

RZ-1997-SU-050 BATAL BUILDERS - WESTBROOK, LC

PROFFER STATEMENT

FEBRUARY 25, 1998

MARCH 10, 1998

MARCH 18, 1998

MARCH 19, 1998

Pursuant to Section 15.2-2303(A) of the Code of Virginia, as amended, and subject to the Board of Supervisors' approval of rezoning application RZ-1997-SU-050, as proposed, for rezoning from the R-1 and WSPOD Districts to the R-2 (Cluster) and WSPOD Districts, Batal Builders - Westbrook, LC (the "Applicant"), for its successors and assigns, hereby proffers that development of Tax Map Parcels 55-2-((2))-15-A1, -15-A2 and 55-2-((3))-B, -C, -D (the "Property"), containing approximately 22.521 acres, shall be in accordance with the following proffered conditions:

1. Substantial Conformity. Subject to provisions of Section 18-204 of the Zoning Ordinance, the Property shall be developed in substantial conformance with the Generalized Development Plan prepared by BC Consultants, dated March, 1998, as revised through March 9, 1998 (the "GDP"), as further modified by these proffered conditions.
2. Minor Modifications to Design. Pursuant to Paragraph 5 of Section 18-204 of the Zoning Ordinance, the Applicant may make minor adjustments which may be required as a result of final engineering to modify the layout, if such changes are in substantial conformance with the GDP and these proffers, and if the changes do not increase the total number of units, decrease the minimum amount of open space, or decrease the amount of landscaping along the Property lines or in common open space areas.
3. Maximum Density. A maximum of forty-two (42) dwelling units shall be permitted on the Property.
4. Fairfax Center Area Roadway Contribution. The Applicant shall contribute to the Fairfax Center Area Road Fund in accordance with the "Procedural Guidelines" adopted by the Board of Supervisors (the "Board") on November 22, 1982, as amended, subject to credit for all creditable expenses, as determined by the Fairfax County Office of Transportation and the Fairfax County Department of Environmental Management ("DEM").
5. Right-of-Way Dedication. All right-of-way dedicated in conjunction with these proffers and as depicted on the GDP shall be conveyed to the Board in fee simple upon demand by the County or at the time of recordation of the final subdivision plat, whichever occurs first.
6. Westbrook Drive Improvements. The Applicant shall dedicate and convey in fee simple to the Board right-of-way up to twenty-six (26) feet from centerline along portions of the Westbrook Drive frontage of the Property as depicted on the GDP. Further, the Applicant

shall widen Westbrook Drive, along the Property's frontage east of the site entrance, to a pavement width of nineteen (19) feet as shown on the GDP.

7. Steuben Place. Unless a lesser section is approved by DEM, the Applicant shall dedicate, and convey in fee simple to the Board, up to a fifty-two (52) foot right-of-way for "Steuben Place" beginning at the Property's western property line eastward to the intersection with the proposed spine road and shall reserve, for dedication upon demand by the County, up to a fifty-two (52) foot right-of-way for the potential extension of "Steuben Place" beginning at the intersection with the proposed spine road and extending to the Property's eastern property line. Further, the Applicant shall construct a standard two-lane, thirty-eight (38) foot section with curb, gutter and sidewalk generally as shown on the GDP, beginning at the Property's western property line eastward to the intersection with the proposed spine road. At the time of final site plan approval, the Applicant shall escrow with DEM, in an amount determined by DEM to be adequate, funds for the construction of the remaining portion of Steuben Place on-site between Lots 28 and 29, generally as shown on the GDP. As part of site development, the Applicant shall grade the reservation area sufficiently to accommodate construction by others of Steuben Place in the reservation area, so that no ancillary easements will be required on adjacent Lots 28 and 29. Should Steuben Place be deleted from the Comprehensive Plan, or should there be a determination by VDOT or the Board that Steuben Place shall not be extended eastward off-site from, but adjacent to, subject Property, then at that time such escrowed funds may be applied toward the construction of other road improvements in and/or serving the Westbrook Drive area as determined by the Board and the property reserved for the extension of Steuben Place shall revert to the Homeowners Association for use as common open space.
8. Limits of Clearing and Grading. The Applicant shall conform to the limits of clearing and grading shown on the GDP, subject to installation of trails and utility lines, if necessary, as approved by DEM. The trails and utilities will be installed in the least disruptive manner possible as determined by the County Urban Forester to the maximum extent feasible given engineering and construction cost constraints. A replanting plan will be developed and implemented, as approved by the County Urban Forester, for any areas located within the limits of clearing and grading that must be disturbed due to the installation of utilities lines and trails.
9. Transplanting Plan. Prior to any land disturbing activity on-site, the trees to be transplanted shall be identified in the field and marked clearly with surveyor's flagging to ensure their preservation. During clearing and grading activities but prior to completion of clearing and grading, the Applicant shall provide tree transplanting equipment on-site for three days and shall relocate trees to be used for final landscaping of finished lots and/or augmenting existing vegetation in tree save or common open space areas. All labor in conjunction with this activity shall also be provided by the Applicant. To the extent that transplanted vegetation will be used in final landscaping on finished lots, a temporary nursery will be provided in an undisturbed area with access to water.
10. Tree Preservation. For the purposes of maximizing the preservation of trees in tree save areas, the Applicant shall prepare a tree preservation plan. The tree preservation plan shall

be submitted to the County Urban Forestry Branch of DEM for review and approval as part of the subdivision submission. This plan shall be prepared by an arborist certified by the International Society of Arboriculture and coordinated with and approved by the County Urban Forester and shall provide for preservation of specific quality trees or stands of trees within the common open space and the tree save areas depicted on the GDP to the maximum extent reasonably feasible, subject to installation of trails shown on the GDP and necessary utility lines, and to the maximum extent reasonably feasible without precluding the development of a home typical to this project on each of the lots shown on the GDP. The County Urban Forester may require modifications of such plans to the extent these modifications do not alter the number of dwelling units shown on the GDP, reduce the size of the proposed units, significantly move their location on the lot, or require the installation of retaining walls. The tree preservation plan shall include the following elements:

- A. A tree survey which identifies all trees 12" and greater in diameter located within 20' of either side of the limits of clearing and grading, within the tree save areas behind lots 1 through 5 and lots 8 through 11, and between lots 32 and 35.
- B. All tree save areas and individual trees designated to be preserved on the tree preservation plan shall be protected by fencing, a minimum of four feet in height, placed at the dripline of trees to be preserved, or at the limits of clearing and grading, whichever is greater. The fencing shall be installed prior to any work being conducted on the site and signage affirming "Tree Save Area - Do Not Disturb" shall be provided on the temporary fence and made clearly visible to all construction personnel.
- C. If, as a result of the Applicant violating the tree save provisions and designated areas set forth in paragraph 10 (B), as determined by the County Urban Forester, efforts to save trees in designated tree save areas are unsuccessful, landscaping, which shall produce a canopy equivalent to that lost, shall be substituted on the site in coordination with the County Urban Forester. Where feasible, the Applicant will make efforts to provide such replacement landscaping by utilizing existing vegetation transplanted from other tree save areas on site as contemplated in Paragraph 9, above.

Additionally, the HOA covenants shall require that trees in open space areas and tree save areas will not be disturbed except for the removal of diseased, dead and dying trees and selective maintenance to remove noxious and poisonous weeds.

11. Environmental Quality Corridor and Open Space Areas. All common open space and the Environmental Quality Corridor ("EQC") as depicted on the GDP shall be conveyed to a private homeowners' association at the time of recordation of the final subdivision plat. All common open space areas shall be maintained by said private homeowners' association. The EQC area shall not be disturbed except for the removal of dead, dying or diseased vegetation and except for the installation of trails and utilities. A replanting plan will be developed and implemented, as approved by the County Urban Forester for any areas located within the EQC that must be disturbed due to the installation of utilities lines and trails.

12. EQC Trail. The Applicant shall construct an eight (8) foot wide asphalt trail, as generally depicted on the GDP, within a twelve (12) foot wide public access easement as determined by DEM. Final determination of the trail location and design shall be made at the time of preliminary plat approval, subject to DEM approval. Said trail shall be maintained by the Homeowners' Association.
13. Open Space Improvements. The Applicant shall provide benches and a four (4) foot wide asphalt trail for use by community residents, in the common open space area located on the eastern portion of the Property, as generally depicted on the GDP. The applicant shall also provide benches within the common open space area adjacent to the EQC and the trail on the western portion of the Property, as generally depicted on the GDP.
14. Landscaping and Design. The Applicant will provide the following:
 - A. Subject to approval by the County Urban Forester, landscaping shall be provided as generally shown on the GDP, including the illustratives on sheet 3 which depict the character and quality of planting to be achieved. Locations may be adjusted if conflicts arise with VDOT sight distance requirements.
 - B. Street lighting and benches shall be provided as generally shown on the GDP, including the illustratives of Sheet 3 which depict the general character and style of the proposed amenities.
 - C. Subject to approval by the County Urban Forester, landscaping shall be provided through the use of evergreens and large deciduous trees generally as shown on the GDP along the rear lot lines of Lots 17, 18, 19, 20 and 21.
15. Energy Conservation. All homes constructed on the property shall meet the thermal standards of the Virginia Power Energy Saver Program for energy efficient homes, or its equivalent, as determined by DEM, for either electric or gas energy systems.
16. Residential Noise Attenuation. The Applicant shall use building materials with characteristics pursuant to commonly accepted industry standards to achieve a maximum interior noise level of 45 dBA Ldn as follows:
 - A. All units located within 355 feet of the centerline of the Fairfax County Parkway which are impacted by highway noise levels of between the 70 and 65 dBA Ldn and not otherwise shielded by structures or topography shall have the following acoustical attributes: Exterior walls shall have a laboratory STC rating of at least 39; Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than twenty percent (20%) of any facade, they should have the same laboratory STC as walls. Measures to seal and caulk between exterior wall surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.
 - B. When necessary to achieve a maximum exterior noise level of 65 dBA Ldn, noise attenuation structures such as acoustical fencing, walls, earthen berms or

combinations thereof, shall be provided for those outdoor recreation areas, including rear yards, that are unshielded by topography or structures. If acoustical fencing or walls are used, they should be architecturally solid from ground up with no gaps or openings.

- C. As an alternative to "A" or "B", above, the Applicant may elect to have a refined acoustical analysis performed, subject to approval of DEM, to verify or amend the noise levels and impact areas set forth above and/or to determine which units may have sufficient shielding from vegetation and other structures to permit a reduction in the mitigation measures prescribed above; or to determine minimum STC ratings for exterior walls, windows, and doors.
17. Noise Disclosure. The Applicant shall disclose in its sales contract to purchasers that noise walls will not be provided along the Fairfax County Parkway.
 18. Fence. The Applicant shall provide a six (6) foot high wooden fence along the shared property boundary of Tax Map Parcel 55-2-((3))-E2 and proposed Lots 40, 41 and 42. Said fence shall begin at the northwestern corner of proposed Lot 40 and will extend south along the western property boundary of Lots 40, 41, and part of Lot 42, terminating at a point on Lot 42 even with the northwestern (rear) corner of the existing house, which is approximately sixty (60) feet from the northern lot line of proposed Lot 42. The Applicant shall plant twelve (12) Leyland Cypress or other evergreen trees, six (6) to eight (8) feet in height, adjacent to said wooden fence but located on Tax Map Parcel 55-2-((3))-E2, subject to that owner's approval as to the type and location of the trees.
 19. Sanitary Sewer Easement. The Applicant shall grant a sanitary sewer easement to the County to serve Tax Map Parcel 55-2-((2))-14 in the location depicted on the GDP and approved by DEM at the time of record plat approval. This proffer shall in no way obligate the Applicant to construct or install sanitary sewer lines within said easement.
 20. Density Credit. All intensity of use attributable to land areas dedicated and conveyed to the Board pursuant to these proffers shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the residue of the subject Property.
 21. Successors and Assigns. Each reference to "Applicant" in this proffer statement shall include within its meaning, and shall be binding upon, Applicant's successor(s) in interest and/or developer(s) of the site or any portion of the site.
 22. Counterparts. To facilitate this execution, this Proffer Statement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of all the parties to the Proffer Statement appear on each counterpart of this Proffer Statement. All counterparts of this Proffer Statement shall collectively constitute a single instrument.

BATAL BUILDERS - WESTBROOK. LC

By: 

Title: Manager

George R. Layne

By John M. Batal his attorney in fact

GEORGE R. LAYNE

Co-Owner, Parcels 55-2-((2))-15-A1 & 55-2-((2))-15-A2

By: John M. Batal, his Attorney-in-Fact

Sarah Layne

By John M. Batal her attorney in fact

SARAH R. LAYNE

Co-Owner, Parcels 55-2-((2))-15-A1 & 55-2-((2))-15-A2

By: John M. Batal, her Attorney-in-Fact

George P. Layne

By John M. Batal his attorney in fact

GEORGE P. LAYNE

Co-Owner, Parcel 55-2-((2))-15-A2

By: John M. Batal, his Attorney-in-Fact

Linda A. Adrian

By John M. Batal her attorney in fact

LINDA A. ADRIAN

Title Owner, Parcel 55-2-((3))-B

By: John M. Batal, her Attorney-in-Fact

Hamid M. Al-Abdulla

By John M. Batal his attorney in fact

HAMID M. AL-ABDULLA

Co-Owner, Parcel 55-2-((3))-C

By: John M. Batal, his Attorney-in-Fact

Linda R. Al-Abdulla

By John M. Batal her attorney in fact

LINDA R. AL-ABDULLA

Co-Owner, Parcel 55-2-((3))-C

By: John M. Batal, her Attorney-in-Fact

Abdul-Amir M. Al-Abdulla
By John Batal his attorney in fact

ABDUL-AMIR M. AL-ABDULLA

Co-Owner, Parcel 55-2-((3))-C

By: John M. Batal, his Attorney-in-Fact

ESTATE OF WILLIAM R. OWENS, JR.

Title Owner, Parcel 55-2-((3))-D

Charles L. Weatherhead
By John Batal his attorney in fact

Charles L. Weatherhead

Executor

By: John M. Batal, his Attorney-in-Fact