FAIRFAX COUNTY

DEPARTMENT OF PLANNING AND ZONING
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509

(703) 324-1290 Fax (703) 324-3924

V I R G I N I A

November 6, 2000

Mark C. Looney
Cooley Godward LLP
11951 Freedom Drive
Reston, VA 20190-5601

Re: Interpretation for RZ 86-C-121, Reston Section 95, Block 1, Tax Map 17-3 ((1)) 37

Dear Mr. Looney:

This is in response to your letter of October 16, 2000, requesting an interpretation of the proffers and Development Plan accepted by the Board of Supervisors in conjunction with the approval of RZ 86-C-121 and its subsequent Proffer Condition Amendments. As I understand it, the question is whether constructing high-density residential uses more than 10 stories but no more than 120 feet in height would be in conformance with the proffers and the Development Plan. A copy of the above-referenced letter is attached.

The approved Development Plan states that the "maximum building height shall not exceed 10 stories (120 feet)." It is your position that the maximum height of either 10 stories or 120 feet could be constructed for residential use. You have also indicated that Block 1 of Section 95 is listed as 120 feet in height on the Master Conceptual Plan for the Town Center District Plan and is planned for office, retail, residential, and/or parking.

Conceptual Plan CP 86-C-121-10, approved by the Planning Commission for Block 1 of Section 95, pursuant to Proffer D1 of the Reston Town Center proffers, shows a 5-story building for housing for the elderly, and also currently governs the site.

It is my determination that, provided a Conceptual Plan Amendment is submitted and approved for a residential use for a building up to 120 feet in height, constructing high-density residential uses more than 10 stories in height but no more than 120 feet in height would be in conformance with the proffers and the Development Plan. This determination has 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 Elaine Jensen at (703) 324-1290.

Sincerely,

Barbara A. Byron, Director
Zoning Evaluation Division, DPZ

BAB/EZJ/*N:\ZED\JENSEN/INTERPS/RestonSect95Blk1.doc*

Attachments: A/S

cc: Catherine M. Hudgins, Supervisor, Hunter Mill District
John M. Palatiello, Planning Commissioner, Hunter Mill District
Jane W. Gwinn, Zoning Administrator
Michelle A. Brickner, Director, Office of Site Development Services, DPWES
Angela K. Rodeheaver, Section Chief for Site Analysis, DOT
Craig A. Carinci, Director, Environmental and Facilities Inspection Division, DPWES
Files: RZ 86-C-121, CP 86-C-121-10, PI 2010 133

Cooley Godward LLP

ATTORNEYS AT LAW

One Freedom Square
Reston Town Center
11951 Freedom Drive
Reston, VA
20190-5601
Main 703 456-8000
Fax 703 456-8100

www.cooley.com

Boulder, CO
303 546-4000
Denver, CO
303 606-4800
Kirkland, WA
425 893-7700
Menlo Park, CA
650 843-5100
Palo Alto, CA
650 843-5000
San Diego, CA
858 550-6000
San Francisco, CA
415 693-2000

MARK C. LOONEY
703 456-8652
mlooney@cooley.com

RECEIVED
DEPARTMENT OF PLANNING AND ZONING
OCT 16 2000
ZONING EVALUATION DIVISION

October 16, 2000

BY HAND DELIVERY

Ms. Barbara Byron
Director, Zoning Evaluation
Fairfax County Department of Planning and Zoning
12055 Government Center Parkway, Suite 830
Fairfax, Virginia 22035

Re: Zoning interpretation of maximum building height for high-density residential use for Reston Section 95, Block 1 (Fairfax County Tax Map #17-3-((1)), part of Parcel 1)

Dear Barbara:

On behalf of Renaissance Housing (the "Applicant"), the owner of the above-referenced property (the "Property"), I write seeking your determination regarding the maximum building height for high-density residential uses permitted under the governing Development Plan for the Property.

The Applicant is considering filing a Town Center Concept Plan to, among other things, revise the intended use of the subject Property from "housing for the elderly" to "high-density residential," as is permitted under the Reston Town Center District proffers. In determining the parameters and limitations that must be addressed as part of that application, a question has arisen regarding the maximum building height permitted under the Development Plan (the "Plan") proffered when the Property was rezoned in 1987 to the PRC district. We request your determination as to the maximum permitted building height for high-density residential uses under that Plan.

The Plan that accompanied the Property's rezoning, attached as **Exhibit 1**, notes the permissible uses, development densities and associated building heights for each of the four (4) corner parcels at the intersection of Reston Parkway and Sunset Hills Road, including the subject Property. The subject Property is identified as Part 12, which is located east of Reston Parkway and north of Sunset Hills Road.

Among the Plan notes is a description of the maximum gross floor area for each part, including Part 12 (the subject Property), as well as maximum permissible building heights. Note One (1) for Part 12 restricts the gross floor area for the Property to no more than 181,000 square feet. Note Two (2) states that "[m]aximum building height shall not exceed 10 stories (120 feet)." It is this latter restriction regarding the maximum building height that we believe needs clarification.

We contend that the height limitation represents an "either-or" situation; the Property may be developed to a maximum of 120 feet or ten (10) stories, depending on the type of use to be developed on the Property. We believe this interpretation is correct for two reasons.

First, we note that the Master Conceptual Plan (the "Conceptual Plan"), attached as **Exhibit 2**, that was proffered as part of the rezoning for the Town Center District "depicts the land use, heights, and non-residential FAR" for each land block with the Town Center District. (*see* General Plan Note One (1) of the Conceptual Plan). The subject Property is labeled as Section 95, Block 1, which the Conceptual Plan notes indicate is planned for "Office, Retail, Residential, and/or Parking," with a "height limit" of 120 feet. There is no mention of a maximum number of stories, leading one to believe that both the Development Plan and the Conceptual Plan were concerned more about the overall maximum building height of developments within the Town Center District, rather than the number of stories constructed. Accordingly, we contend the 120-foot limitation is the controlling height limitation for the subject Property.

Second, we note that the 10-story limitation imposed by the Plan, coupled with the 120-foot maximum height, likely was directed at non-residential buildings, rather than residential buildings, which tend to have smaller floor-to-ceiling heights. Indeed, residential buildings tend to have floor-to-ceiling heights of eight (8) to ten (10) feet, while non-residential buildings have typical floor-to-ceiling heights of eleven (11) to twelve (12) feet. As a result, it is likely that, given the overall height limitation of 120 feet on the Property, a non-residential building necessarily would need to be limited to no more than ten (10) stories to stay within the overall height limit. By contrast, a residential building of up to twelve (12) floors could be constructed within the maximum allowable height of 120 feet. The Development Plan for the Property must have recognized this difference between residential and non-residential floor plates. Otherwise, there was no need to include the 120-foot designation in the Plan; no building, residential or non-residential, could exceed 10 stories. We do not think this is what the Development Plan and Conceptual Plan intended.

We respectfully request your determination as to whether the maximum building height for non-residential uses on the subject Property is, indeed, 120 feet, and that the Applicant is not bound by the 10-story limitation for non-residential uses. Should you have any questions or need additional information regarding this request, please feel free to contact me at (703) 456-8652.

Thank you for your assistance with this matter.

Sincerely,

Mark C. Looney

MCL:mcl

Enclosure

cc: Albert H. "Sonny" Small, Jr., President, Renaissance Housing
Barry Schwartz, COO, Renaissance Housing
Maurice Walters, AIA, CHK
Barry B. Smith, P.E., Urban Engineering, and Associates, Inc.
Dave McElhaney, P.E., Urban Engineering and Associates, Inc.
Antonio J. Calabrese, Esquire, Cooley Godward LLP

68554 v1/RE
1GW@01!.DOC
101300/1544