withdrawn, the site improvements shown on the CDP/FDP on Lot 36B will not be implemented. In the event the Court were to determine that the owner of Fairfax County Tax Map 55-4((1))33 has a property right to any portion of the Property, the Applicant will use its best efforts to apply for and diligently pursue a PCA to the extent needed to remove any encumbrances that would hinder the owner of Fairfax County Tax Map 55-4((1))33's exercise of its rights on the Property as prescribed by the determination of the Court.

### Successors and Assigns

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Title: Executive Vice President

Brightview Senior Living Development, LLC  
Applicant

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

Name: David D. Carliner

Title: Executive Vice President

**Proffered Conditions**  
**Brightview Senior Living Development, L.L.C.**  
**PCA 2017-SP-017**  
**November 26, 2019**  
**December 30, 2019**  
**February 26, 2020**

Pursuant to Section 15.2-2303(a) of the Code of Virginia, 1950, as amended, the applicant and the property owner in this proffer condition amendment proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Map Reference 55-4((1))31 A, (hereinafter referred to as the "Property") will be in accordance with the adopted proffer conditions associated with the approval of RZ 2017-SP-017, except as noted below if, and only if, said proffer condition amendment request is granted by the Board of Supervisors of Fairfax County, Virginia (the "Board"). In the event said application request is denied or the Board's approval is overturned by a court of competent jurisdiction, the governing proffers applicable to the Property will consist of those adopted with the approval of RZ 2017-SP-017 in their entirety.

Proffer 1 will be replaced in its entirety with respect to the Property by the following:

1. Substantial Conformance. Subject to the provisions of Section 18-204 of the Fairfax County Zoning Ordinance (hereinafter referred to as the "Zoning Ordinance"), development of the Property will be in substantial conformance with the Conceptual Development Plan Amendment/Final Development Plan Amendment (CDPA/FDPA), prepared by BC Consultants, dated September 3, 2019, revised through November 26, 2019.
2. Implementation. In the event the Fairfax County Circuit Court or an appellate court were to determine that the owner of Tax Map 55-4((1))33 holds a property right to any portion of Tax Map 55-4((1))36B, as alleged in a complaint filed by that owner, the Applicant will use its best efforts to apply for and diligently pursue a PCA to remove any encumbrances that would hinder the owner of Tax Map 55-4((1))33's exercise of its rights on the Tax Map 55-4((1))36B as prescribed by the determination of the Court.

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Brightview Fair Oaks, LLC  
Owner of 55-4((1))31A

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

Name: David D. Carliner

Title: Executive Vice President



Brightview Senior Living Development, LLC  
Applicant

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

Name: David D. Carliner

Title: Executive Vice President

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**Brightview Senior Living Development, L.L.C.**  
**PCA 2017-SP-017**  
**November 26, 2019**  
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**Brightview Senior Living Development, L.L.C.**  
**RZ 2019-SP-014**  
**November 26, 2019**  
**December 30, 2019**

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**Successors and Assigns**

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Brightview Fair Oaks Outlet Road, LLC  
Applicant and Owner of 55-4((1))36B

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

Name: David D. Carliner

Title: Executive Vice President



**Planning Commission  
February 26, 2020  
RZ/FDP 2019-SP-014 concurrent with  
PCA/FDPA 2017-SP-017  
Brightview Senior Living Development, LLC**

**Waivers and Modifications  
February 26, 2020**

Staff recommends approval of the following modifications noted below:

- Modification of Par. 3 of Sect. 13-305 of the Zoning Ordinance to modify the transitional screening planting requirements along the western property line in favor of using the existing vegetation supplemented with the proposed plantings as shown on the CDP/FDP/CDPA/FDPA; and
- Modification of Par. 3 of Sect. 13-305 of the Zoning Ordinance to modify the placement of the barrier requirement to the periphery of the western property line as shown on the CDP/FDP/CDPA/FDPA.

Staff recommends re-affirmation of the following previously approved waivers and modifications noted below:

- Modification of Par. 3 of Sect. 13-305 of the Zoning Ordinance to modify the transitional screening planting requirements along the northern, southern, and eastern property lines in favor of using the existing vegetation supplemented with the proposed plantings as shown on the CDP/FDP/CDPA/FDPA;
- Modification of Par. 3 of Sect. 13-305 of the Zoning Ordinance to modify the placement of the barrier requirement to the periphery of the eastern and southern property line as shown on the CDP/FDP/CDPA/FDPA;
- Waiver of Par. 3 of Sect. 13-305 of the Zoning Ordinance to waive the barrier requirement along the northern property line;
- Modification of Par. 13 of Section 11-203 of the Zoning Ordinance to modify the loading space requirement for three loading spaces in lieu of that shown on the CDP/FDP/CDPA/FDPA;
- Modification of Pars. 2 and 3 of Sect. 17-201 of the Zoning Ordinance of the construction requirements for the shared use path and service drive along Lee Highway in lieu of that shown on the CDP/FDP/CDPA/FDPA;
- Waiver of Par. 3 of Section 17-201 of the Zoning Ordinance to waive the requirement to provide interparcel access to east and west in lieu of the service drive as shown on the CDP/FDP/CDPA/FDPA; and
- Waiver of Par. 2 of Sect. 17-201 of the Zoning to waive the requirement to construct a sidewalk along Lee Highway in lieu of the Shared Use Path as shown on the CDP/FDP/CDPA/FDPA.