FAIRFAX COUNTY
VIRGINIA

DEPARTMENT OF PLANNING AND ZONING
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509

(703) 324-1290 Fax (703) 324-3924

August 29, 2003

Mark C. Looney
Cooley Godward LLP
One Freedom Square, Reston Town Center
11951 Freedom Drive
Reston, VA 20190-5656

Re: Interpretation for RZ 91-C-002 and SE 91-C-005, Tax Map 17-3 ((8)) 7-E1:
Building Height, Building Orientation, Landscaping and Circulation

Dear Mr. Looney:

This is in response to your letter of June 5, 2003, requesting an interpretation of the proffers and the Generalized Development Plan (GDP) accepted by the Board of Supervisors in conjunction with RZ 91-C-002, and the development conditions approved with SE 91-C-005. As I understand it, the question is whether your proposed changes to the building orientation, number of nonresidential floors and building height, and landscaping circulation and similar design features, would be in substantial conformance with the proffers, GDP, and development conditions. This determination is based on the exhibits attached to your letter which depict the proposed changes, as well as a later exhibit of the limits of clearing and grading near the proffered tree save which was faxed to staff. Copies of the above referenced letter and the exhibits are attached.

The GDP/SE Plat depicts a six (6) story office building with a maximum height of 90 feet on Parcel 7E-1. The envelope for the proposed office building is oriented from north to south, with the building entrance and vehicle drop-off area facing Sunrise Valley Drive. A small tree save area is depicted immediately east of the driveway, along Sunrise Valley Drive. Proffer C6 states that:

> *Limits of clearing and grading shall be as shown on the GDP; provided, however, that final limits of clearing and grading which may reflect minor adjustment due to final engineering data but which otherwise conform with the GDP may be approved by the County Arborist as part of the site plan review process.*

In your letter, you state that Boston Properties proposes to construct a seven (7) story building, which would be ninety (90) feet in height. In addition, Boston Properties seeks to reorient the proposed building on Parcel 7E-1 from the depicted north-south orientation to an east-west orientation. Turning the building footprint in this way would then necessitate a relocation of the landscaping and the vehicle drop-off area. Instead of the building entrance facing Sunrise Valley Drive, the building entrance and vehicle drop-off area would face the DAAR. You have indicated through a faxed exhibit that the limits of clearing and grading associated with this reoriented building would not impact the proffered tree save along Sunrise Valley Drive.

It is my determination that a seven (7) story office building 90 feet in height would be in substantial conformance with the proffers, the GDP and SE development conditions. It is also my determination that the reorientation of the proposed building would be in substantial conformance with the proffers, the GDP and SE development conditions, so long as the limits of clearing and grading do not impact the tree save area depicted along Sunrise Valley Drive. This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator.

If you have any questions regarding this interpretation, please feel free to contact Cathy Lewis at (703) 324-1290.

Sincerely,

Barbara A. Byron, Director
Zoning Evaluation Division, DPZ

Attachments: A/S

cc: Catherine M. Hudgins, Supervisor, Hunter Mill District
Frank de la Fe, Planning Commissioner, Hunter Mill District
John Crouch, Deputy Zoning Administrator
Michelle Brickner, Director, Office of Site Development Services, DPWES
File: RZ 91-C-002, SE 91-C-005, PI 0306 087, SEI 0306 032, Imaging

Cooley Godward LLP

ATTORNEYS AT LAW

One Freedom Square
Reston Town Center
11951 Freedom Drive
Reston, VA
20190-5656
Main 703 456-8000
Fax 703 456-8100

www.cooley.com

Broomfield, CO
720 566-4000
Palo Alto, CA
650 843-5000
San Diego, CA
858 550-6000
San Francisco, CA
415 693-2000

MARK C. LOONEY
(703) 456-8652
mlooney@cooley.com

June 5, 2003

BY HAND DELIVERY

Mr. Kevin Guinaw
Fairfax County Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

RECEIVED
Department of Planning & Zoning

JUN 09 2003

Zoning Evaluation Division

Re: Substantial Conformance Determination for Office Building on Reston Section 904, Block 7E - Tax Map No 17-3 ((8)), Parcel 7-E1

Dear Kevin:

On behalf of MGA Virginia One, LP ("Boston Properties" or "Owner"), I write to request your determination that the design of a proposed office building and associated drive aisles is in substantial conformance with the approved General Development Plan ("GDP") and Special Exception ("SE") plat approved for the above-referenced property (the "Property"). Boston Properties expects to submit a site plan to Fairfax County and the Reston Planning and Zoning Committee for review and approval in the coming weeks, as well as present the design to the Reston Association's Architectural Board of Review ("RAABR") and surrounding communities for review and comment.

In particular, we request your determination that the (a) orientation of the building, (b) number of nonresidential floors and building height, and (c) landscaping, circulation and similar design features are in substantial conformance with the approved GDP and SE.

A. REZONING TO C-3 ZONING DISTRICT AND APPROVAL OF SPECIAL EXCEPTION FOR RESEARCH AND DEVELOPMENT

The Property is approximately 3.6218 acres in size. The Fairfax County Comprehensive Plan designates the Property for office uses at a maximum FAR of 0.50. The Property was rezoned from the I-4 zoning district to the C-3 zoning district in 1991 as part of a large zoning application (RZ 91-C-002) affecting a total of 22.72 acres. Concurrent with the rezoning, a SE was approved (SE 91-C-005) to permit research and development uses on the full 22.97 acre site. Copies of the proffers and GDP that accompanied the rezoning are attached as Exhibit A, while the approvals for the SE are attached as Exhibit B. Notably, the development conditions, plan notes and proffers for the rezoning are similar, if not identical, to the conditions and notes for the approved SE.

The GDP approved with the rezoning incorporates the two (2) existing office buildings that were constructed adjacent to the Property in the late 1980s under the previous I-4 zoning. The GDP

permits development of an office building on the Property, with a maximum GFA of 200,000 s.f., although Boston Properties only plans to construct a 185,000 s.f. building The maximum height of the proposed building is listed in several places; Sheet 1 of the GDP notes the building as a "proposed 6-story building," with a maximum height of ninety (90) feet, while Sheet 2 of the GDP and SE plats note that the "actual building height," as considered in the context of the angle of bulk plane (see chart on Sheet 2), also is 90 feet.

In addition to the restrictions on allowable FAR and building height, the GDP and proffers associated with RZ 91-C-002 (the "Proffers") establish (i) a minimum open space requirement of 20% across all 22.72 acres, (ii) a tree cover requirement of 10% under the GDP and (iii) a modification of the required setback from the Dulles Airport Access and Toll Road (the "Toll Road") from 75 feet to 40 feet. The Proffers also require that any building constructed on the subject Property be architecturally compatible with the adjacent buildings (Proffer D.1). Importantly, because the Property is covered by the Reston Center for Industry and Government covenants, architectural designs, building materials and related items must be reviewed and approved by the RAABR. Site plans for the Property also must be submitted to the Reston Planning and Zoning Committee for review and comment (Proffer D.2).

Two other items are worthy of note. First, the GDP shows the location of an existing Dominion Virginia Power ("DVP") electricity distribution substation on the northeast end of the 22.97 acre site, adjacent to the Property, as well as a 20-foot easement to provide access to the substation. Second, a tree save area is shown slightly to the northeast of the Property and highlighted as being outside the limits of clearing and grading, meaning the trees are to be undisturbed during construction of the office building on the Property. As discussed in greater detail below, the proposed development of the Property respects these two conditions and ensures both continued access to the DVP substation and the saving of the adjacent trees.

B. PROPOSED DEVELOPMENT OF THE PROPERTY AND SUBSTANTIAL CONFORMANCE WITH APPROVED GDP

Boston Properties proposes to develop the Property in substantial conformance with the approved GDP, proffers and SE, albeit with certain modifications intended to improve circulation on the site and visibility of the building from the Dulles Toll Road. We contend these proposed modifications are permitted under the GDP and proffers, and we respectfully request your confirmation of our interpretation.

1. PROPOSED ORIENTATION OF BUILDING AND DESIGN IMPROVES VISIBILITY AND REDUCES BULK

As part of the Property's development, Boston Properties proposes to orient the building and associated entrances to provide enhanced visibility from the Dulles Toll Road and the approaches along Sunrise Valley Drive, as well as better orient the building to the existing

garage to the west. Attached as Exhibit C are two drawings depicting the orientation of the proposed building and its relationship to the existing parking structure. Included on Exhibit C (and noted through the use of dashed lines) is the building envelope shown on the approved GDP and SE plats within which the proposed new building sits.

As shown on Exhibits A and B, the approved GDP, Proffers and SE all note the fact that, at the time of the rezoning and SE, the office building to be constructed on the Property was not yet designed or constructed. Indeed, the GDP and Proffers C.8, D.1 and D.2 all indicate that the building was only "proposed." Moreover, the Proffers require that the design of the building be "architecturally compatible with the existing" office buildings elsewhere on the 22.97 acre site, and that the designs be sent to the RAABR and Reston Planning and Zoning Committee for review. See also Condition 5 of the SE. Further, the building design is to "incorporate acoustical treatment" to reduce the interior noise level resulting from the Property's proximity to the Toll Road. Thus, there was and is no design specifically proffered or included as part of the approvals, only a requirement that any future design (including landscaping) be done so as to be compatible with those buildings and parking areas already constructed and in place.

As evidence of this flexibility in the architectural design, the GDP and SE plats only provide a building envelope – a parallelogram – within which the building design and associated parking could take form and develop. Limits of clearing and grading, identified on the GDP and SE plats, provide the boundaries of the permitted disturbance of the Property, albeit with suggested circulation patterns resulting from the entrances shown from Sunrise Valley Drive and included on the plans. Had a specific design or building footprint, including parking areas, been envisioned at the time of the rezoning and SE, they would and should have been articulated on the GDP and SE plats, just as the existing buildings and parking areas were. In the absence of such detail, however, and given the requirement to run the gauntlet of County and community approvals for the building's design, we contend the proposed building orientation and surface parking is consistent with the approved GDP and SE plats and associated Proffers and development conditions.

A. AESTHETIC BENEFITS TO REORIENTATION

Importantly, Boston Properties has chosen the design shown on Exhibit C to accentuate the building's visibility from the Toll Road and the approaches along Sunrise Valley Drive. Indeed, orienting the building so that the longer sides of the building are parallel with the Toll Road's travel lanes, as opposed to perpendicular (and consistent with the parallelogram shape of the construction envelope), enhances the building's aesthetics while reducing the building expanse along Sunrise Valley Drive. Moreover, the existing parking structure to the west and the existing tree stand to the east (which is clearly articulated by the limits of clearing and grading will be preserved as part of the Property's development) ensures the building is appropriately buffered. Access to the existing DVP substation also is maintained (if not enhanced) through the

entranceway and parking lots of the proposed building. Hence, the proposed design has the effect of maximizing the aesthetic and commercial benefit to the Owner while being appropriately buffered and protecting the existing trees.

Consistent with the Proffers and development conditions, however, Boston Properties will test this design through presentations to the Reston Planning and Zoning Committee, RAABR and other community groups. Suffice it to say, though, we believe the orientation is permitted by the Proffers, GDP and SE development conditions, and should be permitted as such. We respectfully request your concurrence that the proposed building orientation is consistent with the approved plans and Proffers.

B. LANDSCAPING AND CIRCULATION CONSISTENT WITH THE APPROVED GDP

The design shown on Exhibit C also incorporates the landscaping and entrances shown on the approved GDP and expands upon them to improve the quality and quantity of plantings. Indeed Sheet 3 of the GDP shows landscaping only along the edge of the Property fronting Sunrise Valley Drive, with a small strip of landscaping along the rear yard adjacent to the Toll Road. By contrast, the proposed building design not only maintains these areas but enhances them through additional plantings within the former building envelope and throughout the entranceways and surface parking areas, ensuring that the proffered percentage of landscaping is maintained and improved. Further, the requirement that the RAABR approve the landscaping ensures not only the quantity of the plantings, but the quality as well.

Accordingly, we respectfully request your concurrence that the proposed landscaping and entranceways are in substantial conformance with the approved zoning.

2. PROPOSED BUILDING DESIGN MEETS THE HEIGHT STANDARDS OF THE GDP AND SPECIAL EXCEPTION

Beyond the building orientation lies the building's height. By squeezing the design to reduce the appearance of bulk, Boston Properties necessarily had to increase the number of floors to make the design more efficient and recapture the floor area that otherwise would have been present in a more sprawling design. Accordingly, the proposed building is seven (7) stories tall and ninety (90) feet in height. Although the Proffers and GDP make reference to a proposed "6-story" building on the Property, we contend there is sufficient design flexibility in the Proffers, GDP and the SE to permit the building to achieve seven stories and still be in substantial conformance with the approved plans.

feet)." The applicant argued that the maximum building height of 120 feet, not the number of floors referenced on the Development Plan, governed. In a letter dated November 6, 2000, Zoning Evaluation Division Director Barbara A. Byron agreed, finding that a residential building "more than 10 stories in height but no more than 120 feet in height would be in conformance with" the approved zoning. A copy of the November 6th letter is attached as Exhibit D. We contend a similar interpretation is appropriate and required here.

C. DESIGN MEETS ZONING ORDINANCE STANDARDS

For your information, the proposed building height of the design shown on Exhibit C (90 feet) is consistent with our interpretation of the GDP, Proffers and SE approvals. Section 20-300 of the Zoning Ordinance provides that the Building Height is determined using the distance measured from Grade (meaning the average grade) to the highest point of the roof for flat roofs. Thus, to meet the Zoning Ordinance's standards, the proposed building's height must not exceed 90 feet when measured from Grade to the top of the flat roof line.

As shown on the plans included as Exhibit C and the elevation drawing attached as Exhibit E, the proposed building to be constructed on the Property is 90 feet as determined by application of the Zoning Ordinance standards. In this respect, the proposed design is in accordance with the Proffers, the GDP and SE plats, as well as consistent with prior interpretations of the County for similar development limitations and properties. Accordingly, we request your concurrence that the proposed building height (90 feet) and number of stories (seven) are in substantial conformance with the approved GDP, Proffers and SE.

C. CONCLUSION

Given the foregoing, we respectfully request your concurrence with our interpretation that the proposed building orientation and height are in substantial conformance with the approved GDP, Proffers and SE. Please note that, once we have received conceptual approval of the building's design from the RAABR, we will return to your office for concurrence that the architectural design is architecturally compatible with the existing buildings adjacent to the subject Property.

Should you have any questions or need additional information, please do not hesitate to contact me at (703) 456-8652. Thank you for your attention to this matter.

Sincerely,

Mark C. Looney

Enclosures

cc: The Honorable Catherine M. Hudgins, Hunter Mill District Supervisor
Fran de la Fe, Hunter Mill Planning Commissioner
Jack Burkart, Boston Properties
Eric Siegel, P.E., Urban Engineering and Associates, Inc.
Kiam Shamloo, Gensler
Antonio J. Calabrese, Esquire, Cooley Godward LLP

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