

RZ/FDP 2003-DR-049
ROSEWOOD BUILDING & DEVELOPMENT LLC
PROFFER STATEMENT

November 8, 2004

Pursuant to Section 15.2-2303(A) of the Code of Virginia, as amended, and subject to the Fairfax County Board of Supervisors' (the "Board") approval of rezoning application RZ/FDP 2003-DR-049, as proposed, for rezoning from the R-3 and R-12 Districts to the PDH-12 District, the owners and Rosewood Building & Development LLC (the "Applicant"), for themselves and their successors and assigns, hereby proffer that development of Tax Map Parcels 30-4-((1))-3, 3A, 4, 5, 5A and 6 (collectively the "Property"), containing approximately 2.61 acres, shall be in accordance with the following proffered conditions:

1. Substantial Conformity. The Property shall be developed in substantial conformance with the Conceptual Development Plan and Final Development Plan ("CDP/FDP") consisting of eight (8) sheets prepared by Planning & Development Services, Inc., entitled Conceptual Development Plan/Final Development Plan (CDP/FDP), McLean Cove, dated July 18, 2003, revised through September 24, 2004 and as further modified by these proffered conditions.
2. Final Development Plan Amendment. Notwithstanding that the CDP/FDP consists of eight (8) sheets and said CDP is the subject of Proffer 1 above, it shall be understood that (i) the CDP/FDP shall consist of the entire plan relative to the general layout, points of access to the existing road network, location and types of units, peripheral and building setbacks, the maximum number and type of units, general limits of clearing and grading and the location and amount of open space on the Property; and (ii) the Applicant has the option to request Final Development Plan Amendment ("FDPA") approvals from the Planning Commission in accordance with Section 16-402 of the Zoning Ordinance with respect to the remaining elements. The Applicant shall maintain, at a minimum, the setbacks and yard dimensions shown on CDP/FDP. The Applicant further agrees to make no reductions in the open space located between the proposed dwelling units and the east and south property boundaries. The units shall be located, grouped, and arranged on the site as shown on the CDP/FDP.
3. Minor Modifications to Design. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the approved CDP/FDP may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layout shown on the CDP/FDP provided such changes are in substantial conformance with the CDP/FDP and proffers, and do not increase the total number of units or decrease the minimum amount of open space or peripheral setbacks shown to be provided on the Property. However, there shall be no increase in the height, decrease in the setbacks or change to the roof lines or style of construction of the roofs (i.e. hip roof versus gable roof) for those units along the eastern property line with Stoneleigh [Tax Map 30-4 ((38))].

4. Maximum Density. A maximum of twenty-six (26) single family attached dwelling units shall be permitted on the Property. The Applicant reserves the right to develop fewer than the maximum number of units referenced in this paragraph without the need for a Proffered Condition Amendment ("PCA") application or CDPA/FDPA.
5. Right-of-Way Dedication. The Applicant shall dedicate right-of-way along Davidson Road and construct improvements including the right turn lane (on Davidson Road) as depicted on the CDP/FDP, subject to review and approval by VDOT and DPWES. All road right-of-way ("ROW") dedicated in conjunction with these proffers and/or as depicted on the CDP/FDP shall be conveyed to the Board in fee simple upon demand by Fairfax County (the "County") or at the time of recordation of the final record plat/subdivision plat, whichever occurs first, and shall be subject to the "Density Credit" proffer below regarding reservation of development intensity to the residue of the subject Property.
6. Private Streets. All private streets will be constructed with materials and depth of pavement consistent with public street standards in accordance with the Fairfax County Public Facilities Manual ("PFM"), as determined by DPWES. The Homeowners' Association ("HOA") shall be responsible for the maintenance of all private streets and the HOA documents shall expressly so state. The Applicant shall be responsible for the maintenance of the private streets until the control of the Homeowners' Association is assumed by the HOA. The Applicant, or its representatives, shall disclose to prospective purchasers prior to, or at the time of contract, that the HOA is responsible for the maintenance of private streets within the development.
7. Streetscape. The Applicant shall install the "Davidson Road Streetscape" and the "Chain Bridge Road Streetscape" along the subject Property's frontages as shown on sheet 4 of the CDP/FDP subject to approval by DPWES and VDOT. If requested by VDOT, the Applicant shall agree to have the HOA be responsible to maintain the trees and/or sidewalk located within the right-of way (Such responsibility shall be stated in the HOA documents and shall be disclosed in writing to prospective purchasers). In the event VDOT disapproves the location of the street trees within the VDOT right-of-way, then the Applicant shall locate the street on the Applicant's property as described in Note 24 of the CDP/FDP. If VDOT or other regulatory authority disapproves the proposed sidewalk design along the VDOT right-of-way in any material and substantive way, the Applicant agrees to make a good faith effort to seek the input of the McLean Planning Committee regarding alternative design features that will meet with agency approval.
8. Landscaping. Landscaping shall be consistent with the quality, quantity and the locations of the plantings as shown on the CDP/FDP. Actual types and species of vegetation shall be determined pursuant to more detailed landscape plans submitted at the time of the first and all subsequent submissions of the site plan, for review and approval by the Urban Forest Management Branch, DPWES. Such landscape plans shall provide tree coverage and species diversity consistent with the PFM criteria, as determined by the Urban Forest Management Branch, DPWES. Landscaping shall be consistent with the design concepts, quality, quantity, locations and arrangement of the plantings as shown on the CDP/FDP. All plantings shall be installed with minimum initial sizes complying with

those indicated in the FDP. Evergreens located along the east and south property lines shall have a minimum initial height of 9 feet. The Applicant also agrees to make a good faith practical effort to work with neighboring property owners to preserve existing trees located adjacent to this Property. The Applicant will meet County tree cover requirements.

9. Stormwater Management.

The Applicant shall provide Stormwater Management - Detention & Best Management Practices (BMPs) in infiltration trenches and / or underground facilities(s) located onsite, which shall be privately maintained. The Applicant proffers the following conditions:

a) At DPWES request, the Applicant shall pursue Infiltration Trenches as the preferred method of Stormwater Management onsite. This effort shall include a formal analysis of the soils located onsite to determine if and where infiltration may be feasible onsite. In the event, the existing soils located onsite will not support Infiltration Trenches to meet all of the stormwater management requirements, then the Applicant shall be permitted to utilize underground facilities to provide stormwater management for the McLean Cove Development.

b) The Applicant shall, with Department of Public Works and Environmental Services (DPWES) approval relocate entrance and/or access to the underground facilities(s) from their proposed locations shown on the CDP/FDP to areas underneath the pavement within the private streets as depicted on the attached exhibit or other areas as approved by DPWES. Said relocation(s), shall not require a proffered condition amendment if in substantial conformance with the CDP/FDP.

c) If underground detention/BMP facilities are to be constructed, they shall be constructed of reinforced concrete products only and incorporate safety features including restricted keyway locking manholes and doors, which may be central station monitored and may be local alarm equipped, as determined by the DPWES at the time of Site Plan submission.

d) No infiltration trenches or underground facilities shall be located in a County storm drainage easement.

e) Operational procedures associated with the infiltration trenches or underground detention facilities shall be incorporated in the HOA's documents to insure safe operation/maintenance of the facilities, as well as outline maintenance responsibility of the HOA.

f) A maintenance plan and agreement shall be executed prior to final plat approval with a financial plan for all of the property owners and the HOA to finance regular maintenance. The Applicant shall establish a replacement fund for future replacement of the facilities. The Applicant shall establish a mechanism for the HOA to make annual payments to the replacement fund, which are based on the initial construction costs subject to inflation and an estimated 50-year lifespan for concrete products. The

Applicant and future HOA also shall include a separate line item in the annual budget for inspection and maintenance.

g) The maintenance agreement shall be reviewed and approved by the Fairfax County Attorney's Office and recorded in the Land Records of the County. This agreement shall include:

- County inspection and all other issues as may be necessary to insure that the facilities are maintained by the property owners (e.g. Homeowners Association) in good working condition acceptable to the County so as to control stormwater which results from the development of the McLean Cove site.
- A condition that the Applicants, owners, their successors and assigns shall not petition the County to assume future maintenance or replace the underground facilities.
- Establishment of a reserve fund for future maintenance and replacement of the underground facilities.
- Establishment of procedures to follow to facilitate inspection by the County, i.e. advance notice procedure, whom to contact, and who has the keys for access to the underground facility, etc.
- A condition that the owners provide and continuously maintain liability insurance, in an amount agreed to with DPWES. The typical liability insurance amount is at least \$1,000,000, against claims associated with the underground facilities.
- A statement that Fairfax County shall be held harmless for any liability associated with the facilities.

h) The proposed facilities shall be maintained by the Applicants, their successors and assigns in accordance with the regulations of DPWES, i.e., a private maintenance agreement as conditioned above.

i) The purchasers shall be advised prior to entering into a contract of sale and in the HOA documents that all of the property owners and the HOA shall be responsible for the maintenance of the underground facilities.

j) Infiltration trenches or underground detention facilities approved for use in residential developments, shall be disclosed as part of the chain of title to all future property owners.

k) In order to supplement the financial strength of the newly established HOA, the Applicant agrees to the following contributions:

- The Applicant agrees, prior to final Fairfax County bond release, to escrow with Fairfax County for future assignment by the County to the HOA the sum of \$17,400.00,

as adjusted for inflation from the date of these proffers, based on the Engineering News Record Construction Cost Index, or the amount equivalent to three years of the HOA's annual payment to the underground facilities replacement reserve fund, as determined by DPWES, whichever is greater.

- The Applicant agrees, prior to site plan approval, to escrow with Fairfax County for future assignment by the County to the HOA, the amount equivalent to 20-years of maintenance of the underground facilities, as determined by DPWES. These monies shall not be made available to the HOA until after final bond release.

l) The Applicant agrees to ensure that development of Mclean Cove shall not result in an increase in the amount of surface stormwater runoff that flows onto the Stoncleigh Subdivision from the rear portion of the project.

10. Public Schools Contribution At the time of issuance of the first building permit, Applicant shall contribute to Fairfax County \$76,600.00 for capital improvements to Longfellow Middle School. Said contribution shall be deposited by DPWES into the County Schools Proffer Account for distribution by the Board of Supervisors to the Fairfax County Public Schools for application to public school construction projects in the vicinity of the subject property.

11. Recreational Facilities. The Applicant shall comply with Paragraph 2 of Section 6-110 and with Section 16-404 of the Zoning Ordinance as follows:

Contribution to Fairfax County of \$955.00 per unit, credited against that contribution shall be the cost of the design and construction of on-site recreational improvements. In the event the total cost of the on-site recreation expenses is less than the proffered \$955.00 per market rate unit, the Applicant shall provide a cash contribution to the Park Authority for the remainder of the recreational facility contribution ("Park Contribution"), payable at the time of issuance of each building permit and to be used solely for development of park facilities in the vicinity of this development.

12. Garages and Driveways. The Applicant shall place a covenant on each residential lot that prohibits the use of the garage for any purpose which would preclude motor vehicle storage. This covenant shall be recorded among the land records of Fairfax County prior to the sale of lots and shall run to the benefit of the HOA and to the Board. Prior to recordation, the covenant shall be approved by the Fairfax County Attorney's office. The HOA documents shall expressly state this use restriction. The driveway provided for each unit shall be a minimum of eighteen (18) feet in length to permit the parking of two (2) vehicles without overhanging into the sidewalk. Garages shall be designed to accommodate two (2) vehicles. The minimum number of off-street parking spaces provided shall be the aforementioned two (2) per dwelling unit (provided in the garages) plus 0.5 visitor spaces per unit.

13. Open Space. A minimum of thirty-one (31) percent of the site shall be retained in open space. At the time of recordation of the final record plat/subdivision plat, the Applicant

shall convey all open space parcels and all open space areas outside private lot lines to the HOA for ownership and maintenance.

14. Energy Efficiency. All homes constructed on the Property shall meet the thermal standards of the CABO Model Energy Program for energy efficient homes, or its equivalent, as determined by DPWES, for either electric or gas energy systems. Exterior site and building-mounted lighting shall be residential in architectural style and light output characteristics, and where possible, conform with Fairfax County “dark sky” regulations.
15. Illegal Signs. No temporary signs (including "popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on- or off-site by the Applicant or at the Applicant's direction to assist in the initial sale of homes on the Property. Furthermore, the Applicant shall direct its agents and employees involved in the marketing and sale of the residential units on the Property to adhere to this Proffer.
16. Affordable Dwelling Unit Program. At the time of first building permit approval, a contribution shall be made to the Fairfax County Housing Trust Fund of 0.5% of the sales price of each dwelling unit actually constructed or to be constructed. The Amount of said contribution shall be determined by the Fairfax County Department of Housing and Community Development.
17. Architectural Design. The Applicant shall design the residential dwellings and fencing on the subject property as conceptually and illustratively shown in the Architectural elevations as shown on the CDP/FDP. While actual elevations may differ from those shown on the CDP/FDP, all townhouses shall utilize similar materials and colors and standard architectural features to create a unified architectural theme. The standard architectural features shall include: Architectural tab shingles and/or standing seam metal roofs, multi-piece cornice trim, all brick exteriors-except rakes, bays, trim details and elements where precast concrete is used. Where decks are constructed they shall be architectural decks with metal railings and brick pier detailing. Lots 8-13, 1-7 and 14-26 shall have coordinated brick and roof color schemes and coordinated trim color schemes, including cornice trim, exterior metals and shutters. The maximum height of any building shall not exceed 39 feet. Height shall be calculated per the Fairfax County Zoning Code. Roof shapes for units 10,11, and 14 shall be a “hip” design. Units 10 and 11’s roof height (per code) shall not exceed 35’5”. Unit 14’s roof height (per code) shall not exceed 36’4”. No noise generating equipment, such as air conditioning condenser units, shall be located in the side yards or open space adjacent to the east Property line.
18. Decks/Balconies. The second story (one story above the garage) decks/balconies for Lots 1-7 and Lots 14-26 shall be no deeper than four (4) feet and no wider than sixteen (16) feet in total length. Each unit may have 2 decks which combined shall not exceed 16 feet in length. For Lots 8-13 the second story decks/balconies shall be no deeper than twelve (12) feet. Decks/balconies shall be constructed with metal railings and brick pier detailing. Any wood materials shall be painted or stained. No unfinished “natural”

pressure-treated wood materials shall be permitted. This restriction shall be added as a covenant running with the land and included in the Homeowner's Association Declaration.

19. Park Authority Contribution. In addition to the contributions described in Proffer #11, at the time of site plan approval, Applicant shall contribute \$16,695.00 to the Fairfax County Park Authority for its use in establishing and maintaining parks and recreational facilities in the Dranesville district of Fairfax County. The contribution amount shall be adjusted by increases to the Construction Cost Index from the *Engineering News Record* from the date of Board of Supervisor's approval of this rezoning application, to the date of site plan approval.
20. Density Credit. All intensity of use attributable to land areas dedicated and conveyed to the Board or any other County agency pursuant to these proffers shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the residue of the Property.
21. Counterparts. To facilitate execution, this Proffer Statement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of all the parties to the Proffer Statement appear on each counterpart of this Proffer Statement. All counterparts of this Proffer Statement shall collectively constitute a single instrument.
22. Successors and Assigns. Each reference to "Applicant" in this Proffer Statement shall include within its meaning, and shall be binding upon, Applicant's successor(s) in interest, assigns, and/or developer(s) of the Property or any portion of the Property.

[SIGNATURES ON FOLLOWING PAGES]

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ROSEWOOD BUILDING & DEVELOPMENT LLC,
Applicant

BY: *Terry F. Spragens, Managing Member*
Terry F. Spragens, Managing Member

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ROSEWOOD-McLEAN, LLC, *Title Owner of Parcels*
30-4-((1)) 3, 3A

BY: *Terry F. Spragens*
Terry F. Spragens, Managing Member

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HAZEL REISMAN TRUST #1 AND #2, Title Owner
of a 50% interest in Parcels 30-4-((1))-4 and 6

BY: *A.L. Wheeler, Trustee*
A.L. WHEELER, TRUSTEE

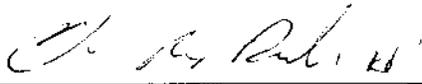
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VEGA INVESTMENT CORPORATION, *Title*
Owner of 50% interest in Parcels 30-4-((1))-4 and 6

BY: 
James J. Wheeler, President

CHARLES RAY DURBIN, IV

Title Owner of a 1/3 interest in Parcels 30-4-(11)-5, 5A

BY: 

Charles Ray Durbin, IV

GINNY SUE O'CONNOR

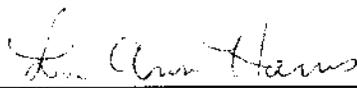
Title Owner of a 1/3 interest in Parcels 30-4-(1)-5, 5A

BY: 
Ginny Sue O'Connor

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LISA ANN HARRIS

Title Owner of a 1/3 interest in Parcels 30-4-((1))-5, 5A

BY: 
Lisa Ann Harris

