



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

May 2, 2008

Brian J. Winterhalter
Cooley Godward Kronish LLP
11951 Freedom Drive
Reston, Virginia 20190-5656

Re: Interpretation for SEA 79-V-073-3, American Horticultural Society,
Tax Map 102-2 ((1)) 20, 22: Expiration of Special Exception

Dear Mr. Winterhalter:

This is in response to your letter of February 13, 2008 (attached), requesting an interpretation of the Special Exception Amendment (SEA) Plat and development conditions approved by the Board of Supervisors in conjunction with SEA 79-V-073-3. As I understand it, the question is whether the Special Exception Amendment is still valid for the expanded hours and events for the previously approved public benefit association. This determination is based on your letter of February 13, 2008.

SEA 79-V-073-3 was approved by the Board of Supervisors on December 3, 2001, to permit modification of the development conditions, building addition, site modification, and the addition and deletion of land area, for a previously approved public benefit association. The timing of these improvements included the allowance for immediate issuance of a Non-RUP for the expanded hours and events, and the issuance of a subsequent Non-RUP for the proposed site modifications and land swap.

Development Condition #22 states:

“This Special Exception Amendment (SEA 79-V-073-3) shall be valid from the date of issuance of the Non-RUP for the expanded events and hours, which must be obtained prior to the current expiration date of SEA 79-V-073-2 in February, 2002. Relocation of the entrance as permitted by development condition number 6, construction of the greenhouse, and the land swap are not required prior to the issuance of the Non-RUP for the expanded events and hours; however, a second Non-RUP must be issued for these items, which must be established or construction commenced within thirty (30) months of the approval of this SEA.”

Development Condition #6 states, in part:

“Future access to the site shall occur at a new entrance on East Boulevard Drive as identified on the SEA Plat, which will replace the existing entrance, and said entrance shall be constructed in accordance with the improvements noted on Exhibit A, attached to these conditions. In the event that construction of said access is denied by either VDOT or the National Park Service, the existing entrance on East Boulevard shall remain, and shall be modified in accordance with the improvements identified on Exhibit B, attached to these conditions.”

Mr. Brian J. Winterhalter
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A Non-RUP was issued immediately after approval of SEA 79-V-073-3, on December 4, 2001. Therefore, it is my determination that SEA 79-V-073-3 is valid. However, a subsequent Non-RUP has not been issued for the relocation of the entrance, construction of the greenhouse, or land swap, which have not been constructed or established. Therefore, it is my determination that violations of Development Condition #22 and Development Condition #6 exist and are cause for the revocation of this SE by the Board of Supervisors. Par. 2 of Sect. 9-016 of the Zoning Ordinance states:

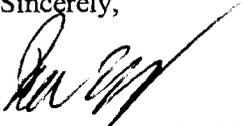
“A special exception shall be revocable by the Board at any time because of the failure of the owner or operator of the use covered by the special exception to comply with the terms or conditions of the special exception. Before revoking any special exception, the Board shall conduct a public hearing and provide notice in accordance with the provisions of Sect. 18-110. The Board or its agent shall give the holder of the special exception at least twenty (20) days advance written notice of the hearing date either by certified mail, return receipt requested, or by hand delivery, and the notice shall contain:

- A. The grounds for the proposed revocation of the special exception; and
- B. The date, time and place of the public hearing.”

Therefore, it is my determination that compliance with the Development Conditions 6 and 22 approved in conjunction with SEA 79-V-073-3 is required, or the SEA is subject to revocation by the Board of Supervisors. If SEA 79-V-073-3 were revoked by the Board of Supervisors, approval of a new Special Exception by the Board of Supervisors would be required to continue operation as a public benefit association. These determinations have been made in my capacity as the duly authorized agent of the Zoning Administrator.

If you have any questions regarding this interpretation, please feel free to contact Cathy Belgin at (703) 324-1290.

Sincerely,



Regina C. Coyle, Director
Zoning Evaluation Division

RCC/O:\CBELG\SEI SEA 79-V-073-3 AHS.DOC

Attachments: A/S

cc: Gerald W. Hyland, Supervisor, Mount Vernon District
Earl Flanagan, Planning Commissioner, Mount Vernon District
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ
Ken Williams, Plan Control, Land Development Services, DPWES
Angela Rodeheaver, Section Chief for Site Analysis, DOT
Craig Carinci, Director, Environmental and Facilities Inspection Division, DPWES
Kevin Guinaw, Chief, Special Projects/Applications Management Branch, ZED, DPZ
File: SEA 79-V-073-3, SEI 0802 006, Imaging, Reading File



BRIAN J. WINTERHALTER
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February 13, 2008

Ms. Regina Coyle
Director, Zoning Evaluation Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway
Fairfax, Virginia 22035

RECEIVED
Department of Planning & Zoning
FEB 14 2008
Zoning Evaluation Division

**RE: Special Exception Amendment SEA 79-V-073-3
American Horticultural Society
Tax Map 102-2 ((1)) 20 and 22**

Dear Ms. Coyle:

On behalf of the American Horticultural Society ("AHS"), I am writing to request a response to the enclosed letter to Eileen McLane of the Zoning Administration Division dated November 5, 2007. I also request your confirmation of the status of Special Exception Amendment SEA 79-V-073-3 with respect to the above-referenced property (the "Property"). A copy of the applicable Tax Map with the Property outlined and a copy of the development conditions associated with SEA 79-V-073-3 (the "Development Conditions") are also enclosed with this request.

In 1973, the Fairfax County Board of Supervisors approved Special Exception SE 79-V-073 to allow the operation of a public benefit association (AHS) on the Property. Since that time, the Board of Supervisors has approved three special exception amendments for the Property. The amendments modified the development conditions to allow AHS to operate with expanded hours and host additional events. The most recent special exception amendment, SEA 79-V-073-3, included approval of expanded hours and events, a land exchange, a greenhouse, and relocation of the entrance for the Property.

Based on the Development Conditions, SEA 79-V-073-3 became valid upon Fairfax County's issuance of a Non-Residential Use Permit ("Non-RUP") to AHS on December 4, 2001 for the operation of a public benefit association on the Property. Condition #22 states that SEA 79-V-073-3 "shall be valid from the date of issuance of the Non-RUP for the expanded events and hours." As a result, SEA 79-V-073-3 became valid upon Fairfax County's issuance of a Non-RUP for the operation of a public benefit association regardless of whether AHS subsequently obtained a Non-RUP for the land exchange, relocation of the site entrance, and construction of the greenhouse.

It is our understanding that AHS has not obtained a Non-RUP for the land exchange, relocation of the site entrance, or construction of the greenhouse; however, expiration of the approval for these items does not affect AHS's approval to operate a public benefit association on the Property or to operate such public benefit association during expanded hours. The Development Conditions state that "approval for construction of the greenhouse and/or entrance



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drive shall expire, without notice, thirty (30) months after the date of approval of [SEA 79-V-073-3] unless those uses have been established or construction of the greenhouse and/or entrance drive has commenced and been diligently prosecuted." It is our understanding that approval for the entrance drive relocation, greenhouse, and land exchange expired because AHS did not obtain a Non-RUP for these items prior to June 3, 2006.

Under the terms of the Development Conditions, AHS's operation of a public benefit association and during expanded hours became valid separately from the land exchange, entrance drive relocation, and greenhouse. The Development Conditions state that SEA 79-V-073-3 "shall automatically expire, without notice, at the time of expiration of the current special exception amendment in February, 2002, if the expanded events and hours have not been established by obtaining a new Non-RUP." As discussed above, AHS obtained a Non-RUP for the expanded events and hours well before the February 2002 deadline, and therefore, SEA 79-V-073-3 remains valid under the Development Conditions.

We respectfully request your confirmation that the Property remains subject to SEA 79-V-073-3 and the Development Conditions, with the exception that approval for the land exchange, relocation of the entrance drive, and the greenhouse has expired. We request your further confirmation that the operation of AHS as a public benefit association on the Property and during expanded hours is in conformance with the Development Conditions.

Please contact me at 703-456-8168 if you have any questions or need any additional information. We thank you in advance for your time and attention to this matter.

Best regards,

A handwritten signature in black ink, appearing to read "Brian J. Winterhalter".

Brian J. Winterhalter

Enclosures

cc: Gerald Hyland, Mount Vernon District Supervisor
Trish Gibson, American Horticultural Society
Andy Pace, Akridge Development
David Tuchmann, Akridge Development
Antonio J. Calabrese, Cooley Godward Kronish LLP
Colleen Gillis Snow, Cooley Godward Kronish LLP

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