FAIRFAX COUNTY

DEPARTMENT OF PLANNING AND ZONING
Zoning Evaluation Division
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V I R G I N I A

September 8, 2005

Elizabeth D. Baker, Land Use Coordinator
Walsh, Colucci, Lubeley, Emrich & Terpak, P.C.
2200 Clarendon Blvd., 13th Floor
Arlington, VA 22201-3359

Re: Interpretation for PCA/FDPA 86-C-029-10, PCA/FDPA 88-C-066-5, and PCA/FDPA 1996-HM-044-3: Shifting FAR and Building Height (Tax Map Parcel 15-4 ((1)) 13C, 23A pt. and 23A1; 15-4 ((1)) 13 and 13B; and, 15-4 ((1)) 23A pt.)

Dear Ms. Baker:

This is in response to your revised letter of August 18, 2005, requesting an interpretation of the proffers and the Conceptual Development Plan Amendment (CDPA) accepted by the Board of Supervisors and the Final Development Plan Amendment (FDPA) and development conditions approved by the Planning Commission in conjunction with the approval of the above referenced applications. These determinations are based on your letter, the attached reduction of the combined Conceptual Development Plan Amendment (CDPA) and the Final Development Plan Amendment (FDPA) dated September 29, 2004, (Exhibit A) which was prepared by William H. Gordon Associates, Inc., and the proffers. Copies of your letter and relevant exhibits are attached.

On December 6, 2005, the Board of Supervisors approved PCA 86-C-029, PCA 88-C-066, and PCA 1996-HM-044-3 to permit construction of a mixed-use development including offices, a hotel, multi-family residences, and public parkland. According to your letter, the developer would like to shift 25,000 square feet of gross floor area from Building 10 (hotel) to Building 8 (office) and 25,000 square feet of gross floor area from the hotel to Building 9 (office). The increase in square footage in Buildings 8 and 9 would result in one additional floor being added to each building. A table on Sheet 2 of the development plan shows Buildings 8 and 9 as 8-10 stories with a building height of 150 feet, or 175 feet including the penthouse. The gross floor area of Buildings 8 and 9 is shown as +/- 210,000 square feet. Building 10 is shown as a 10-story, 320 room hotel, or a 10-story office building containing 231,896 square feet.

Your letter states that, with an additional story, Buildings 8 and 9 would not exceed the 8-10 story range shown on the CDPA/FDPA and would be below the 150 foot maximum height limit, excluding a penthouse. There would be no increase in the total gross floor area of these buildings.

Your letter notes that Proffer # 4 allows minor modifications pursuant to Par. 4 of Sect. 16-403 which you believe permits the flexibility needed to accommodate the proposed changes.

In addition, Note 6 on Sheet 3 of the approved CDPA/FDPA states: "*The Applicant reserves the right to make minor modifications to each building's size, height, parking lot layout, and gross floor area shown on the conceptual Development Plan Amendment (CDPA) and Final Development Plan Amendment (FDPA) based on final engineering and architectural design provided the overall floor area ratio (FAR) is not exceeded, open space provided is not reduced, and minimum building setbacks and bulk plane angles to the peripheral lot lines are not reduced and in substantial conformance with CDPA/FDPA.*"

Based on the above, it is my determination that the proposed reallocation of 50,000 square feet of gross floor area from Building 10 to Buildings 8 and 9 (25,000 square feet to each) and resulting addition of one story to each building is in substantial conformance with the proffers and development plan, as long as the footprints of Buildings 8 and 9 remain consistent with those on the development plan.

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 Mary Ann Godfrey at (703) 324-1290.

Sincerely,

Barbara A. Byron, Director
Zoning Evaluation Division, DPZ

BAB/MAG/O:\mgodfr\Proffer Interpretations PI DullesCorner FAR..doc

Attachments: A/S

cc: Catherine M. Hudgins, Supervisor, Hunter Mill District
Frank De La Fe, Planning Commissioner, Hunger Mill District
Leslie Johnson, Deputy Zoning Administrator, ZAD, DPZ
Michelle Brickner, Assistant Director, Office of Land Development Services, DPWES
Angela Rodeheaver, Chief, Site Analysis Section, DOT
Kevin J. Guinaw, Chief, Special Projects/Applications Management Branch, DPZ
Audrey Clark, Director, Building Plan Review Division, DPWES
File: PCA 86-C-029, PCA 88-C-066-5, PCA 1996-HM-044-3
PI 0507 093, Imaging, Reading File

Elizabeth D. Baker
Land Use Coordinator
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WALSH COLUCCI
LUBELEY EMRICH
& TERPAK PC

August 18, 2005 (REVISED)

Via Email and Hand Delivery

Barbara A. Byron
Director, Zoning Evaluation Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

Re: Administrative Determination
Dulles Corner
PCA 86-C-029-10, PCA 88-C-066-05, PCA 1996-HM-044-3

Dear Ms. Byron:

The referenced proffered condition amendment applications were approved by the Board of Supervisors on December 6, 2004. The Board amended the proffers to permit construction of a mixed-use development including office, hotel, multi-family residences and public park land. Copies of the approved proffers and a reduced version of the approved CDPA/FDPA are enclosed for your convenient reference. I am requesting your determination with regard to flexibility permitted to shift square footage between commercial buildings. I am not submitting a copy of an interpretation exhibit as the questions are general in nature.

The approved CDPA/FDPA shows three commercial buildings along the property's western buildings. Buildings 8 and 9 are shown as office buildings with +/- 210,000 gross square feet each and heights of 8-10 stories (building height of 150 feet, 175 feet with penthouse). Building 10 is shown as either a 10 story, 320 room hotel with a two story hotel support wing, or a 10 story office building with a two story retail/office wing. Both the office building and hotel are approximately 231,096 square feet.

The developer is contemplating shifting up to 50,000 square feet from Building 10 to Buildings 8 and 9. This could be accomplished by shifting up to 25,000 square feet to Building 8 and up to 25,000 square feet to Building 9. Shifting 25,000 square feet to each of Buildings 8 and 9 would result in one additional floor being added to each building. This could easily be accommodated within the 8-10 story range shown on the CDPA/FDPA and well below the 150 foot height limit excluding penthouse. Thus, I would like your determination on the following issues:

1. Would an addition of up to 25,000 square feet to Buildings 8 or 9 be allowed as a "minor modification" since the development would comply with all other conditions including height, setback, open space, etc.?
2. May we assume that the height in feet as denoted on the CDPA/FDPA is the constraining factor for the maximum height of structures?

Based on the approved proffers and CDPA/FDPA, we believe that such flexibility is permitted. Specifically, approved proffer #4 allows minor modifications pursuant to Paragraph 4 of Section 16-403 provided such changes are in substantial conformance with the FDPA as determined by the Zoning Administrator and neither increases gross square footage nor decreases the amount of open space.

In addition, general note 6 on Sheet 3 of the approved CDPA/FDPA states that:

"The Applicant reserves the right to make minor modifications to each building's size, height, parking lot layout, and gross floor area shown on the Conceptual Development Plan Amendment (CDPA) and Final Development Plan amendment (FDPA) based on final engineering and architectural design provided the overall floor area ratio (FAR) is not exceeded, open space provided is not reduced, and minimum building setbacks and bulk plane angles to the peripheral lot lines are not reduced and in substantial conformance with the CDPA/FDPA."

This request is in accordance with the requirements of Paragraph 4 of Section 16-403 and may be considered a minor modification to proffered conditions. The proposed modifications do not request the following:

- A more intensive use from that approved pursuant to the proffered conditions. The square footage of commercial/hotel uses on the property will not change.
- An increased parking requirement. There is no increase in the parking requirement. Parking will be provided in keeping with the Ordinance requirements.
- Uses other than those approved pursuant to the proffered conditions. No changes are proposed to the uses.
- A reduction in approved transitional screening, buffering, landscaping or open space. No changes are proposed to transitional screening, buffering open space, or landscaping.
- A change to bulk, mass, orientation or location of buildings which would adversely impact the relationship of development or part thereof to adjacent property. There are no changes to bulk, mass, orientation or location of buildings that will have an adverse impact on adjacent properties.

- Additional buildings or additions to buildings. There are no additional buildings proposed.

We believe that the proposed changes are in substantial conformance with the proffers and approved plans and are minor in nature. I would appreciate your favorable consideration of this request. As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY, EMRICH & TERPAK, P.C.

Elizabeth Baker /By: [illegible]

Elizabeth D. Baker
Land Use Coordinator

EDB/ies

cc: Mary Ann Godfrey
Martin D. Walsh

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GENERAL NOTES:

1. LOCATION. THE PROPERTY CONSISTS OF 33.415 ACRES (1,445,558 SQUARE FEET) AS DELINEATED O THIS PLAT AND IS SHOWN ON FAIRFAX COUNTY TAX MAP NO. 15-4 ((1)) PARCELS 13, 13B, 13C, 23A, AND 23-A1 (PER ALTA SURVEY). IT IS CURRENTLY ZONED PLANNED DEVELOPMENT COMMERCIAL (PDC).

2. COMPREHENSIVE PLAN. THE PROPERTY IS DEFINED AS LAND UNIT 'A' WITHIN THE DULLES SUBURB CENTER OF AREA III OF THE FAIRFAX COUNTY COMPREHENSIVE PLAN. THERE IS NO SPECIFIC LAND U 'A' PLAN LANGUAGE THAT ADDRESSES THE SITE. GENERAL PLAN LANGUAGE FOR UNIT 'A' ADDRESSE THE DESIRE FOR MIXED USE, HIGH QUALITY DEVELOPMENT TO INCLUDE RESIDENTIAL USES. LANGUAG IS ALSO INCLUDED PROMOTING THE INCLUSION OF MERRYBROOK RUN (THE TRIBUTARY WHICH EMPTIE INTO DULLES CORNER LAKE) AS A LINEAR PARK PROVIDING PEDESTRIAN LINKAGES TO THE COUNTYWIDE TRAIL SYSTEM.

NOISE. FAIRFAX COUNTY HAS ADOPTED AN AIRPORT NOISE IMPACT OVERLAY DISTRICT STATING TH NEW RESIDENTIAL DEVELOPMENT SHOULD NOT OCCUR IN AREAS SUBJECTED TO PROJECTED AIRCRA NOISE EXCEEDING DNL 60 dBA. THE COUNTY MAPPED THIS DNL 60 dBA LINE BASED ON NOISE CONTOUR MAPS PROVIDED BY THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY (MWAA) IN A 1993 ADDENDUM TO THE ORIGINAL 1983 STUDY. THIS DNL 60 dBA LINE IS PRESENTED ON THIS SUBMISSION AND SERVES AS A LINE TO SEPARATE PROPOSED RESIDENTIAL USES FROM PROPOSED OFFICE AND HOTEL USES.

HEIGHT. THE FEDERAL AVIATION ADMINISTRATION (FAA) HAS ESTABLISHED STANDARDS KNOWN AS FAA-PART 77 REGULATIONS TO DETERMINE WHAT MAY BE OBSTRUCTIONS IN NAVIGABLE AIRSPACE. FAIRFAX COUNTY MANDATES ADHERENCE TO THESE REGULATIONS. ACCORDINGLY, THE APPLICAN REAFFIRMS THEIR COMMITMENT TO COMPLY WITH ALL FAA REGULATIONS REGARDING HEIGHT.

3. OWNERSHIP. THE PROPERTIES THAT ARE THE SUBJECT OF THIS SUBMISSION ARE LISTED IN THE COUNTY TAX RECORDS AS OWNED BY LB DULLES ACQUISITION, LLC.

4. EXISTING USES. THE PROPERTIES ARE CURRENTLY UNDEVELOPED AND ARE ZONED PLANNED DEVELOPMENT COMMERCIAL (PDC).

5. PROPOSED USES. THE PROPOSED USES INCLUDE OFFICE BUILDINGS & PARKS, HOTELS, VEHICULAR PARKING STRUCTURES, MULTIFAMILY RESIDENTIAL USES, AND AFFORDABLE DWELLING UNITS. OTHER PRINCIPAL USES MAY INCLUDE: BUSINESS SERVICE AND SUPPLY SERVICE ESTABLISHMENTS, EATING ESTABLISHMENTS, ESTABLISHMENTS FOR SCIENTIFIC RESEARCH, DEVELOPMENT AND TRAINING, FINANCIAL INSTITUTIONS, PERSONAL SERVICE ESTABLISHMENTS, REPAIR SERVICE ESTABLISHMENTS AND RETAIL SALES ESTABLISHMENTS. SECONDARY USES WITHIN THE PROPOSED BUILDINGS MAY INCLUDE FAST FOOD RESTAURANTS (NO DRIVE-THRU FACILITIES), HEALTH CLUBS, CHILD CARE CENTERS, PRIVATE SCHOOLS OF SPECIAL EDUCATION AND GENERAL EDUCATION, PUBLIC PARKS, AND COLLEGES AND UNIVERSITIES. ACCESSORY USES AS LISTED IN ARTICLE 10 MAY BE PROVIDED. IN ADDITION, SPECIAL EXCEPTION AND SPECIAL PERMIT USES MAY BE PROVIDED WITH APPROPRIATE ZONING APPROVALS.

6. MINOR MODIFICATIONS. THE APPLICANT RESERVES THE RIGHT TO MAKE MINOR MODIFICATIONS TO EACH BUILDING'S SIZE, HEIGHT, PARKING LOT LAYOUT, AND GROSS FLOOR AREA SHOWN ON THIS CONCEPTUAL DEVELOPMENT PLAN AMENDMENT (CDPA) AND FINAL DEVELOPMENT PLAN AMENDMENT (FDPA) BASED ON FINAL ENGINEERING AND ARCHITECTURAL DESIGN PROVIDED THE OVERALL FLOOR AREA RATIO (F.A.R.) IS NOT EXCEEDED, OPEN SPACE PROVIDED IS NOT REDUCED, AND THE MINIMUM BUILDING SETBACKS AND BULK PLANE ANGLES TO THE PERIPHERAL LOT LINES ARE NOT REDUCED AND IN SUBSTANTIAL CONFORMANCE WITH THE CDPA/FDPA.

7. COMMUNITY & PUBLIC FACILITIES. THIS SUBMISSION IS PART OF THE COLLECTIVE DEVELOPMENT CALLED DULLES CORNER. DULLES CORNER OFFERS MANY UNIQUE DESIGN FEATURES AND AMENITIES INCLUDING EXTENSIVELY LANDSCAPED PARKS, A CHILD CARE FACILITY, NEIGHBORHOOD-ORIENTED RETAIL USES, A TRAIL SYSTEM WHICH PROVIDES A PLEASANT MEANS OF PEDESTRIAN ACCESS THROUGHOUT THE DEVELOPMENT, AND OTHER FEATURES SUCH AS PLAZAS WITH OUTDOOR DINING AND PUBLIC ART DISPLAYS, TREE-COVERED WALKWAYS, AND LAKES THAT DOUBLE AS REGIONAL STORM WATER RETENTION PONDS. IN KEEPING WITH THE EXISTING FACILITIES IN DULLES CORNER, ADDITIONAL COMMUNITY AND PUBLIC FACILITIES FOR THE PROPOSED RESIDENTIAL AND OFFICE AND HOTEL USES MAYBE PROVIDED (I.E. BUS SHELTERS) IF IN SUBSTANTIAL CONFORMANCE TO THE CDP/FDP.

8. BOUNDARY & TOPOGRAPHY INFORMATION. BOUNDARY INFORMATION FOR THE SUBJECT SITE IS TAKEN FROM AN 'ALTA' SURVEY PREPARED BY WILLIAM H. GORDON ASSOCIATES, INC. (W.H.G.A.) ON JUNE 24, 2003 AND DOES REFLECT TITLE INFORMATION. TOPOGRAPHIC INFORMATION PRESENTED IS AT A TWO-FOOT CONTOUR INTERVAL AND IS BASED ON AN AERIAL SURVEY BY OTHERS.

9. PUBLIC STREETS. THERE ARE NO NEW PUBLIC STREETS PROPOSED WITH THIS APPLICATION. THE OFFICE AND RESIDENTIAL USES SHARE A COMMON 4-LANE DIVIDED 'BOULEVARD' THAT WILL BE JOINTLY MAINTAINED.

10. UTILITY EASEMENTS. THERE ARE NO KNOWN UTILITY EASEMENTS ON THE PROPERTY

FAR on the entire Property does not exceed 0.86; that the overall FAR for the entire Dulles Corner property (Parcels 1, 1B1, 1B2, 2, 3, 4, 6A, 13, 13B, 15A, 16, 23A and 23A1 as shown on Sheet 1 of the CDPA/FDPA) does not exceed a 0.70 FAR (0.72 FAR including Affordable Dwelling Units and bonus units); and that open space of 40. 97 acres for the entire Dulles Corner property is provided.

4. **[Previous Proffer 4 is replaced as follows]** Minor Modifications. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the FDPA/FDP may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layout shown on the CDPA/FDP without requiring approval of an amended FDP provided such changes are in substantial conformance with the FDPA/FDP as determined by the Zoning Administrator, agents or assigns and neither increase the total gross square footage nor decrease the amount of open space.

   The individual sections within the Property may be subject to Proffered Condition Amendments (PCA) and Final Development Plan Amendments without joinder and/or consent of the other property owner of the other sections/buildings.

5. **[Previous Proffer 5 is replaced as follows]** The following Principal and Secondary Uses may be permitted within the non-residential Buildings 8-10 shown on the CDPA/FDPA:

   A. Accessory uses and accessory service uses.

   B. Business service and supply service establishments.

   C. Eating establishments.

   D. Establishment for scientific research, development and training where assembly, integration and testing of products in a completely enclosed building is incidental to the principal use of scientific research, development and training.

   E. Fast food restaurants, only if located with other principal or secondary uses and not to include a drive-through.

   F. Financial institutions not to include a drive-through bank.

   G. Health clubs.

   H. Institutional uses.

   I. Medical offices.