

RZ 2003-MV-059
PROFFERS

November 8, 2004

Pursuant to Section 15.2-2303(A), *Code of Virginia*, 1950 as amended, Anastasios Grypeos and Anna Grypeos, for the owners, themselves, their successors and assigns in RZ 2003-MV-059 filed for property identified as Tax Map 93-1((18))(D)117, 126, pt. 130, and 138 (hereinafter referred to as the Property), hereby proffer for themselves and their successors and assigns that the development of the Property will be subject to the following terms and conditions provided that the Board of Supervisors (BOS) approves the rezoning application from the C-8 and R-3 Zoning District to the PRM Zoning District.

1. Conceptual/Final Development Plan (CDP/FDP)

I. 1. Substantial Conformity. Development of the property shall be in substantial conformance with the plan entitled "Conceptual Development Plan/Final Development Plan Memorial Heights" (CDP/FDP), consisting of four (4) sheets prepared by Alexandria Surveys International, LLC, dated January 30, 2003, as revised through October 11, 2004. The CDP portion of the CDP/FDP shall constitute the entire plan relative to the FAR, minimum required open space, points of access, height, the maximum number of units, type of units, general location, and orientation of the building, parking, and setbacks. The Applicant shall have the option to request Final Development Plan Amendments (FDPAs) from the Planning Commission for portions of the plan in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance.

I. 2. Landscaping and Design Amenities. A landscape plan shall be submitted as part of the first and all subsequent site plan submissions for review and approval by the Urban Forest Management Branch. Landscaping shall be provided along Richmond Highway and East Lee Avenue in substantial conformance with the CDP/FDP. Actual types and species of vegetation shall generally meet the guidelines recommended by the Richmond Highway Streetscape Plan as approved by the Urban Forest Management Branch. All new shade trees provided as a part of the streetscape shall be minimum of two (2) inches in caliper at the time of planting; all new flowering trees shall be a minimum of 2 inch caliper at the time of planting; and all new evergreen trees shall be a minimum of six to eight (6 to 8) feet in height at the time of planting. The evergreen trees shall be Leyland Cypress unless the Urban Forest Management Branch determines that species tree does not have a good chance of survival, in which case the type tree shall be determined by the Urban Forest Management Branch.

All efforts, as determined by the Urban Forestry Division of the Department of Public Works and Environmental Services (DPWES), shall be made to prevent disturbance to the 30" oak tree located off site on lot 141 including the pruning and trimming of said tree if the owner of the tree agrees. These efforts shall include substituting a wood fence instead of architectural block wall in that area. If parking spaces must be removed, the parking reduction which has been requested shall address this reduction but shall not exceed the allowable 20% reduction. The landscaping plantings shall be modified if deemed necessary by the Urban Forest Management Branch to ensure that the roots of any plantings will not adversely affect said tree. Good faith efforts shall be made to obtain approval from the appropriate party(s), government entities, owner(s), but not to include vacation of undeveloped Preston Avenue, to plant evergreen trees/shrubs within the twenty-five (25) feet of undeveloped Preston Avenue that is adjacent to the subject property and across from residentially zoned land. The purpose of these plantings will be to enhance the view of the proposed development from adjacent residential properties. If such approvals are secured, the applicant shall plant within that area plantings approved by the Urban Forest Management Branch; if such approval is not secured, the applicant shall demonstrate to DPWES such failed attempts to plant to secure permission.

Notwithstanding the proposed Garden Area shown on the CDP/FDP, the proposed Garden Area will not be planted in the VDOT right-of-way since that area will be used for frontage improvements in accordance with Proffer V 2.

- I. 3. Building Design and Building Materials. The design and architecture of the proposed building shall be in substantial conformance with the illustrative elevations submitted with the application, except that all or a portion of the balconies may be deleted at the option of the developer to address noise issues. Modifications may be made with the final architectural design if they are determined to be in substantial conformance with the elevations. The exterior building materials will be a combination of materials to include concrete, siding, glass, metal panels, masonry, cementitious panel, or stucco or brick.
- I. 4. Maximum Density and Permitted Uses. A maximum of Twenty-Two (22) multiple family dwelling units and a maximum of 7,050 square feet of non-residential uses (retail and/or office) and the community room shall be provided on the first floor in the main building. The Floor Area Ratio (FAR) for the site shall not exceed 0.78. The primary uses shall be multiple family dwelling units. The following secondary uses may be located on the first floor of the building but only if the combined parking requirement for the uses can be met on site taking into account a 20%

reduction in required parking permitted in the Richmond Highway Commercial Revitalization District:

- A. Accessory uses and accessory service uses.
- B. Business service and supply service establishments.
- C. Eating establishments (not drive through).
- D. Fast food restaurants (not drive through), such as a deli, ice cream parlor, or coffee shop.
- E. Financial institution (not drive through).
- F. Garment cleaning establishment (not drive through).
- G. Health clubs.
- H. Personal service establishment.
- I. Private club and public benefit associations.
- J. Public uses.
- K. Quick service food store.
- L. Unmanned bank teller machines (not drive through).
- M. Offices.
- N. Retail sales establishments.
- O. Repair service establishments for minor appliances, bicycles, and computers.
- P. Private schools of special education (which do not require outdoor recreation areas) -- such as ballet studio.

II. General

- II. 1. Signs. Signage shall be provided in accordance with Article 12 of the Zoning Ordinance. If lighted, signage shall be internally lit only. The Applicant reserves the right to make application for a comprehensive signage plan in accordance with the provisions set forth in Sect. 12-210 of the Zoning Ordinance. No temporary signs (including "popsicle" 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 by any builder or at the Applicant's or any builder's direction to assist in the initial and future marketing and/or sale/rental of dwelling units on the subject property. The Property Owner or Developer shall direct agents and employees involved in marketing the Property to adhere to this Proffer.
- II. 2. School Contributions. After the approval of the site plan and prior to approval of the first Building Permit for the approved development, the Applicants shall contribute the sum of \$22,500 to the Board of Supervisors for capital projects related to Bucknell Elementary, Sandburg Middle, and/or West Potomac High School.

- II. 3. Density Credit. Advanced density credit is reserved consistent with Sect. 2-308 of the Fairfax County Zoning Ordinance for all eligible dedications described herein or as may be required by Fairfax County or VDOT pursuant to the Public Facilities Manual (PFM), at the time of site plan approval for the Property.
- II. 4. Affordable Dwelling Units (ADUs). After the approval of the site plan and prior to the issuance of the first Building Permit, the Applicant shall contribute to the Fairfax County Housing Trust Fund a sum equal to one-half of one percent (0.5%) of the projected sales price of the new residential condominiums to be built on-site, as determined by the Department of Housing and Community Development (HCD) and DPWES in consultation with the Applicant to assist the County in its goal to provide affordable dwellings elsewhere in the County.
- II. 5. Administrative Review. Concurrent with the submission of site plans to DPWES, the Applicant shall submit copies of the site plans and all revisions to the Mt. Vernon District Supervisor and Planning Commissioner for the purpose of administrative review and comment.
- II. 6. Construction Hours: Outdoor construction activity will be limited to between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday and 8:00 am and 5:00 pm on Saturdays. No outdoor construction activities will be permitted on Sundays.
- II. 7. Construction Parking and Equipment: There shall be no construction parking or construction equipment on Preston Avenue, except that which is necessary to construct the frontage improvements for Richmond Highway. If permission is granted to allow planting in the undeveloped portion of Preston Avenue, equipment appropriate to prepare the soil for plantings shall be allowed in that area. All parking by construction employees shall be on site and the construction dumpster shall be on site. There shall be no parking by employees engaged in the construction activities on East Lee Street, Memorial Heights Drive and/or Preston Avenue. There shall also be a temporary construction fence around the perimeter of the site abutting Preston Avenue, adjacent to the limits of disturbance indicated on the development plan and along the rear of the property abutting the residentially zoned and developed land.

III. Recreation

- III. 1. Recreation Contribution: At the time of site plan review, the Applicants shall demonstrate that the value of the amenities within the community room/exercise facility and community deck designated for the residents is equivalent to a minimum of \$955.00 per residential unit as required by Section 6-409 of the Zoning Ordinance. Pursuant to Section 16-404 of the

Zoning Ordinance, in the event it is demonstrated that these recreational facilities as described therein, do not have sufficient value as defined above, the Applicants shall, prior to the issuance of the first residential building permit, provide additional recreational amenities for the condominium units or shall contribute the remaining amount per unit to the Fairfax County Park Authority ("Park Authority") for use of recreational facilities for one of its parks within the service area of the Subject Property.

- III. 2. Landscaped Deck: The Applicants also proffer that the proposed deck which is to the east of the community/exercise room shall be landscaped and designed to provide an amenity to the residents of the building in accordance with the CDP/FDP. The portion of the deck between the community outdoor area and contiguous to the main building shall be landscaped in accordance with the CDP/FDP and shall be utilized by patrons of the non-residential uses in the building. The landscaping shall consist of the combination of shrubs and ornamental trees planted in the planters around the outside perimeter of the deck.
- III. 3. Benches and Outdoor Spaces: A minimum of four (4) benches shall be provided on the subject property along the Richmond Highway frontage, together with landscaping to encourage the gathering of people. The design of the benches and landscaping shall conform to the Richmond Highway Streetscape Guidelines.
- III. 4. Community Room: The amenities provided to the residents within the community room may include the following: television and other electronic entertainment facilities with seating arrangements, billiard and/or ping pong table, exercise equipment, card tables and chairs with appropriate lighting, bar/kitchen area for serving food prepared elsewhere, such furnishings to be determined and purchased by the Condominium Owners Association (COA) or the developer.

IV Environmental:

- IV. 1. Stormwater Management (SWM) and Best Management Practices (BMP): In accordance with County engineering requirements and subject to approval by the County DPWES, stormwater management/Best Management Practices (BMPs) shall be provided on-site in an underground facility(s), as approved by DPWES. The stormwater management facility shall be part of the common elements of the condominium and shall be maintained by the Condominium Unit Owners Association (COA). The applicants/developers shall deposit in the reserves of the COA an amount as determined by the DPWES to cover maintenance of the Underground Stormwater Management Facility as agreed to by the Applicant's engineer and DPWES.

IV.2. Energy Conservation. The Residential Units 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 dwellings as applicable.

IV.3. Noise Attenuation. The Applicants shall provide the following noise attenuation measures:

A. In order to reduce the maximum interior noise to a level of 45 dBA Ldn or less, the Applicant proffers that the front and side walls of all residential units facing Richmond Highway shall have the following acoustical attributes:

- (1) Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45;
- (2) Windows shall have a STC of 35, exterior doors shall have a STC of 34 and sliding doors shall have a STC of 36. If glazing constitutes more than 20% of any facade it shall have the same laboratory STC rating as walls; and
- (3) Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

B. In order to reduce the maximum interior noise to a level of 45 dBA Ldn or less, the applicants proffer that the front wall of all residential units facing the rear of the property shall have at least the following acoustical attributes:

- (1) Exterior walls shall have a laboratory sound transmission class (STC) rating of 45;
- (2) Windows shall have a STC of 31, exterior doors and sliding doors shall have a STC of 30. If glazing constitutes more than 20% of any facade, it shall have the same laboratory STC rating as walls; and
- (3) Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

IV 4. Lighting. All on-site outdoor and parking garage lighting shall comply with the Outdoor Lighting Standards set forth in Part 9 of Article 14 of the Zoning Ordinance. Street lights shall be full cut off. Parking lot lights shall conform to the Richmond Highway Urban Design Recommendations of the Comprehensive Plan (preferably bollard type) unless light poles are required for safety considerations. Pedestrian lights shall be provided along the Richmond Highway frontage of the property in conformance with the Richmond Highway Streetscape requirements.

IV. 5. Pedestrian Facilities. The pedestrian facilities and related streetscape design for Richmond Highway and East Lee Avenue, including the browsing plazas, shall be in substantial conformance with the CDP/FDP except for the following: If at the time of site plan review, it is determined that the public sidewalk cannot be constructed within the 75 foot of dedicated area, public access easements shall be established over the proposed sidewalk in the front of the building and the connection sidewalks to East Lee Avenue and the three proposed sidewalks that connect to the existing sidewalk along Richmond Highway.

Transportation.

- V. 1. Transportation Management Strategies. Mass transit, ride-sharing, and other transportation strategies will be utilized to attempt to reduce single occupancy vehicular (SOV) traffic during peak hours. Residents and employees of the residential development shall be advised of this transportation strategy. The following is a list of strategies that shall be implemented:
- A. Dissemination of information by the COA regarding Metrorail, Metrobus, ridesharing, and other relevant transit options in residential sale/lease packages;
 - B. Making Metro maps, schedules and forms, ridesharing and other relevant transit option information available to owners/tenants and employees in a common area(s) of property ;
 - C. Maintaining a safe sidewalk system designed to encourage/facilitate pedestrian circulation and to clear the sidewalk of snow as required by law.
- V. 2. Right of Way Dedication and Frontage Improvements. The Applicants shall dedicate a maximum of seventy-five (75) feet from existing center line of Richmond Highway as shown on the CDP/FDP. This right-of-way shall be dedicated and conveyed in fee simple to the Board of Supervisors upon demand by the VDOT or Fairfax County, or at the time of site plan approval, whichever occurs first. The applicant shall provide for frontage improvements along the Richmond Highway frontage of the site.

VI. Miscellaneous.

- VI. 1 The Condominium Owners Association:

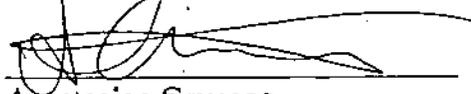
- A. Condominium Owners Associations. The Condominium Owners Association shall be created upon substantial completion of the units as required by the Condominium Act of the Commonwealth of Virginia and prior to the sale of the first unit. The COA shall consist of all of the residential and non-residential units within this development.
- B. The public offering statement shall be made available to potential purchasers in accordance with the Condominium Act of the Commonwealth of Virginia. Maintenance of all common elements contained in the condominium shall be included in the Public Offering Statement. All potential purchasers shall be notified in writing prior to purchase that the COA is responsible for maintenance and replacement of all common elements and areas within the condominium development. The Condominium documents shall disclose that parking in the garage and within the gated area shall be for residents and employees of the retail units. In addition, it shall also be disclosed that the residents may share the use of the parking spaces for the retail uses during the hours the retail businesses are closed. This notification shall also be included in the COA documents. Potential purchasers shall also be notified in writing prior to purchase that: Richmond Highway shall be widened along the property's frontage; that this property is within the noise impacts of Richmond Highway; and that the outside balconies will be impacted by this noise.

VI. 2. Dumpster Pad. If it is determined that the dumpster pad interferes with safe ingress and egress of emergency vehicles or turnaround of those vehicles, the dumpster pad, the adjacent two parking spaces, and the adjacent proposed fire lane may be switched or the two parking spaces removed to shift back toward the proposed retaining wall to provide more maneuvering room for the trash vehicle and/or the emergency vehicles.

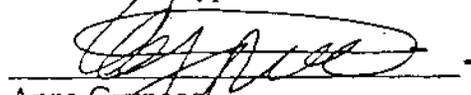
VI. 3. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and his successors and assigns. Each reference to "Applicant" in this proffer statement shall include within its meaning and shall be binding upon Applicants successor(s) in interest and/or developer(s) of the site or any portion of the site.

TITLE OWNERS SIGNATURE TO FOLLOW:

TITLE OWNERS:



Anastasios Grypeos



Anna Grypeos