



County of Fairfax, Virginia

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

September 11, 2008

Ms. Lori Greenlief
McGuireWoods
1930 Isaac Newton Square
Reston, Virginia 20190-5093

Re: Interpretation for Willard Industrial Park, RZ 80-S-008 and PCA 80-S-008,
Tax Map 44-2 ((11)) 3A, 13930 Willard Road: Change in Use

Dear Ms. Greenlief:

This is in response to your letter of July 23, 2008, (attached) requesting an interpretation of the generalized development plans (GDPs) and proffers accepted by the Board of Supervisors in conjunction with the approval of RZ 80-S-008 and PCA 80-S-008. As I understand it, the question is whether a change in the use approved pursuant to PCA 80-S-008 would be in substantial conformance with the GDPs and proffers. This determination is based on your letter of July 23, 2008, as well as a letter to you dated August 11, 2008 from Getachew Tadesse in the Zoning Administration Division, providing the use determination for the property.

On December 15, 1980, the Board of Supervisors approved RZ 80-S-008, to permit I-5 uses on the property which included Parcel 3A. Several I-5 uses were excluded by the proffers, including "heavy equipment and specialized vehicle sale, rental and service establishments." On October 14, 1996, the Board of Supervisors approved PCA 80-S-008, for Parcel 3A only, to permit a use which was previously prohibited in the proffers to be located on this parcel: an outside storage and rental facility for specialized vehicles such as Ryder or U-Hail trucks not exceeding 30,000 lbs. GVW. The proffers for PCA 80-S-008 state that "All other proffers approved by RZ 80-S-008 will remain in effect for this property." Further, while the PCA proffers allow for this particular previously excluded use, they do not exclude the other uses that were previously approved with the rezoning

On August 11, 2008, Getachew Tadesse, Assistant to the Zoning Administrator, determined that the proposed use for Parcel 3A, which is described as a use that produces and sells steel or metal decorative or architectural elements such as stairs, steps, and gates, would be considered "an establishment for printing of any size, production, processing, assembly, manufacturing, compounding, preparation, cleaning, servicing, testing, repair or storage of materials, goods, or products, and associated retail sales..." per Par. 6 of Sect. 5-502 of the Zoning Ordinance.

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Ms. Lori Greenlief

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It is my determination that a change in approved use, from an outside storage and rental facility for specialized vehicles such as Ryder or U-Hail trucks not exceeding 30,000 lbs. GVW; to a use that produces and sells steel or metal decorative or architectural elements such as stairs, steps, and gates would be in substantial conformance with the GDPs and proffers for RZ 80-S-008 and PCA 80-S-008. This determination has been reviewed with the Zoning Administration Division and 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 Cathy Belgin at (703) 324-1290.

Sincerely,



Regina C. Coyle, Director
Zoning Evaluation Division, DPZ

RCC/ O:\CBELGIN\PI PCA 80-S-008 WILLARD INDUSTRIAL.DOC

Attachments: A/S

cc: Michael R. Frey, Supervisor, Sully District
John L. Litzenberger, Jr., Planning Commissioner, Sully 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
Assad Ayoubi, Acting Director, Environmental and Facilities Inspection Division, DPWES
Kevin J. Guinaw, Chief, Special Projects/Applications Management Branch, ZED, DPZ
File: RZ 80-S-008, PCA 80-S-008, PI 0807 068, Imaging, Reading File

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July 23, 2008

RECEIVED
Department of Planning & Zoning

JUL 25 2008

Zoning Evaluation Division

Ms. Regina Coyle, Director
Zoning Evaluation Division
12005 Government Center Parkway
Suite 801
Fairfax, VA 22035

RE: Interpretation for RZ 80-S-008 and PCA 80-S-008

Dear Ms. Coyle:

The purpose of this letter is to request a determination pursuant to Sect. 18-204 of the Zoning Ordinance that the proposed use is in substantial conformance with the proffers accepted with the approval of RZ 80-D-008 and PCA 80-S-008 and the Generalized Development Plan approved with PCA 80-S-008.

BACKGROUND

The subject property is a lot within the Willard Industrial Park, specifically Tax Map 44-2((11))3A. A Tax Map is attached for your reference. The subject property and the remaining parcels within double-circle 11 and double-circle 12 were rezoned from the I-3 to the I-5 District pursuant to RZ 80-S-008. Proffers were accepted with this approval (attached), but the GDP was not proffered. In 1996, a partial proffered condition amendment (PCA) was approved on just Lot 3A. The clear purpose of the PCA was to allow a use which was specifically excluded in the original proffers to be permitted on Lot 3A (a heavy equipment and specialized vehicle sale, rental and service establishment). The proffers associated with the approval of PCA 80-S-008 are also attached. The PCA proffers indicate that the "amendment will apply to this parcel only. TM 44-2((11))3A" and "All other proffers approved by RZ 80-S-008 will remain in effect for this property". The submission requirement of a GDP was waived and the approved "as-built" site plan was allowed to serve as the GDP.

REQUEST

Our client would like to establish a use on the property which is a permitted use in the I-5 District and one that was not excluded from the original proffers, specifically an establishment which produces and sells steel/metal decorative architectural elements such as stairs, rails, steps and gates.

CONFORMANCE

The subject property, Lot 3A, has two sets of proffers which govern its use and development. This is specifically stated in the introductory paragraph to the proffers associated with the 1996 PCA application. The PCA applied to only Lot 3A but all the other proffers approved by RZ 80-S-008 will remain in effect for Lot 3A. In order to determine whether a particular use is permitted on the property under the current legislative approvals, in this case, all governing proffers should be analyzed.

The following points will show that the focus of the PCA application was narrow in scope – to allow a particular use which was specifically excluded in the original proffers on Lot 3A but not to the exclusion of uses that would otherwise be permitted by the original rezoning. Any other use which would have been allowed under the original rezoning should be still allowed on the property.

- Proffer 2 of PCA 80-S-008 specifically states that the “PCA will allow the excluded use #5.a.1 listed in the original proffers for RZ 80-S-008.” The proffer does not indicate that the purpose of the PCA is to allow “only” the excluded use. This proffer, by virtue of its silence with respect to the other excluded uses listed in Proffer 5 of RZ 80-S-008, implies that the other excluded uses are still excluded and those allowed (other by-right uses in the I-5 District) are still allowed.
- The request, as described in the staff report written for PCA 80-S-008, is “to amend the proffers approved in conjunction with RZ 80-S-008 to permit the outside storage and rental of U-Haul./Ryder trucks in association with a warehousing establishment.....The proffers approved with RZ 80-S-008 specifically prohibit this type of use on the subject property.” Thus, the purpose of the PCA application, as stated in the staff report was to add a use to those allowed on the property pursuant to the approval of RZ 80-S-008.
- Under the “Proffer Compliance” discussion section of the staff report, staff states that “to the best of staff’s knowledge this PCA request does not conflict with any of the previously imposed proffers.” This underscores the fact that the previous proffers are still in effect on the property. Note that Proffer 6 acknowledges that an educational, institutional or hotel/motel use could be developed on the property. It is clear that this proffer is still in effect and thus, if these other uses are still allowed on the property, then other uses also allowed pursuant to the original rezoning should also be permitted.
- Proffer 1 associated with PCA 80-S-008 states that the property shall be occupied with a Warehouse/office/retail mix in accordance with the GDP.

July 23, 2008

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Given the clear facts above, the correct and only practical interpretation of Proffer 1 is that it is meant to tie the physical development of the site to that shown on the plan, i.e., elements such as the building location and configuration, the parking, access points and screening. It is also clear that while the proffer mentions warehouse, retail and office mix and indicates that the facility shall be occupied with such uses, again, it is not exclusive. If Proffer 1 were read as an exclusive list of uses, then Proffer 2 which allows a "heavy equipment and specialized vehicle sale, rental and service establishment" would be in conflict with Proffer 1.

SUMMARY

In summary, the proffers associated the PCA 80-S-008 specifically state that all the other proffers associated with RZ 80-S-008 are in effect for this property. We believe that the approval of PCA 80-S-008 was not meant to exclude all of the uses that were approved under RZ 80-S-008 but rather to allowed one of the excluded uses listed in Proffer 5 associated with RZ 80-S-008. Therefore, our client's proposed use, a permitted use in the I-5 should be permitted on the property.

For the reasons stated herein, I respectfully respect your determination that the proposed use, an establishment that manufactures and sells metal decorative elements is in substantial conformance with the zoning approvals on the property. If you have any questions or need additional information, please do not hesitate to call me.

Best Regards,



Lori Greenlief
McGuireWoods LLP

Attachments: As stated

cc: Ed Bloom, Esq.
Savvas Savopoulos



County of Fairfax, Virginia

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

August 11, 2008

Ms. Lori R. Greenlief
McGuire Woods LLP
1750 Tysons Boulevard, Suite 1800
McLean, VA 22102-4215

RE: Use Determination
13930 Willard Road
Tax Map #: 44-2 ((11)) 0003A
Zoning Districts: I-5, WS

Dear Ms. Greenlief:

This is in response to your letter dated July 29, 2008 requesting a use determination for the referenced property. This response supplements the July 3, 2008 zoning compliance letter you received for the referenced property. According to your letter, you would like confirmation that a use that produces and sells steel or metal decorative or architectural elements such as stairs, steps and gates is considered an establishment for production and processing. Yes, such a use is considered an establishment for printing of any size, production, processing, assembly, manufacturing, compounding, preparation, cleaning, servicing, testing, repair or storage of materials, goods or products, and associated retail sales; except bulk storage of flammable materials for resale, and those particular heavy industrial uses set forth in Par. 13 of Sect. 9-501 of the Zoning Ordinance.

As stated, you are awaiting a response from the Zoning Evaluation Division to determine if the proffered conditions associated with Rezoning RZ 80-S-008 and Proffered Condition Amendment PCA 80-S-008 permit such a use at the referenced property.

I trust that this letter satisfactorily responds to your request. Should you have any additional questions, please feel free to contact me at 703-324-1314.

Sincerely,

Getachew A. Tadesse
Assistant to the Zoning Administrator

cc: Michael R. Frey, Supervisor, Sully District
Michelle M. O'Hare, Deputy Zoning Administrator, Ordinance Administration Branch
Diane E. Johnson-Quinn, Deputy Zoning Administrator, Zoning Permit Review Branch

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