

PROFFERS

DUNN LORING METRO APARTMENTS PARTNERSHIP

RZ 2005-PR-003

October 13, 2005

Pursuant to Section 15.1-2203 (A), Code of Virginia, 1950, as amended, the undersigned Applicant and property owner, for themselves and for their successors and assigns (hereinafter "Applicant"), filed for a Rezoning for property identified as Tax Map 49-2 ((1)) 41 (hereinafter referred to as "Application Property") hereby proffer the following, provided that the "Board of Supervisors" (hereinafter referred to as "Board") approves RZ 2005-PR-003 rezoning the Application Property from the R-20 District to the R-30 District.

1. DEVELOPMENT PLAN:

Development of the Application Property shall be in substantial conformance with the Generalized Development Plan (GDP), prepared by Vika, dated March 18, 2005, as revised through September 20, 2005, provided, however, that minor modifications may be permitted when necessitated by sound engineering or which may become necessary as determined by the Department of Public Works and Environmental Services (DPWES) in accordance with the provisions set forth in Section 18-204 of the Zoning Ordinance. The site layout shall be developed in accordance with the GDP and proffers.

2. TRANSPORTATION:

- a. Prior to Site Plan Approval or on demand, whichever occurs first, the owners shall dedicate right-of-way as shown on the GDP in fee simple to the Board.
- b. The Applicant shall construct road improvements (3rd northbound lane and extension and taper for northbound right turn lane) along the Property's Gallows Road frontage with an 8 foot wide sidewalk and streetscape as shown on the GDP subject to the review and approval by VDOT and Department of Public Works and Environmental Services (DPWES). Applicant shall be responsible for maintenance of landscaping within dedicated right-of-way along the Property's Gallows Road frontage.
- c. Prior to Site Plan approval, an interparcel access with a public access easement shall be granted to Tax Map 49-2((1)) 39 as shown on the GDP. However, the final location of the interparcel access connection shall be determined at the time of site plan approval.

- d. The median at the garage entrance shall be striped and not a raised median.
- e. The Applicant shall enter into a licensing agreement with VDOT for maintenance of the streetscape elements located within public right-of-way. If this licensing agreement is not acquired by the Applicant, a proffered condition amendment (PCA) may be necessary.
- f. An interparcel access easement shall be provided along the shared eastern property boundary with Tax Map 49-2((1)) 39. The purpose of this easement shall be to provide a future pedestrian connection to the adjacent property.

3. TRANSPORTATION DEMAND MANAGEMENT STRATEGIES:

Mass transit, ride-sharing and other transportation strategies will be utilized to reduce single occupancy vehicular (SOV) traffic during peak hours. All residents and employees of the residential development shall be advised of this transportation strategy. Transportation coordination duties shall be carried out by a designated property manager(s). The goal of the strategies is to achieve a 35% reduction in peak hours single occupancy vehicles. The following is a list of strategies that shall be implemented; other strategies may also be implemented, in coordination with the Fairfax County Department of Transportation (FCDOT):

- a. Designating an individual to act as the transportation coordinator (property management staff person) for the Application Property whose responsibility will be to implement the transportation management strategies with ongoing coordination with Fairfax County Department of Transportation on an approval basis to provide for opportunities for adjustment of the program. The individual shall on an annual basis obtain a survey of the residents which shall estimate the percentage reduction in peak single occupancy vehicles. In the event the 35% reduction is not being achieved, the individual shall implement additional strategies as recommended by FCDOT;
- b. Participation in the Fairfax County Ride Share Program and the Merrifield Transportation Management Association;
- c. Dissemination of information regarding Metrorail, Metrobus, ridesharing and other relevant transit options in residential lease packages;
- d. Making Metro maps, schedules, marketing materials, ridesharing and other relevant transit option information available to tenants and employees in a common area of the building;

- e. Providing amenities for bicycle storage;
- f. Providing a sidewalk system designed to encourage/facilitate pedestrian circulation; and
- g. Providing broadband, high capacity data/network connections in all dwellings to facilitate working at home.
- h. Distributing \$600 (\$20 per dwelling unit) worth of metro checks to residents on a monthly basis.
- i. The TDM program shall be continued by the condominium owners association in the event of a condominium conversion.

4. STORMWATER MANAGEMENT:

Stormwater Management (SWM) and Best Management Practices (BMP) facilities and measures shall be provided in accordance with the PFM and in addition in accordance with the following standards as may be approved by DPWES.

- a. The facilities will provide a minimum of 40% phosphorous removal.
- b. The Applicant proposes to utilize underground detention and BMP facilities as the primary means of detained and treating the stormwater runoff. The location and number of underground stormwater management and best management practice facilities may be modified as depicted on the GDP but shall be subject to approval of DPWES.
- c. The proposed underground detention facilities will be designed to reduce the cumulative proposed conditions 2 and 10 year release rate from the site 10% below the cumulative existing flow rate.
- d. In addition to detaining the two (2) and ten (10) year storms as described above and prescribed by existing County regulations, given approval by DPWES, the outlet devices on the proposed underground SWM facilities will be designed to maximize the detention of the runoff from the proposed development program for approximately 0.85" of rainfall which equates to a storm frequency of less than one (1) year.
- e. In addition, if approved by DPWES, the proposed SWM facilities will be designed to capture a volume of runoff large enough to fully detain the runoff generated by the proposed development program for the mean annual storm.

- f. If DPWES should not approve one of the proposed standards presented in Paragraphs a, b, c or d above, in lieu thereof, the Applicant shall pay two (2) times the currently established pro rata share for drainage improvements downstream.
- g. Prior to site plan approval, the Applicant shall demonstrate to the satisfaction of DPWES that an adequate outfall is provided.
- h. In lieu of a standard sand filter device, the Applicant may utilize other innovative BMP devices to meet the BMP requirements, subject to the approval of DPWES and engineering design requirements. Smaller facilities, integrated into storm catch basin structures, may be utilized elsewhere on the site, subject to the approval of DPWES. The use of such facilities is subject to the granting of a waiver of current County policies to permit these underground facilities in a residential/mixed use project. If the proposed facilities, or viable alternatives that do not significantly affect the site layout, are not approved by DPWES, the Applicant recognizes that it may be necessary to request an amendment to the proffers ("PCA") and/or approved GDP to alter the site design.
- i. The Applicant, and its successors, will assume the responsibility for the perpetual maintenance of all underground stormwater management facilities and will execute an agreement with the County in a form satisfactory to the County to this effect at the time of site plan approval. Said agreement shall address the following issues:
 - i. Future replacement when warranted;
 - ii. Liability and insurance in an amount acceptable to Fairfax County;
 - iii. Restriction that the Applicant or successors or assigns shall not in the future petition DPWES for maintenance; and
 - iv. County inspection to ensure that the facilities are maintained by the Applicant in good working order.
 - v. Establishment of an initial fund in an amount acceptable to Fairfax County for future maintenance and/or replacement.
 - vi. Notice to purchasers prior to entering into a contract that the facility is not maintained by Fairfax County and is the responsibility of the HOA. This disclosure shall be in the HOA documents.

- j. In the event the proposed underground facilities are approved by DPWES, the facilities shall be subject to waiver #7462-WPFM-005-1 Conditions dated June 10, 2005, prepared by DPWES and attached hereto.

5. TREE PRESERVATION:

- a. The Applicant shall submit a tree preservation plan as part of the first and all subsequent site 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 reviewed and approved by Urban Forest Management ("UFM"). The tree preservation plan shall consist of a tree survey that includes the location, species, size, crown spread and condition rating percentage of all trees that are ten (10) inches or greater in diameter, and twenty (20) feet to either side of the limits of clearing and grading shown on the GDP for the entire site. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the GDP, and other areas in which trees can be preserved as a result of final engineering. The condition analysis ratings shall be prepared using methods outlined in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture. Specific tree preservation activities that will maximize the survivability of trees to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.
- b. All trees shown to be preserved on the tree preservation plan or identified in the field shall be protected by a tree protection fence. Tree protection fencing four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart, shall be erected at the limits of clearing and grading as shown on the demolition, phase I & phase II erosion and sedimentation control sheets for the entire site.

Methods to preserve existing trees may include, but not be limited to, the following: use of super silt fence, welded protection fence, root pruning and mulching. All tree protection fences shall be installed prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing, except super silt fence shall be performed under the supervision of a certified arborist. Three days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, UFM and the District Supervisor shall be notified and given the opportunity to inspect the site to assure that all tree protection

devices have been correctly installed and the project's certified arborist or landscape architect shall verify in writing that the tree protection fence has been properly installed.

- c. The demolition of existing features and structures shall be conducted in a manner that does not impact individual trees and groups of trees that are to be preserved as reviewed and approved by UFM.
- d. During any clearing or tree/vegetation/structure removal on the Application Property, a representative of the Applicant shall be present to monitor the process and ensure that the tree protection fencing remains in place and the trees protected by said fencing are preserved. 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. The monitoring schedule shall be described and detailed in the tree preservation plan, and reviewed and approved by UFM.
- e. The Applicant shall retain the services of a certified arborist or landscape architect, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the pre-construction meeting. Before or during the pre-construction meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an UFM representative to determine where minor adjustments to the clearing limits can be made to increase the survivability of trees at the edge of the limits of clearing and grading, and may result in an expansion of the limits of clearing and grading, and the limits shall be adjusted accordingly. Trees that are not likely to survive construction due to their species and/or their proximity to disturbance will also be identified at this time, and the Applicant may be given the option of removing them as part of the clearing operation. Any tree that is designated for removal at the edge of the limits of clearing and grading or within the tree preservation areas, shall be removed using a chain saw to avoid damage to surrounding trees. If a stump must be removed, this shall be done using a stump grind machine in a manner causing as little disturbance as possible to the adjacent trees.
- f. The Applicant shall remove any dead, dying, or hazardous, on-site, co-owned and off-site trees adjacent to the limits of clearing and grading, and replace the lost tree canopy, as determined by UFM. Off-site mitigation shall only be conducted with permission of the appropriate off-site owner, which permission shall be diligently pursued as determined by DPWES. Prior site plan approval, a replacement value shall be assigned by UFM to all healthy on-site, co-owned or off-site trees

measuring ten (10) inches or larger in diameter, which are located within twenty (20) feet of the limits of clearing and grading as shown on the GDP. Trees recommended for removal on the tree preservation plan shall not be assigned a value. At the time of site plan approval, the Applicant shall post cash or a letter of credit payable to the County of Fairfax to ensure removal and replacement of any such on-site, co-owned or off-site trees that are left dead, dying, or hazardous as a result of damage by normal construction activities, but not those harmed by construction activities that are not permitted by the approved Tree Preservation Plan. The calculated replacement values shall be reviewed and approved by UFM prior to posing the cash bond or letter of credit. The terms of the letter of credit shall be subject to approval by the County Attorney. The replacement value of each designated tree shall be determined by a certified arborist according to the methods contained in the latest edition of the Valuation of Landscape Trees, Shrubs and Other Plants published by the International Society of Arboriculture, subject to review and approval by UFM, in addition to any conservation escrow that is required at the time of site plan approval. From time to time, funds, or a portion thereof, may be drawn on the cash bond or letter of credit and expended for the purposes of this proffer. The remaining balance of the cash bond or letter of credit shall be refunded by Fairfax County at the time of final bond release.

6. LANDSCAPING:

- a. Landscaping shall be consistent with the quality, quantity and general locations shown on the Landscape Plan on the GDP. At the time of planting, the minimum caliper for deciduous trees shall be two and one-half (2 ½) inches and the minimum height for evergreen trees shall be six (6) feet. Actual types and species of vegetation shall be determined pursuant to more detailed landscape plans approved by Urban Forest Management at the time of final site plan approval. Such landscape plans shall provide tree coverage and species diversity consistent with the Public Facilities Manual (PFM) criteria, as determined by Urban Forest Management. The Applicant shall underground utilities along the subject property's Gallows Road frontage.
- b. The Applicant shall coordinate with UFM during final site plan design review of the planting of the outer landscape strip of the Gallows Road streetscape, to ensure that the correct tree species are selected that meet the intent of the Merrifield Suburban Center Streetscape Design Guidelines.

7. MAINTENANCE:

The Applicant shall be responsible, as landlord, to maintain all landscaping, travel aisles, parking areas and stormwater management systems. In the event the project is converted into a condominium, a condominium owners association will be established and assume these responsibilities. At such time the Applicant shall disclose the maintenance responsibilities in writing and within the condominiums association documents to all prospective unit purchasers, prior to sale.

8. BUILDING FACADE:

The building façade on all four sides of the building shall be predominantly brick and precast concrete in substantial conformance with elevations on sheet 8 of the GDP. There shall be no E.I.F.S. provided as part of the construction materials.

9. PARK CONTRIBUTION:

Prior to issuance of a RUP, the Applicant shall contribute Ten Thousand Dollars (\$10,000) to the Park Authority for the acquisition of park land or facilities within the Merrifield Suburban Center.

10. FIRE AND RESCUE:

Prior to the issuance of a RUP, the Applicant shall contribute Five Hundred Dollars (\$500) to Merrifield Station #30 for the purchase of Fire and Rescue equipment.

11. NOISE ATTENUATION:

The Applicant has not performed a noise study on the Property to date. However, prior to site plan approval, the Applicant shall conduct an independent noise study as reviewed and approved by DPWES in coordination with the Department of Planning and Zoning (DPZ) to determine the level of highway noise impacts on the proposed residential units. If the study determines that highway noise impacts units at a level of or exceeding DNL65DBA, the Applicant shall implement the following:

- a. In order to reduce interior noise to a level of approximately DNL 45 dBA, all residential units within noise contour levels DNL 65 to 70 dBA, shall include the following acoustical treatment measures:
 - i. Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.

- ii. Doors and windows shall have a laboratory STC of at least 28 unless glazing constitutes more than 20 percent of any façade exposed to noise levels of DNL 65 dBA or above. If glazing constitutes more than 20 percent of an exposed façade, then the glazing shall have a STC rating of at least 39.
 - iii. All surfaces shall be sealed and caulked in accordance with the methods approved by the American Society for Testing Materials (ATSM) to minimize sound transmission.
- b. All affected units shall be indicated on the Site Plan. The noise contours shall be indicated from the centerline of Gallows Road on the site plan.

12. RECREATION:

- a. Prior to the issuance of a RUP, the Applicant shall construct an exercise facility room on the first floor for the use of the tenants. The facility shall be furnished with exercise equipment, such as stationary bicycles, weights, and treadmills with a minimum total value of \$6,000. The Applicant shall be responsible for maintenance, repair and replacement of the equipment.
- b. The Applicant shall provide information to all tenants on obtaining individual memberships to the Westbriar Plaza swimming pool.

13. LIGHTING:

Standards contained in Part 9 (Outdoor Lighting Standards) of Article 14 of the Zoning Ordinance shall be met by all exterior lighting. Fixtures used to illuminate streets, parking areas and walkways shall not exceed fifteen (15) feet in height as measured from finished grade, shall be of low intensity design and shall utilize full cut-off fixtures which shall focus directly on the Property.

14. ENERGY EFFICIENCY:

All residential units shall meet the thermal standards of the CABO Model Energy Program for energy efficient homes, or its equivalent, as determined by DPWES.

15. SIGNS:

- a. 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 of Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on- or off-site by the Applicant or at

the Applicants' direction to assist in the initial sale or rental of residential unites on the Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and sale and/or rental of residential units on the Property to adhere to this proffer.

- b. All construction signage shall be posted on-site in both English and Spanish.

16. ADUs:

Two (2) ADUs as defined in Section 2-800 of the Zoning Ordinance shall be provided pursuant to Article 2-811 and 2-812 of the Fairfax County Zoning Ordinance.

17. CONDOMINIUM CONVERSION:

The Applicant shall apply for a Proffer Condition Amendment prior to converting the units to condominium ownership.

18. ESCALATION:

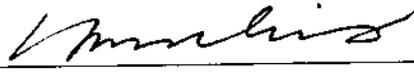
All monetary contributions stated in these proffers shall be adjusted by increases to the *Marshall and Swift Building Cost Index* from the date of the Board of Supervisors' approval of this rezoning application to the date of site/subdivision approval.

19. SUCCESSORS AND ASSIGNS:

These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.

APPLICANT/TITLE OWNER:

Dunn Loring Metro Apartment Partnership

By: 
Ying-Chung Chiang
General Partner

Waiver #7462-WPFM-005-1 Conditions
2729 - 2733 Gallows Road
RZ 2005-PR-003
June 10, 2005

1. The underground facility shall be constructed by the landowner in accordance with the development plan as modified by these conditions and approved by Director of the Department of Public Works and Environmental Services (DPWES).
2. The underground facility shall be located under the travel lanes or private streets and not within the open space areas of the proposed development, as determined by DPWES.
3. The underground facility shall be constructed of reinforced concrete products only and incorporate safety features, including locking manholes and doors, as determined by DPWES at the time of construction plan submission.
4. The underground facility shall be privately maintained and shall not be located in a County storm drain easement.
5. A private maintenance agreement, as reviewed and approved by the Fairfax County Attorney's Office, shall be executed and recorded in the Land Records of the County. The private maintenance agreement shall be executed prior to final plan approval.

The private maintenance agreement shall address:

- County inspection and all other issues as may be necessary to insure that the facility is maintained by the property owners (e.g. Homeowners Association) in good working condition acceptable to the County so as to control stormwater generated from the development of the 2729-2733 Gallows Road site.
 - A condition that the applicant, owners, their successors or 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, who has the access keys, etc.
 - A condition that the owners provide and continuously maintain liability insurance. The typical liability insurance amount is at least \$1,000,000, against claims associated with underground facilities.
 - A statement that Fairfax County shall be held harmless for any liability associated with the facilities.
6. Operation, inspection and maintenance procedures associated with the underground facilities shall be incorporated in the site construction plan, private maintenance

agreement, and homeowner association documents which insure safe operation, inspection and maintenance of the facilities.

7. A financial plan for the homeowner association, to finance regular maintenance and full life cycle replacement costs, shall be established prior to final plat approval. A separate line item in the homeowner association annual budget for operation, inspection and maintenance shall be established. A reserve fund for future replacement of the underground facilities shall also be established to receive annual deposits from the members of the homeowners association based on the initial construction costs and an estimated 50-year lifespan for concrete products.
8. Prior to final plan approval, the applicant shall escrow sufficient funds for the benefit of the homeowner association which will cover a 20-year maintenance cycle of the underground facilities. These monies shall not be made available to the homeowners association until after final bond release.
9. All future purchasers of any of the 2729-2733 Gallows Road lots shall be advised prior to entering into a contract of sale, as well as within the homeowner association documents, that the homeowner association is responsible for the operation, inspection, maintenance and replacement of the underground facilities.
10. The applicant, successors and assigns shall disclose, as part of the chain of title, to all future property owners, the presence of the underground facilities and the homeowner association's responsibility for operation, inspection, maintenance and replacement.