

PROFFERS

Cardinal Estates

RZ 2004-SP-001

February 3, 2005



**NUMBERING SYSTEM FOR
PROFFERS IS FLAWED**

Pursuant to Section 15.2-2303(A) of the 1950 Code of Virginia, as amended, the owner and the Applicant, for himself and his successors or assigns (herein collectively referred to as the "Applicant") in this rezoning application filed on property identified on the Fairfax County Tax Maps 79-3 ((6)) Parcel 41 (hereinafter referred to as the "Application Property"), agrees to the following proffers, provided that the Fairfax County Board of Supervisors (hereinafter referred to as the "Board") approves the rezoning of the Application Property from the R-1 zoning district to the R-3 district.

1. **Development Plan**

- a) Subject to the provisions of Section 18-204 of the Fairfax County Zoning Ordinance ("the Ordinance"), development of the Application Property shall be in substantial conformance with the Generalized Development Plan ("GDP") entitled "Cardinal Estates" containing five sheets and prepared by Williams Enterprises, Inc., dated December 2003 and last revised December 15, 2004. The GDP also includes the Tree Protection Plan, containing a single sheet and prepared by Williams Enterprises, Inc., dated December 2003 and last revised December 15, 2004.
- b) Pursuant to Paragraph 2 of Section 18-204 of the Zoning Ordinance, minor modifications/adjustments/revisions/changes from the GDP may be permitted as determined by the Zoning Administrator. These modifications may include the locations of utilities, minor adjustment of internal lot lines, and the general location of dwellings on the proposed lots provided that the total area of open space is not decreased from that shown hereon, the building setbacks outlined on the GDP are honored, and the limits of clearing and grading are strictly adhered to.

2. **Homeowners Association**

Applicant will establish a Homeowners Association for the proposed development to own, manage, and maintain the open space, stormwater management facilities, and all other community-owned land and improvements. The Homeowners Association documents shall provide that the Homeowners Association shall assume responsibility for maintenance of the open space. Prior to entering into a contract of sale, prospective purchasers of houses shall be notified in writing by the Applicant of the maintenance responsibilities for the open space areas on the Application Property and said purchasers shall be required to acknowledge

receipt of this information in writing. The Homeowners Association shall be established prior to any record plat recordation.

3. Transportation

- a) At the time of Record Plat approval or upon demand by Fairfax County or the Virginia Department of Transportation ("VDOT"), whichever occurs first, the Applicant shall dedicate and convey in fee simple to the Board, right-of-way up to 30 feet from the existing centerline along the Application Property's Center Road frontage subject to the approval of VDOT and the Fairfax County Department of Public Works and Environmental Services ("DPWES").
- b) Density credit shall be reserved as may be permitted by the provisions of Paragraph 4 of Section 2-308 of the Ordinance for all eligible dedications described herein or as may reasonably required by DPWES or VDOT at the time of the subdivision plat approval subject to VDOT and DPWES approval.
- c) All access to the lots shall be from the new public street, and not Center Road once the property is subdivided. The existing access shall be removed and re-vegetated. Driveways shall be a minimum length of 18 feet in length from the inside of the sidewalk to the garage door..
- d) The applicant will provide sidewalks along the Application Property's Center Road frontage and the new cul-de-sac as depicted on the GDP.

4. Open Space Dedication

Concurrently with recordation of the record plat for the applicable lot, the Applicant shall dedicate Outlot A as shown on the GDP, to the Homeowners Association.

5. Landscaping

Landscaping and on-site amenities shall be generally consistent in terms of character, materials and quantity with the GDP. Specific features such as the exact locations of plantings, driveways, sidewalk connections, etc., are subject to minor modification with final engineering and architectural design.

6. Tree Preservation

- a) The Applicant shall conform to the limits of clearing and grading as shown on the GDP, subject to minor modifications, as approved by Urban Forest Management, DPWES (UFM) for the placement and installation of necessary utilities, trails and storm water drainage facilities. Placement of utilities or trails within the limits of clearing and grading, if necessary, shall be performed in the least disruptive manner possible, considering cost and engineering, as determined by the UFM and disturbed areas shall be re-vegetated as determined by UFM.
- b) The Applicant shall contract with a certified landscape architect or arborist (the "project arborist") to prepare a tree preservation plan to be submitted as part of the first subdivision plan submission. The tree 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 shall be reviewed and approved by the UFM. The tree preservation plan shall consist of a tree inventory which includes the location, species, size, crown spread and condition rating percentage of all trees twelve (12) inches of greater in diameter, measured 4.5 feet from the ground, and located within twenty (20) feet of the limits of clearing and grading for the entire Application Property. The 40-inch southern red oak located in Outlot A on the GDP shall be preserved unless UFM determines it should not be preserved due to its health. The condition analysis shall be prepared using methods outlined in the latest edition of *The Guide for Plant Appraisal*. Specific tree preservation activities designed to maximize the survivability of trees designated for preservation shall be incorporated into the tree preservation plan. Activities should include, but are not limited to, crown pruning, root pruning, mulching, and fertilization.
- c) All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fencing. Tree protection fencing, consisting of four (4) feet high, 14 gauge welded wire or equivalent attached to six (6) feet long steel posts driven eighteen (18) inches into the ground and placed no farther than ten (10) feet apart, shall be placed at the limits of clearing and grading as shown on the Phase One and Two erosion and sediment control sheets in all areas. The tree protection fencing shall be made clearly visible to all construction personnel. The tree protection fencing shall be installed prior to the performance of any clearing and grading activities on the site, including the demolition of any existing structures. All tree preservation activities, including the installation of tree protection fencing, shall be performed under the supervision of the Project Arborist. Prior to the commencement of any clearing, grading or demolition activities on site, the Project Arborist shall verify in writing the tree protection fencing has been properly installed.
- d) A replacement value shall be assigned to the 40-inch southern red oak, as shown on the GDP. Trees recommended for removal on the tree preservation plan shall not be assigned a value. The calculated replacement value for this designated tree shall be

assigned by a certified arborist according to methods contained in the latest edition of the Guide for Plant Appraisal, published by the International Society of Arboriculture, subject to review and approval of UFM. At the time of subdivision plan approval, the Applicant shall post a cash bond or letter of credit payable to the County of Fairfax, to be released with final bond release for the subdivision, to ensure preservation and/or replacement of the designated tree if such tree dies from construction related activities. If the tree should die from other unrelated matters (infestation, disease, etc.), the bond shall not be used for replacement of the tree. The terms of the bond or letter of credit shall be subject to the approval by the County Attorney. The total amount of the insurance bond, cash bond or letter of credit shall be in the amount of the sum of the assigned replacement value of the designated tree.

- e) The demolition of existing features and structures shall be conducted in such a manner as to minimize the impact on individual trees and groups of trees to be preserved, as determined in consultation with UFM.
- f) The Applicant shall have the limit of clearing and grading marked with a continuous line of flagging prior to the pre-construction meeting and shall clearly delineate the limits and grading with such flagging throughout the construction period. Before or during the pre-construction meeting, the Applicant shall walk the limits of clearing and grading with a representative of the UFM to determine where minor adjustments to the clearing limits can be made to increase the survivability of trees at the edge of the limits of clearing and grading; once identified, the limits shall be adjusted accordingly. Trees that are not likely to survive construction due to their proximity to the disturbance shall also be identified at this time and the Applicant shall remove such trees as part of the clearing operation. Any tree designated for removal at the edge of the limits of clearing and grading and within the tree preservation area shall be removed using chain saws. The stump shall be cut as close to the ground level as possible. 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 tree preservation area.
- g) The Applicant agrees to 1) root prune, 2) mulch, and 3) provide tree protection fencing along the limits of clearing and grading adjacent to Outlot A as depicted on the GDP. All three treatments shall be clearly identified, labeled and detailed on the erosion and sediment control sheets and demolition plan sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by the UFM and may include, but not be limited to, the following:
 - i. Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.
 - ii. Root pruning shall take place prior to any clearing and grading, or demolition of structures.
 - iii. Root pruning shall be conducted with the supervision of a certified arborist.

- iv. 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.
- v. Immediately after the Phase II and Erosion and Sediment activities are complete, mulch shall be applied at a depth of four inches extending ten feet inside the undisturbed area without the use of motorized equipment.
- vi. A UFM representative shall be informed when all root pruning and tree protection fence installation is complete.

7. Storm Water Management

- a) The Applicant shall provide onsite storm water detention and a best management practices ("BMPs") pond in accordance with the requirements of the Fairfax County Public Facilities Manual ("PFM") unless waived or modified by DPWES. If these onsite requirements are modified, the Applicant shall use Low Impact Development (LID) methods such as open space, rain gardens and/or infiltration trenches to provide onsite detention and/or BMP's on the lots if approved by DPWES and in substantial conformance with the CDP/FDP, or a Proffer Condition Amendment (PCA) will be required. The clearing limits shown on the GDP shall not be modified nor shall encroachment into tree save areas be permitted to provide these measures. Any rain gardens shall be maintained in accordance with the requirements of DPWES attached hereto as Attachment A; this requirement specifying the maintenance obligation shall also be included in the HOA documents.
- b) At the time of subdivision plan, any roads or easements required by DPWES to provide access to the stormwater management facility shall be dedicated at no cost.
- c) In the event that onsite measures are provided, the prospective purchasers of houses shall be notified in writing prior to entering into a contract of sale that onsite detention and/or BMP's are provided on the lot; this notification shall also be included in the HOA documents.
- d) In order to restore a natural appearance to the proposed stormwater management pond, the landscape plan submitted as part of the first submission of the subdivision plan shall show the restrictive planting easement for the pond and the maximum feasible amount of landscaping that will be allowed in the planting areas of the pond outside of that restrictive planting easement, in keeping with the planting policies of Fairfax County and the Applicant shall install said landscaping in accordance with said plan, subject to DPWES and UFM approval.

8. Contributions

- a) At the time of first building permit issuance, the Applicant shall contribute to the

Fairfax County Housing Trust Fund the sum equal to one half of one percent (1/2 %) of the projected sales price for each house to be constructed. The projected sales price shall be determined by the Applicant in consultation with the Fairfax County Department of Housing and Community Development (HCD) and DPWES.

- b) Prior to subdivision plan approval, the applicant shall contribute \$3,275.00 to the Fairfax County Park Authority for the Popes Head Assemblage.
- c) Prior to the issuance of the first building permit, the Applicant shall contribute \$15,000 to the Board of Supervisors ("Board") to be utilized for the provision of capital facilities within the Fairfax County School Board's pyramid of schools serving this development. In the event that the approved final subdivision plan yields less than four units, this contribution amount shall be reduced proportionately based upon a ratio of four units to \$15,000.

12 Energy Saver Program

All homes constructed on the property shall meet the thermal guidelines of the CABO Model Energy Program for energy-efficient homes or its equivalent, as determined by the DPWES for either electric or gas energy systems, as applicable.

13 Miscellaneous

- a) All exterior lighting shall be in conformance with Part 9 of Article 14 of the Zoning Ordinance.
- b) No temporary signs (including "Popsicle" style paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on or off-site by the Applicant or at the Applicant's direction to assist in the initial marketing and sale of homes on the Property. Furthermore, the Applicant shall direct its agents and employees involved in marketing and/or home sales for the Property to adhere to this Proffer.
- c) Decks, bay windows, patios and mechanical equipment may extend into peripheral minimum yards as permitted by Section 2-412 and/or Article 10 of the Zoning Ordinance. Notwithstanding the above, any deck constructed within a required rear yard shall be limited to a maximum height of four (4) feet above finished ground level and no closer than twelve (12) feet from the rear property line. Notice of this restriction shall be enclosed in the Homeowners' Association documents. The Applicant will also provide prospective purchasers with written information as to the size and height of decks that are permitted on each lot.
- d) The Applicant shall place a covenant on each garage that prohibits the use of the garage as a sleeping area. The covenant shall be in a form acceptable to the County

Attorney and it shall be recorded among the land records of Fairfax County prior to the sale of lots and shall run to the benefit of the HOA and the Board of Supervisors. Initial purchasers shall be advised in writing of this restriction prior to execution of the sales contract; this restriction shall also be included in the HOA documents.

- e) Prior to any land disturbing activities on the Application Property, Applicant shall conduct a Phase I archaeological study on the Application Property and provide the results of such study to the Heritage Resources Branch of the Fairfax County Park Authority ("Heritage Resources"). The study shall be conducted by a qualified archaeological professional approved by Heritage Resources, and shall be reviewed and approved by Heritage Resources. If the Phase I study concludes that significant artifacts are present on the Application Property, Heritage Resources shall notify Applicant, in writing within thirty (30) days of the submission of the study results to Heritage Resources that additional investigations are warranted. The Applicant shall then conduct a Phase II archaeological study. Based on the findings of the Phase II study, a Phase III study may be necessary.

Signatures:

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GHOLAMREZA KHAMESI

Applicant and Title Owner of Tax Map 79-3 ((6)) Parcel 41