

PROFFERS BESLEY FARM

May 7, 2004
Revised June 25, 2004
Revised July 1, 2004
Revised July 7, 2004
Revised July 8, 2004
Revised July 23, 2004
Revised July 27, 2004
Revised June 27, 2005
Revised July 11, 2005

Pursuant to Section 15.2-2303 (a), Code of Virginia, 1950 as amended, Tysons 89, LLC, the applicant in RZ 2003-HM-042, filed for the property identified as Tax Map # 28-4-1-22B and 23 and the former U. S. Government property identified as a portion of Ashgrove Lane (hereinafter referred to as "Subject Property"), proffers the following for itself and any successors and assigns, provided that the Board of Supervisors approve a rezoning of the Subject Property to the R-2 District.

1. Development Plan: Development of the Subject Property shall be in substantial conformance with the Generalized Development Plan ("GDP") prepared by Walter L. Phillips dated May 5, 2004 as revised through 6/30/2005.
2. Minor Deviation: Pursuant to Paragraph 5 of Section 18-204 of the Zoning Ordinance, minor modifications to the GDP may be permitted as determined by the Zoning Administrator. The Applicant reserves the right to make minor adjustments to the layout, internal lot lines, and lot sizes of the proposed subdivision at time of subdivision plan submission based on final house locations, building footprints, and utility locations, provided that there is no decrease to the amount of the open space in Outlots "A" and "D", tree save, limits of clearing and grading, yard setbacks, or distances to peripheral lot lines as dimensioned on the GDP and the proposed minor modifications are in substantial conformance with the GDP.
3. Limits of Clearing: The applicant shall conform to the limits of clearing and grading as shown on the GDP subject to the installation of utilities and/or trails as determined necessary by the Director of DPWES. If it is determined necessary to install utilities outside of the limits of clearing and grading as shown on the GDP they shall be located in the least disruptive manner necessary as determined by the Urban Forestry Management. A replanting plan shall be developed and implemented, subject to approval by the Urban Forestry Management for any areas outside the limits of clearing and grading that must be disturbed.

4. Outlots "A", "B" & "C", "D": The area designated as Outlots "A", "B" and "C" and "D" shall be conveyed to the Homeowner Association referenced in paragraph 5 below.
5. Homeowner Association: The Applicant shall establish a homeowners' association for the proposed development to own, manage and maintain Parcels A, B, C and D as shown on the GDP. Maintenance obligations including those associated with the SWM/BMP facilities on Parcel A and D and the access road on Outlot B as outlined in Proffer 17 shall be disclosed to contract purchasers of residential units within the proposed development prior to entering into a contract of sale, and shall be disclosed in the homeowners' association documents prepared for the Application Property.
6. Sidewalks: Applicant shall construct a concrete sidewalk on one side of the extension of Irvin Street, which is a minimum of five (5) feet wide, within the Application Property as shown on the GDP, subject to VDOT approval and acceptance. Such sidewalk shall be within the VDOT right-of-way.
7. Fairfax County Park Authority Contribution: The Applicant shall contribute \$7,950 to the Fairfax County Park Authority at the time of bond release approval, which amount shall be used to provide park improvements at the Ashgrove Historic site.
8. Fairfax County Schools Contribution: Prior to Subdivision Plat approval, the Applicant shall contribute \$37,500 to the Fairfax County Board of Supervisors for transfer to the Fairfax County School Board to be utilized for projects contained in the CIP for public schools within Fairfax County, as determined by the Board of Supervisors.
9. Landscaping: The Applicant shall provide landscaping on the Application Property as generally shown on the GDP, in accordance with the recommendations of the Urban Forestry Management. Evergreen trees shall be a minimum height of eight (8) feet and shade trees shall have a minimum caliper of two and one-half (2-1/2) inches at the time of planting. No pines shall be planted within fifty feet (50) of the common property line with Lot 43, Section 2, Ankerdale Subdivision, subject to approval of the Urban Forester.
10. Tree Preservation Plan. The Applicant shall submit to a tree preservation plan as part of the first and all subsequent *subdivision* plan submissions. The preservation plan shall be prepared by a professional with experience in the preparation of tree preservation plans, such as a certified arborist or landscape architect, and shall be subject to review and approval of the Urban Forest Management, DPWES.

The applicant shall 1) root prune, 2) mulch, and 3) provide tree protection fencing in the form of four foot high, 14 gauge welded wire attached to 6

foot steel posts forms of tree protection fencing approved by Urban Forest Management, DPWES for all tree preservation areas. All treatments shall be clearly identified, labeled and detailed on the erosion and sediment control sheets and demolition plan sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by Urban Forest Management, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved and may include, but not to be limited to the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of a certified arborist.
- Tree protection fence shall be installed immediately after root pruning, and shall be positioned directly in the root pruning trench and backfilled for stability, or just outside the within t the disturbed area.
- Immediately after the phase II E&S activities are complete, mulch shall be applied at a depth of 4 inches extending 10 feet inside the undisturbed area without the use of motorized equipment.
- Mulch shall consist of (specify mulch type).
- An Urban Forest Managemt, DPWES representative shall be informed when all root pruning and tree protection fence installation is complete.

- b. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing consisting of four foot high, 14 gauge welded wire attached to 6 foot steel posts to be driven 18 inches into the ground and placed no further than 10 feet apart shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment sheets, as may be modified by proffer 3 above.

All tree protection fencing shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fence types shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation. that is to be preserved. Three days prior to the commencement of any clearing, grading, or demolition activities, but subsequent to the installation of the tree protection devices, Urban Forest Management, DPWES and the District Supervisor shall be notified and given the opportunity to inspect the sited to assure that all tree protection devices have been correctly installed. If it is determined that the fencing

has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by Urban Forest Management, DPWES.

c.) The demolition of existing features and structures shall be conducted in a manner that does not impact on individual trees and/or groups of trees that are to be preserved as reviewed and approved by Urban Forest Management.

d) During any clearing or tree/vegetation/structure removal or transplantation of vegetation on the Application Property, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by UFM. The applicant shall retain the services of a certified arborist or landscape architect to monitor all construction work and tree preservation efforts in order to ensure conformance with all tree preservation proffers/conditions, and UFM approvals. The monitoring schedule shall be described and detailed in the tree preservation plan and reviewed and approved by Urban Forest Management, DPWES.

At the time of submissions plan approval, the Applicant shall post a cash bond or letter of credit payable to the County of Fairfax to ensure preservation and /or replacement of the designated trees that die or are dying due to normal construction activities permitted on the approved plan. Any trees shown to be preserved on the Tree Preservation Plan that die or are dying due to construction activities NOT permitted on the approved plan shall be replaced with trees of equivalent species and size and bond monies for said trees shall not be refunded. The terms of the letter of credit shall be subject to approval by the County Attorney. The total amount of the cash bond or letter or credit shall be in the amount of the sum of the assigned replacement values of the designated trees. The Applicant shall retain a professional with experience in plant appraisal, such as a certified arborist or landscape architect, to determine the replacement value of the trees shown on the GDP to be preserved. These trees and their value shall be identified on the tree preservation plan at the time of the first submission of the subdivision plan. The replacement value shall take into consideration the age and size of the trees and shall be determined according to the methods contained in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture, subject to review and approval by Urban Forest Management, DPWES.

If, at the time of final bond release, trees are found to be dead or dying despite adherence to approved construction activities by Urban Forest Management., DPWES, the cash bond of letter or credit shall be used as necessary to plant similar size and species, or species appropriated to the

site, in consultation with Urban Forest Management, DPWES, and the developer's certified arborist. The cash bond of letter of credit shall not be used to the removal of the dead/dying trees normally required by PFM and Conservation Agreement.

11. Stormwater Management/BMP: SWM/BMPs shall be provided to the satisfaction of the Director, DPWES. If the waivers needed for the proposed innovative stormwater management Best Management Practices are not granted, stormwater management and/or BMPs shall be provided as required. If the substitute stormwater management and/or BMP facilities are not in substantial conformance with the proffered GDP, the applicant shall be required to obtain a proffered condition amendment. The innovative stormwater management facilities shown on the GDP shall be subject to the review and approval of the Director, Department of Public Works and Environmental Management. The size of the storage pipes may be reduced based on final engineering. A private maintenance agreement addressing the maintenance of the SWM/BMP shall be executed to the satisfaction of the Director, DPWES prior to subdivision plan approval.
12. Housing Trust Fund Contribution: At the time of approval of the first building permit, a contribution shall be made to the Fairfax County Housing Trust Fund of in the amount of 0.5% of the sales price of each single family dwelling actually constructed. The amount of said contribution shall be determined by the Department of Housing and Community Development.
13. Covenant on Use of Garages: A covenant shall be recorded which provides that garages shall only be used for a purpose that will not interfere with the intended purpose of garages (e.g. parking of vehicles). This covenant shall be recorded among the land records of Fairfax County in a form approved, by the County Attorney prior to the sale of any lots and shall run to the benefit of the homeowners' association, which shall be established, and the Fairfax County Board of Supervisors. This restriction shall be stated in the HOA documents, and initial purchasers shall be advised of the use restriction prior to entering into contract of sale.
14. Energy Conservation: All homes constructed on the Application 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.
15. Temporary 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 to assist in the initial sale of homes on the Application Property. Furthermore, the agents and employees involved in the marketing and sale of the residential units on the Application Property shall be directed to adhere to this proffer.

16. Construction of Improvements: All of the improvements described herein shall be constructed concurrent with development of the Application Property.
17. Access Easement/Maintenance of Access Road on Outlot B: Initial purchasers shall be advised of the requirement to maintain the access Road on Outlot B and the estimated costs thereof prior to entering into a contract of sale. This requirement to maintain the private streets as constructed and the estimated maintenance costs shall be included in the homeowners' association documents prepared for the Application Property. Under any circumstances pedestrian access through Outlot B shall be maintained in perpetuity.
18. Right of Way Vacation. Notwithstanding the submission for processing of any applications, plans or plats in furtherance of the development of the Application Property, the Applicant acknowledges that no such application, plan or plat shall be approved by Fairfax County until or unless the vacation of right-of-way for Bartholomew Court proposed as part of the Application Property is approved by the board of Supervisors. In the event that such vacation is not approved by the Board of Supervisors, or in the event that the Board's approval is overturned by a court of competent jurisdiction, any development of the Application property under the RZ District shall require a proffered condition amendment and the Applicant acknowledges that such amendment may result in a loss of density. The Applicant hereby waives any right to claim or assert a taking or any other cause of actions that otherwise may have arisen out of a Board decision to deny in whole or in part the right-of-way vacation.
19. Green Paving: Applicant shall use best efforts to implement alternative paving methods for access to Outlots A and D and the access road on Outlot B, subject to the approval of the Director of DPWES.
20. Town of Vienna Requirements. Prior to obtaining a permit to demolish the existing house, the applicant shall demonstrate to the satisfaction of the DPWES that the Town of Vienna Demolition Permit Regulations have been followed with regard to water service to the property. Further, prior to the approval of the subdivision plan, the applicant shall demonstrate to DPWES that the Town of Vienna construction requirements have been followed with regard to water service to the future dwelling units. The applicant shall also provide the Town of Vienna Superintendent of Water and Sewer with at least two weeks notice of the start of construction.
21. Temporary Cul-de-Sac. Irvin Street shall terminate in a temporary cul-de-sac placed within an easement as shown on the GDP. The terms of the easement shall be subject to the approval of the Director, DPWES. A minimum building setback of 30 feet shall be provided from the edge of pavement of the temporary cul-de-sac for Lot 6. A sign that states that this is a temporary cul-de-sac shall be

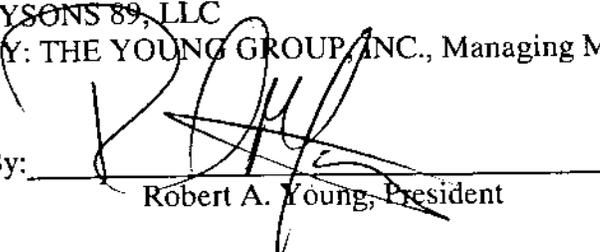
placed at the cul-de-sac.

22. Lot 43, Section 2, Ankerdale Subdivision. The sanitary sewer lateral for this property shall be maintained or, if moved, shall be relocated by Applicant at no expense to the owner of said property.

23. Successors and Assigns. These proffers will bind and inure to the benefit of the applicant and all successors and assigns.

OWNER OF
TAX MAP 28-4-1-22B and 23 and portion of Ashgrove Lane

TYSONS 89, LLC
BY: THE YOUNG GROUP, INC., Managing Member

By: 
Robert A. Young, President

Date: July 11, 2005