APPLICATION ACCEPTED: December 22, 2004
PLANNING COMMISION: June 14, 2006
BOARD OF SUPERVISORS: not scheduled

County of Fairfax, Virginia

June 1, 2006

STAFF REPORT

APPLICATION RZ 2004-LE-045

LEE DISTRICT

APPLICANT:	MC Property Development, LLC
PRESENT ZONING:	R-1
REQUESTED ZONING:	R-2
PARCEL:	91-3 ((1)) 54A
ACREAGE:	4.61 acres
RESIDENTIAL DENSITY:	1.52 dwelling units per acre (du/ac)
PLAN MAP:	Residential; 1-2 du/ac
PROPOSAL:	To rezone from the R-1 District to the R-2 District to permit residential development consisting of seven single family detached units.
WAIVERS & MODIFICATIONS REQUESTED:	Modification of sidewalk requirements to allow an asphalt trail in lieu of a sidewalk

STAFF RECOMMENDATION:

Staff recommends denial of RZ 2004-LE-045. If it is the intention of the Board of Supervisors to approve the application, staff recommends such approval be subject to the execution of proffers consistent with those found in Appendix 1 of this report.

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Department of Planning and Zoning
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509
Phone 703 324-1290
FAX 703 324-3924
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Integrity * Teamwork* Public Service

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions proffered by the owner, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Supervisors.

For additional information, call the Zoning Evaluation Division, Department of Planning and Zoning at 12055 Government Center Parkway, Suite 801, Fairfax, Virginia 22035, (703) 324-1290 TTY 711 (Virginia Relay Center).

Americans with Disabilities Act (ADA): Reasonable accommodation is available upon 7 days advance notice.
For additional information on ADA call (703) 324-1334 or TTY 711 (Virginia Relay Center).

A GLOSSARY OF TERMS FREQUENTLY USED IN STAFF REPORTS WILL BE FOUND AT THE BACK OF THIS REPORT

DESCRIPTION OF THE APPLICATION

Proposal: The application seeks to rezone property from the R-1 District to the R-2 District, to develop a residential community consisting of seven single family detached units at a density of 1.52 du/ac.

Location: South side of Steinway Street, to the east of Beulah Street

Waivers & Modifications Requested: Modification of sidewalk requirements to allow the use of an 8 foot asphalt trail in lieu of a sidewalk

To be addressed at site plan: *Waiver of the requirement to underground utilities along Steinway Street*

The applicant's draft proffers, affidavit, and statement of justification are included in Appendices 1, 2 and 3, respectively.

LOCATION AND CHARACTER

Site Description:

There is an existing single family detached home on the site, constructed in 1930, which is proposed to be demolished with this application. A 100-foot wide Virginia Power easement traverses the site from southwest to northeast. One pole (a single pole, not a tower) is located on the site in the northeastern portion. The majority of the site, outside of the power easement, is forested with the exception of some lawn area along Steinway Street in front of the existing house.

Surrounding Area Description:

	Use	Zoning	Plan
North, East & South	Residential, Single Family Detached	R-1	Residential, (1-2 du/ac)
West	Church	R-1	Residential, (1-2 du/ac)

BACKGROUND

The property is not encumbered by any proffered rezonings, Special Exceptions, or Special Permits.

COMPREHENSIVE PLAN PROVISIONS (See Appendix 4)

Plan Area:	Area IV
Plan District:	Rose Hill
Planning Sector:	Lehigh (RH4)
Plan Map:	Residential, 1-2 du/ac
Plan Text:	no site specific plan text

ANALYSIS

Generalized Development Plan (GDP) (Copy at front of staff report)

Title of GDP:	MC Property Development, LLC
Prepared By:	SDE, Inc.
Original and Revision Dates:	March 2006, (Sheets 2 and 4 as revised through April 17, 2006)

Plan Description:

The GDP consists of four sheets. **Sheet 1** includes notes, tabulations, soils map/information, and a vicinity map. **Sheet 2** shows the layout of the site. **Sheet 3** shows the proposed Stormwater Management information. **Sheet 4** is a conceptual landscape plan.

The GDP shows the following features:

- ***Site Layout:*** A public road, ending in a cul-de-sac, enters from Steinway Street in the northeast corner of the site. Seven single family detached lots are shown, four on the west side of the road and three on the southeast. Typical houses are shown on all lots, as are driveways and building envelopes.
- ***Outlots:*** Two outlots are also shown. Outlot A, in the northeast corner of the site, includes a small park, which could contain a tot-lot, and the VA Power pole. Outlot B, in the southwest corner of the site, contains the proposed stormwater management facility.
- ***Virginia Power Easement:*** The major feature of the site, the Virginia Power easement, crosses the site from the northeast to the southwest. A majority of

the proposed public street lies within this easement, under the power lines; the entrances to most of the driveways lie within the easement, as do significant portions of the front yards of four of the lots (from 1,643 square feet to 12,063 square feet). A very small (5 square feet) portion of Lot 3 also lies in the easement.

- ***Access:*** As noted, a single, public street accesses Steinway Street, ending in a cul-de-sac. The applicant proposes a ditch section road, with grassy swales instead of curb and gutter. An eight foot wide asphalt trail is provided along the southeast side of the proposed street in lieu of a sidewalk. This trail, which extends through Outlot B to the southern end of the property, would be located in an easement on the lots. Because the property frontage on Steinway Street does not extend in either direction on Steinway Street past the entrance, no sidewalks are provided on Steinway Street, although sidewalk returns are provided on both sides.
- ***Tree Save & Landscaping:*** Sheet 4 of the GDP is a conceptual landscaping plan. The limits of clearing and grading, as shown on Sheet 4, generally protect trees located along the periphery of the property. The proposed utilities are shown on the plan as well, so the areas shown to be preserved will not be impacted by the utilities. The landscape plan shows a mixture of canopy and understory trees, both deciduous and evergreen, to be planted on the lots. Most of the trees are situated either in gaps in the existing tree-line to be saved around the periphery of the site or between the houses. An additional significant grouping of trees is placed at the boundary of Lot 7 and Outlot A to supplement existing landscaping and screen the view of the power pole from that lot.
- ***Stormwater Management:*** Stormwater management and BMPs are proposed to be provided with an infiltration type detention facility located on Outlot B, with outfall flowing through a grassed trench to an adjacent pond (as does existing drainage from the site). To reduce the SWM needs on the site, the applicant has utilized a combination of tree save areas and a ditch section roadway with grassy swales to allow some infiltration as water flows to the infiltration device.

RESIDENTIAL DEVELOPMENT CRITERIA

Fairfax County expects new residential development to enhance the community by fitting into the fabric of the neighborhood, respecting the environment, addressing transportation impacts, addressing impacts on public facilities, being responsive to our historic heritage, contributing to the provision of affordable housing, and being responsive to the unique, site specific considerations of the property. For the complete Residential Development Criteria text, see Appendix 13.

Site Design *(Development Criterion #1)*

This Criterion requires that the development proposal address consolidation goals in the plan, further the integration of adjacent parcels, and not preclude adjacent parcels from developing in accordance with the Plan. The application property is surrounded on three sides by single family detached homes on lots which are generally a half acre in size. The entire area is zoned to the R-1 District but planned for a density of 1-2 dwelling units per acre. Because the development pattern is already in conformance with the plan (although zoned to a less dense district) there is no additional land (save the church site to the west) which would be available for redevelopment in the immediate vicinity.

Development should also provide for a logical design with appropriate relationships within the neighborhood, including appropriately oriented units and usable yards. Access should be provided to transit facilities where available, and utilities should be identified to the extent possible. The applicant has provided a layout for a conventional residential development in conformance with the density recommendation in the Comprehensive Plan. The development as proposed, however, orients all of the lots to the Virginia Power easement running down the center of the development. Entrance to the development would be underneath the power lines and through the easement, with the pole located prominently near the entrance. While the applicant has attempted to address this issue by providing landscaping and ground-level features (such as a park) to draw the eye down from the level of the power lines, the power easement remains the over-riding feature of the site.

Open space should be useable, accessible, and integrated with the development. Appropriate landscaping should be provided. While no open space is required by the R-2 District, approximately 10% is provided in the two outlots. One of the outlots (A) includes a small park; illustratives of this park show playground type equipment, but no specific commitments have been made in the proffers or on the GDP at this time. The other outlot (B) is primarily composed of the stormwater management system. It should be noted that the low-impact development / infiltration system provided may allow this area to function as more usable open space than a traditional dry pond would. Though several of the lots are quite large, the excess land generally lies within the power line easement (minimum lot area may be calculated only on those areas outside the easement). The yards of these lots are severely impacted by the power line easement, which crosses the front of four of the seven lots. The house locations are such, however, that each lot does have some area available for either additions to the house or yard area (side or rear) which is outside the power line easement.

Finally, the Comprehensive Plan map designates this area for a density of 1-2 dwelling units per acre. The existing zoning, R-1, is in conformance with the low end of that density range. Staff believes that rezoning this property does not result in a better subdivision than could be accomplished by-right under the current zoning, which is within the Plan range.

Neighborhood Context *(Development Criterion #2)*

While developments are not expected to be identical to their neighbors, this Criterion states that they should fit in the fabric of the area, especially at the interface between the two. This application directly abuts single-family detached residential developments zoned R-1 but developed with lots which are generally half an acre or slightly more in size. The useable area of the lots (outside the easement) proposed is significantly smaller than that found in the surrounding developments. The units and lots themselves, however, are placed to generally align with the units of the surrounding developments.

A comparison of the treatment of the power line easement in the proposed development versus the existing surrounding development, shows that, with the exception of one lot, none of the existing houses in the vicinity front on the easement. The easement passes through the lots on the rear or side of the houses, with the exception of Parcel 91-3 ((6)) (1) 1, at the corner of Miller Drive and Beulah Street. Likewise, with the exception of that same parcel and possibly one other, no driveway entrances are located within the easement. Additionally, while the power line easement crosses the surrounding road network in several places, in no instance in the immediate vicinity of the site does a road travel underneath and parallel to the easement.

Environment *(Development Criterion #3)*

This Criterion requires that developments conserve natural environmental features to the extent possible, account for soil conditions, and protect current and future residents from noise and lighting impacts (no impacts have been identified). Developments should minimize off-site impacts from stormwater runoff and adverse water quality impacts. Additionally, the Policy Plan of the Comprehensive Plan includes guidance to "regulate new development to minimize unnecessary human exposure to unhealthful impacts of low level electromagnetic fields from electrical transmission lines." As such, staff does not believe that a rezoning which orients an entire new subdivision to a power line easement is consistent with the Plan guidance.

Tree Preservation & Tree Cover Requirements *(Development Criterion #4)*

This Criterion states that all developments should take advantage of existing quality tree cover—as preserving existing trees is highly desirable to meet the Public Facilities Manual (PFM) requirements—and that, where feasible, utility crossings should be located so as not to interfere with proposed tree save areas. Sheet 4 of the GDP indicates that the tree cover requirements will be met through a combination of tree save areas and additional plantings; tree cover is provided in excess of the minimum requirements. The location of utility crossings has been shown, and does not interfere with the tree save areas. Additionally, the applicant has proffered to provide a tree preservation plan at the time of subdivision plan approval.

Transportation *(Development Criterion #5)*

This Criterion requires that a development provide safe and adequate access to the surrounding road network, that transit and pedestrian travel be encouraged, and that interconnection of streets be encouraged. In addition, alternative street designs may be appropriate where conditions merit. The applicant is proposing a public street entering from Steinway Street and ending in a cul-de-sac, that will be designed and constructed as a ditch section (with swales rather than curb and gutter) in accordance with the requirements of the PFM. The ditch section is being utilized to allow for less impervious surface on-site, in accordance with low impact development techniques.

The Comprehensive Plan calls for a trail along the powerline easement which crosses the site. The applicant has requested a modification of the sidewalk requirements in the PFM to replace the sidewalk (required on one side of the street only) with an eight foot wide asphalt trail along the southeastern side of the proposed road (see discussion under “waivers and modifications). Instead of ending at the end of the cul-de-sac, the GDP shows that the trail would continue through the easement to the edge of the property, in accordance with the Comprehensive Plan requirement.

Public Facilities *(Development Criterion #6)*

Criterion 6 states that the impacts on public facility systems (i.e., schools, parks, libraries, police, fire and rescue, stormwater management) should be offset by residential development. Impacts may be offset through the dedication of land, the construction of public facilities, the contribution of specified in-kind goods, services or cash earmarked for those uses, and/or monetary contributions to be used toward funding capital improvement projects. (Specific Public Facilities issues are discussed in detail in Appendices 7-11.)

Fairfax County Park Authority (Appendix 11)

The development as originally proposed is projected to add approximately 26 persons to the current population of the Lee District. The GDP shows no recreational amenities. Residents of this development will need outdoor facilities including picnic, playground/tot lot, tennis, multi-use court and athletic fields. The proportional development cost to provide recreational facilities for the residents of this development while maintaining the current level of service is estimated to be $6,890. The applicant has proffered to contribute $6,890 to the Park Authority.

Fairfax County Public Schools (Appendix 10)

The application property is served by Lane Elementary, Hayfield Middle, and Hayfield High Schools. Enrollment in all three schools is currently below capacity and is projected to remain so through the 2009-2010 school year. The proposed application is projected to generate a total of two elementary school students and one high school student, a total of one additional student over what would be projected under the

current zoning. An appropriate contribution would be between $7,500 and $22,500. The applicant has proffered to contribute $15,000 to schools in the Lee District.

Fire and Rescue (Appendix 9)

The application properties are serviced by the Fairfax County Fire and Rescue Department Station # 37, Kingstowne. The subject property currently meets fire protection guidelines.

Sanitary Sewer Analysis (Appendix 7)

The application properties are located in the Dogue Creek (L) Watershed, and would be sewered into the Norman M. Cole Pollution Control Plant. An existing 8 inch pipe located in an easement and on the property is adequate for the proposed use.

Fairfax County Water Authority (Appendix 8)

The subject properties are located within the Fairfax Water Service Area. Adequate domestic water service is available at the site from an existing 8 inch main located at the site.

Land Development Services, DPWES (Stormwater Management)

The application is proposing to utilize a series of low-impact development techniques to address on-site stormwater management and BMPs. As noted, the applicant proposes a ditch section road, where stormwater would flow through grassed swales alongside the road rather than being collected by curb and gutter and concentrated into a pipe. Instead of a traditional dry pond, the GDP shows an infiltration structure which will act as both a detention structure and a BMP. The applicant has revised the GDP to provide an appropriate overland relief system.

Affordable Housing *(Development Criterion #7)*

With less than 50 units, this application is not subject to the ADU Ordinance and therefore not required to construct any ADUs. Criterion 7 states that ensuring an adequate supply of housing for low and moderate income families, those with special accessibility requirements, and those with other special needs is a goal of the County. Satisfaction of this criterion may be achieved by the construction of units, contribution of land, or by a contribution to the Housing Trust Fund. The applicant has proffered to a contribution of 0.5% of the sales price of the houses to the Housing Trust Fund.

Heritage Resources *(Development Criterion #8)*

Criterion 8 requires a development to address potential impacts on historical and/or archaeological resources through research, protection, preservation, or recordation. The Park Authority analysis notes that the site is adjacent to architectural sites in the

State inventory. Therefore, the applicant has proffered to complete a Phase I archaeological study and, if necessary, Phase II and Phase III assessments.

ZONING ORDINANCE PROVISIONS

Bulk Standards (R-2)		
Standard	**Required**	**Provided**
Maximum Density	2.0 du/ac	1.52 du/ac
Lot Area: Minimum	15,000 sq. ft.	15,795 sq. ft. *
Lot Area: Average	18,000 sq. ft.	21,013 sq. ft.
Minimum Lot Width	Interior: 100 feet	Interior: 100 feet
Building Height	35 feet	35 feet
Front Yard	35 feet	35 feet
Side Yard	15 feet	15 feet
Rear Yard	25 feet	25 feet
Transitional Screening & Barrier: none required		

* As stated in Paragraph 6 of Part 2-306 of the Zoning Ordinance, land area within a major power line easement may not count towards the minimum lot area; the minimum lot area provided here is in accord with this standard.

Waivers Requested:

Modification of sidewalk requirements to allow the use of an 8 foot asphalt trail in lieu of a sidewalk

The PFM would require this subdivision to provide a sidewalk along one side of the street. The GDP shows an eight foot wide asphalt trail in lieu of such a sidewalk, to be constructed in an easement across the lots on the southeast side of the proposed new cul-de-sac road. This trail satisfies the Comprehensive Plan requirement for a trail through the power line easement, and will serve the same purpose as the required sidewalk it replaces. The applicant has provided that the trail will be in a public access easement, as such, staff would not object to this modification.

Waiver the requirement to underground utilities along Steinway Street

While staff would not object to this waiver, it will be addressed at the time of subdivision plan approval.

Summary of Zoning Ordinance Provisions

All applicable Zoning Ordinance Provisions have been satisfied.

CONCLUSIONS AND RECOMMENDATIONS

Staff Conclusions

In staff's evaluation, while the proposal is in conformance with applicable R-2 District regulations, it fails to satisfy the Residential Development Criteria, and does not address the Policy guidelines that recommend that exposure to low level electromagnetic fields from electrical transmission lines be limited. Rezoning the application property to allow the development of a neighborhood where the primary feature of the site is a power line in a 100 foot wide easement, is not appropriate. The need to buffer the houses from the power line runs contrary to the desire to create a cohesive neighborhood. While many lots and subdivisions in the County are located adjacent to power line easements, the majority of those orient the houses so that the rears or sides face the easements. Under this proposal, every person entering this development would face and pass through the power line easement, and under the lines. The property as currently zoned (R-1) is in conformance with the density range recommended in the Comprehensive Plan. While a by-right development would also be impacted by the power lines, the smaller number of units would allow the houses to be located further from the power lines and to have more usable yard space outside the easement.

Staff Recommendations

For these reasons, staff recommends denial of RZ 2004-LE-045. If it is the intention of the Board of Supervisors to approve the application, staff recommends such approval be subject to the execution of proffers consistent with those found in Appendix 1 of this report.

It should be noted that it is not the intent of staff to recommend that the Board, in adopting any conditions proffered by the owner, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be further noted that the content of this report reflects the analysis and recommendations of staff; it does not reflect the position of the Board of Supervisors.

APPENDICES

1. Draft Proffers
2. Affidavit
3. Statement of Justification
4. Plan Citations and Land Use Analysis
5. Transportation Analysis
6. Environmental Analysis
7. Sanitary Sewer Analysis
8. Water Service Analysis

APPENDICES (Cont.)

9. Fire and Rescue Analysis
10. Schools Analysis
11. Park Authority Analysis
12. Land Development Services, DPWES (Stormwater Management)
13. Residential Development Criteria
14. Glossary of Terms

DRAFT PROFFERS

MC PROPERTY DEVELOPMENT LLC

RZ 2004-LE-045

May 22, 2006

Pursuant to Section 15.2-2303(A), Code of Virginia, 1950 as amended, the undersigned Applicant and Owners, in this rezoning proffer that the development of the parcel under consideration and shown on the Fairfax County Tax Map as 91-3((1))Parcel 54A, (hereinafter referred to as " the Property"), will be in accordance with the following conditions (the "Proffered Conditions"), if and only if, said rezoning request for the R-2 District is granted. In the event said rezoning request is denied, these Proffered Conditions shall be null and void. The Owners and Applicant, for themselves, their successors and assigns hereby agree that these Proffered Conditions shall be binding on the future development of the Property unless modified, waived or rescinded in the future by the Board of Supervisors of Fairfax County, Virginia, in accordance with the applicable County and State statutory procedures. The Proffered Conditions are:

I. GENERAL

1. Substantial Conformance. Subject to the provisions of Section 18-204 of the Fairfax County Zoning Ordinance (hereinafter referred to as the "Zoning Ordinance"), development of the Application Property shall be in substantial conformance with the Generalized Development Plan (GDP), prepared by GJB Engineering, Inc., dated March 2006. (Sheets 2 and 4 as revised through April 17, 2006).

2. Minor Modifications. Pursuant to Section 18-204 of the Zoning Ordinance, minor modifications from the approved GDP may be permitted as determined by the Zoning Administrator. The layout shown on the GDP may be modified provided such changes are in substantial conformance with the GDP and proffers, and do not increase the total number of lots or relocate any part of the proposed dwellings into the Virginia Power easement.

3. Establishment of Home Owners Association (HOA). Prior to subdivision plan approval, the Applicant shall demonstrate that the Property will be governed by an HOA and be subject to a Declaration of Covenants, Conditions and Restrictions consistent with the requirements of Article 2 of the Zoning Ordinance.

4. Dedication to the HOA. In conjunction with the appropriate subdivision plan review process, open space common areas and amenities, not otherwise conveyed or dedicated to the County shall be dedicated to the HOA and maintained by the same with the exception of the 8 foot asphalt trail which shall not be maintained by the HOA.

5. Disclosure. Prior to entering into a contract of sale, prospective purchasers shall be notified in writing by the Applicants of the maintenance responsibility for the common area amenities, the stormwater management facilities unless a publicly maintained facility is ultimately constructed on this site, and the restrictions contained in Proffer I. 6, Garages, and shall acknowledge receipt of this information in writing. The HOA

documents shall contain language explaining the restriction against mowing the grasses in the stormwater management/Best Management Practices facility (SWM/BMP), except as described in the Maintenance Specifications approved by DPW&ES for the specifically designed SWM/BMP facility. It is noted that the HOA will also not mow the outfall area, but that is within a Fairfax County easement and the County itself may choose to mow the outfall area. The HOA documents shall also include language explaining that a portion of each of the lots, with the exception of Proposed Lots 1 and 2 as shown on the GDP, are located with a Dominion Virginia Power Easement. The HOA documents shall include the Dominion Virginia Power Electric Transmission Right-of-Way Encroachment Policy so that future homeowners are aware of the easement restrictions. The Architectural Review Guidelines established by the HOA shall include a stipulation that no motion sensor lights shall be installed on the rear of any of the homes within the subdivision. The Applicant shall record a covenant running to the benefit of the HOA and Fairfax County in a form as approved by the County Attorney setting the maintenance responsibility as described in this proffer among the land records of Fairfax County. Each deed of conveyance shall expressly contain these disclosures.

6. Garages. A minimum of two parking spaces shall be provided within the garage of each dwelling unit. Any conversion of garages that will preclude the parking of vehicles within the garage is prohibited. A covenant setting forth this restriction 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 Board of Supervisors and the HOA and this restriction shall be included in the HOA documents.

7. Driveways. All driveways serving the approved units shall be a minimum of eighteen (18) feet in length from the edge of the trail for units on the east side of the street and the right of way line for units on the west side of the street to the face of the garage door.

8. Energy Conservation. All newly constructed dwellings on the Property shall meet the thermal guidelines of the CABO Model Energy Program for energy efficient homes, or its equivalent as determined by DPWES for either gas or electric energy systems, as may be applicable.

9. Signs. No temporary signs (including "popsicle" style paper or cardboard signs), which are prohibited by Article 12 of the Zoning Ordinance and Chapter 7 of Title 33.1, and Chapter 8 of Title 46.2 of the Code of Virginia, shall be placed on or offsite by the Applicant or at the Applicant's direction. The Applicant shall direct its agents and employees involved with the Property to adhere to this proffer.

10. Architecture. The front façade of the dwelling units and the sides of the units on Lots 1 and 7 will be designed with a combination of brick or stone and beaded siding or similar materials exclusive of windows, doors, shutters and trim.

11. Park. The area shown on the GDP as Nalls Park will include architectural elements such as, but not limited to, benches and play equipment.

12. Public Access Easement. A public access easement is a form approved by the County Attorney shall be placed on the 8 foot asphalt trail within the development.

II. ENVIRONMENT

1. Stormwater Management Facilities and Best Management Practices. Unless otherwise waived by DPWES, Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided through the use of an infiltration type, enhanced extended detention, modified infiltration filtering or other innovative LID facility, as approved by DPWES, in the area shown on the GDP. To the extent permitted by DPWES, the outfall from the Application Property shall be conveyed through a grass-lined bed and banks ditch/swale placed within an existing offsite storm drainage easement located on Parcel 53. The SWM facility will be grassed with wetlands type grasses with the intent of the HOA not mowing this area or the outfall area. During the Subdivision Construction Plan design phase, should the SWM/BMP facility be proposed and engineered to include wetlands type grasses and/or other vegetation, as approved by DPW&ES, it is the intent that these areas not be mowed, except as described in the Maintenance Specifications approved by DPW&ES for the specifically designed SWM/BMP facility.

2. Limits of Clearing and Grading. The Applicant, to the extent possible, shall conform to the limits of clearing and grading as shown on the GDP subject to the installation of required public improvements, utilities and/or trails as determined necessary by the Director of DPWES. If it is determined necessary to install public improvements, utilities and/or trails outside of the limits of clearing and grading as shown on the GDP, they shall be located in the least disrupting manner possible as determined by Urban Forest Management, DPWES. A replanting plan consistent with the Conceptual Landscaping Scheme shown on Sheet 4 of the GDP shall be developed and implemented, subject to approval by the Urban Forest Management, DPWES, for any areas outside the limits of clearing and grading that must be disturbed.

3. Tree Preservation. The applicant shall submit a tree preservation plan as part of 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 reviewed and approved by the Urban Forest Management (UFM), DPWES. 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 10 inches in diameter and greater 20 feet to either side of the limits of clearing and grading shown on the GDP for the entire site. The tree survey shall also include areas of clearing and grading not shown on the GDP resulting from engineering requirements, such as off-site clearing and grading for public improvements, utilities and/or stormwater outfall. 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 identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan as determined by the professional preparing the Tree Preservation Plan.

4. Tree Value Determination. The Applicant shall retain a professional arborist with experience in plant evaluation, to determine the replacement value of all trees 10 inches (10") in diameter or greater and located within twenty feet (20') of the outer edge of the limits of clearing and grading (i.e. outside the limits of clearing and grading) as shown on the GDP. 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, size and condition of these trees and shall be determined by the ten year canopy calculations as a basis for determining replacement value in conjunction with methods outlined in the 9th edition of the Guide for Plant Appraisal using the Cost of Cure Method.

5. Tree Bonds. In order to provide a remedy for any unintended disruption to trees required to be preserved under these proffers, at the time of bond approval, the Applicant shall both post a cash bond and a letter of credit or similar corporate surety payable to the County of Fairfax to ensure preservation and/or replacement of the trees for which a tree value has been determined in accordance with the previous proffer (hereinafter the "bonded trees") that die or are dying due solely to

unauthorized construction activities. The Applicant shall have no obligation for trees that die or are dying for reasons unrelated to unauthorized construction activities, or for no apparent reason. The letter of credit or other similar corporate surety shall be equal to fifty percent (50%) of the replacement value of the bonded trees. The cash bond shall consist of thirty three percent (33%) of the amount of the letter of credit.

During the time period in which the Tree Bond is required to be held, should unauthorized construction activity cause any bonded trees to die, or be removed, the Applicant shall replace such trees at its expense. As stated above, the Applicant shall have no obligation to replace trees that die or are dying for causes unrelated to unauthorized activities, or no apparent reason. The replacement trees shall be of equivalent size, species, and/or canopy cover as approved by UFM and shall incorporate native plant species. In addition to this replacement obligation, the Applicant shall also make a payment equal to the value of any Bonded Tree that is dead or dying or improperly removed due to unauthorized activity. This payment shall be determined based on the valuation methodology described in Proffer II 4 above and paid to a fund established by the County for furtherance of tree preservation objectives. Upon release of the bond for the site, any amount remaining in the tree bonds required by this proffer shall be returned/released to the Applicant. At the time of approval of the final RUP, the Applicant may request a release of any monies remaining in the cash bond and a reduction in the letter of credit to an amount up to twenty percent (20%) of the total amounts originally committed provided they are in good standing with the tree proffer commitments.

Any funds remaining in the letter of credit or cash bond will be released concurrently with the site performance bond release, or sooner, if approved by UFM.

6. Protection of Existing Understory Vegetation and Soil Conditions in Tree Preservation Areas. All tree preservation-related work occurring in or adjacent to tree preservation areas shall be accomplished in a manner that minimizes damage to vegetation to be preserved in the lower canopy environment, and to the existing top soil and leaf litter layers that provide nourishment and protection to that vegetation. Any removal of any vegetation or soil disturbance in tree preservation areas excluding the removal of plant species that may be perceived as noxious or invasive, such as poison ivy, greenbrier, multi-floral rose, etc. shall be subject to the review and approval of UFM.

7. Use of Equipment. Except as qualified herein, the use of motorized equipment in tree preservation areas will be limited to hand-operated equipment such as chainsaws, wheel barrows, rake and shovels. Any work that requires the use of motorized equipment, such as tree transplanting spades, skid loaders, tractors, trucks, stump-grinders, etc., or any accessory or attachment connected to this type of equipment shall not occur unless pre-approved by UFM.

8. Root Pruning and Mulching. As deemed necessary by a Certified Arborist and delineated on the Tree Preservation Plan that would accompany the subdivision plan submission, the Applicant shall 1) root prune, 2) mulch, and 3) provide tree protection

fencing in the form of four foot (4') high, fourteen (14) gauge welded wire attached to six foot (6') steel posts driven eighteen inches (18") into the ground and placed no further than ten feet (10') apart, or other forms of tree protection fencing approved by UFM, DPWES for all tree preservation relevant areas. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets, tree preservation plan and/or demolition plan sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by UFM, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

- Root pruning shall be done with a trencher, vibratory plow to a depth of eighteen inches (18").
- 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 trench within the disturbed area.
- Immediately after the Phase II Erosion and Sedimentation activities are complete, mulch shall be applied at a depth of four inches (4") extending ten feet (10') inside the undisturbed area without the use of motorized equipment.
- An UFM, representative shall be informed when all root pruning and tree protection fence installation is complete.

9. Tree Preservation Walk-Through. 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 and civil engineer shall walk the limits of clearing and grading with an UFM representative and a representative from the Lee District Land Use Committee to determine where adjustments to the clearing limits can be

made to increase the area of tree preservation; increase the survivability of trees at the edge of the limits of clearing and grading; facilitate the removal of trees adjacent to the limits of clearing and grading; facilitate tree preservation activities such as root pruning or fencing; or facilitate the installation of erosion and sediment control devices. Such adjustment shall be implemented. Trees that are identified specifically by UFM in writing as dead or dying may be removed as part of the clearing operation but it is noted that unless a dead or dying tree presents a safety hazard, attempts will be made to retain the tree. The dead or dying tree may be topped in order to be retained if that eliminates the problem of a safety hazard. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump grinding machine in a manner causing as little disturbance as possible to the adjacent trees and associated understory vegetation and soil conditions.

10. Tree Protection Fencing. All trees shown to be preserved on the Tree Preservation Plan shall be protected by tree protection fencing. Tree protection fencing of a type permitted by UFM shall be erected concurrently with the Phase I Erosion and Sedimentation permit activities. Tree fencing shall be installed prior to any clearing and grading activities including the demolition of any existing structures at the limits of clearing and grading as shown on the demolition, and Phase I & II erosion and sediment control sheets, as may be modified during the tree preservation walk

through with an UFM representative. All tree protection fencing shall be installed after the tree preservation walk-through meeting but 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. Five (5) working days prior to the commencement of any clearing, grading, or demolition activities, but subsequent to the installation of the tree protection devices including fencing, UFM and Lee District Supervisor staff shall be notified and given the opportunity to inspect the site 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 UFM.

11. Site Monitoring. Inspection of the site by a representative of the Applicant during any clearing or tree/vegetation/structure removal on the Applicant Property within the drip line of the trees to be saved as part of the Tree Preservation Plan as described in Proffer II.3, shall occur on a weekly basis to ensure that the activities are conducted as proffered and as approved by UFM. The inspection/monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by UFM, DPWES. The Lee District Supervisor shall be notified of the name and contact information of the Applicant's

representative responsible for site monitoring at the tree preservation walk-through meeting.

12. Landscaping. Landscaping shall be consistent with the quality, quantity and general location shown on Sheet 4 of 4 of the GDP. At the time of planting, the minimum caliper for deciduous trees shall be 2 1/2 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 subdivision plan approval. Such landscape plans shall provide tree coverage and species diversity consistent with the Public Facilities Manual (PRM) criteria, as determined by Urban Forest Management.

13. Transplanting. Should certain existing onsite plant materials by deemed appropriate for transplanting by a Certified Arborist, the applicant shall provide a transplanting plan as part of the first and all subsequent submissions of the subdivision plan for review and approval by the Forest Conservation Section. The plan shall be prepared by a professional with experience in the preparation of tree transplanting plans, such as a certified arborist or landscape architect. If determined by the Certified Arborist to have a high probability of survivability, the plan shall address the transplanting of two 3-5 inch caliper pin oaks located near and in front of the existing dwelling.

III. HOUSING TRUST FUND

1. Affordable Housing. At the time of the first building permit issuance, the Applicant shall contribute a one-time sum equal to one-half of one percent (1/2 of 1%) of the projected sales price of new homes to be built on the Application Property to the Fairfax County Housing Trust Fund, as determined by the Department of Housing and Community Development in consultation with the Applicant to assist the County in its goal to provide affordable dwellings elsewhere in the County.

IV. SCHOOL CONTRIBUTION

1. Per the Residential Development Criteria Implementation Motion adopted by the Board of Supervisors on September 9, 2002, effective January 7, 2003, at the time of the first building permit issuance, the Applicant shall contribute a sum of $15,000 to the Board of Supervisors for transfer to the Fairfax County School Board. These funds shall be allocated by the Board of Supervisors for capital improvements contained in the adopted Capital Improvement Program (CIP) for public schools within the school pyramid in Lee District serving this development.

V. RECREATION

1. Recreation Contribution. At the time of subdivision plan approval, the Applicant shall contribute the one-time sum of $6,890 to the Park Authority for park purposes and/or facilities in the area.

VI. ARCHAEOLOGY

1. Archaeological Study. Prior to any land disturbing activities on the Application Property, the Applicant shall conduct a Phase I archaeological survey, and if deemed necessary by the Cultural Resources Management and Protection Division (CRMPS), a Phase II archaeological survey and/or Phase III data recovery. Any such survey(s) shall be reviewed and approved by CRMPS prior to any land disturbing activity on the site.

VII. VIRGINIA POWER EASEMENT

1. Easement. As stipulated by Virginia Power regulations, the applicant shall execute an encroachment agreement for the proposed uses, improvements, utilities and construction activities within the 100 foot wide Virginia Power easement on the property.

VIII. SUCCESSORS AND ASSIGNS

These proffers shall bind the Applicant and his/her successors and assigns.

IX. COUNTERPARTS

These proffers may be executed on one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one and the same instrument.

TITLE OWNERS SIGNATURES TO FOLLOW ON NEXT PAGE:

MC PROPERTY DEVELOPMENT, LLC

Title Owner of TM 93-1((1))54A

By:_____

Name: John E. Carter

Title: Managing Member

MC PROPERTY DEVELOPMENT, LLC

Title Owner of TM 93-1((1))54A

By:_____

Name: Leslie O. Carter

Title: Member

MC PROPERTY DEVELOPMENT, LLC

Title Owner of TM 93-1((1))54A

By: F-N-M- Holdings, LLC

_____

Name: Charmaine P. Flowers

Title: Member