

PROFFERS

CARNEY-SMITH (COMMERCIAL)
RZ 1998-SU-040

June 15, 1999

Pursuant to Section 15.2-2303(A), Code of Virginia, 1950 as amended, the owners and Jack W. Carney, Trustee and Benjamin M. Smith, Jr. Trustee, (hereinafter referred to as the "Applicant") for the owners, themselves, successors and assigns, in RZ 1998-SU-040, filed for property identified as Tax Map 56-2 ((1)) 69A part and 70, 71; (hereinafter referred to as the "Application Property"), agree to the following proffers, provided that the Board of Supervisors approve a rezoning of the Application Property to the C-6 District. In the event this application is approved, any previous proffers for the Application Property are hereby deemed null and void and hereafter shall have no effect on the Application Property.

1. Development Plan. Development of the Application Property shall be in substantial conformance with the Generalized Development Plan/Special Exception Plat ("GDP/SE") prepared by The BC Consultants consisting of eleven (11) sheets dated June, 1998 and revised through April 16, 1999.
2. Land Use.
 - A. Development of the Application Property shall not exceed a maximum floor area ratio (FAR) of 21.
 - B. The following uses may be permitted:
 1. Accessory Uses.
 2. Business service and supply service establishments.
 3. Drive-in banks *.
 4. Eating establishments.
 5. Fast food restaurants *.
 6. Financial institutions.
 7. Health clubs.
 8. Offices.
 9. Personal service establishments.
 10. Private schools of general education, private schools of special education.
 11. Public uses.
 12. Quick service food stores.
 13. Repair service establishments.
 14. Retail sales establishments.
 15. Service Stations/Mini-marts.
 16. Veterinary Hospitals.

*Limited by the provisions of Sect. 4-605 of the Zoning Ordinance or with approval of a Special Exception.

The following uses will not be permitted:

1. Churches, chapels, temples, synagogues, and other places of worship.
2. Mobil and land-based telecommunication facilities.
3. Telecommunication facilities, except as referenced in Proffer 20 below.
4. Vehicle light service establishments.

This shall not preclude the Applicant from applying for Special Exception and/or Special Permit uses in the future which are not otherwise mentioned above. In addition, the Applicant reserves the right to provide a drive-thru pharmacy within the shopping center as shown on the GDP/SE if permitted with the adoption of an amendment to the Zoning Ordinance that permits such use in the C-6 District.

3. **Minor Deviations.** Pursuant to Paragraph 5 of Section 18-204 of the Zoning Ordinance, minor modifications from the GDP/SE may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layout shown on the GDP/SE without requiring approval of an amended GDP/SE provided such changes are in substantial conformance with the GDP/SE as determined by the Zoning Administrator, agents or assigns and neither increase the total amount of gross floor area nor decrease the following: amount of open space; the amount of required parking; or the location of common open space areas, limits of clearing and grading, access points or distances to peripheral lot lines. Such changes may include, but not be limited to, adjusting the size and location of building footprints, shifting square footage from one building to another provided such a shift does not exceed 10% of the total square footage of the building and providing structured parking below grade.
4. **Storm Water Management.** The Applicant shall provide storm water management (SWM) and Best Management Practices (BMPs) in accordance with the requirements of the Public Facilities Manual and Chesapeake Bay Preservation Ordinance, unless waived by Department of Public Works and Environmental Services ("DPWES"). Storm water management and BMP requirements for the Application property shall be satisfied offsite in a regional Storm water management facility to be located on the adjacent residential property subject to RZ 1998-SU-041. No non-residential use permits (non-RUPs) shall be issued until the regional SWM facility has been constructed, partially constructed or other temporary SWM/BMP facility(ies) are constructed as may be approved by DPWES.
5. **Limits of Clearing and Grading.** The Applicant shall conform to the limits of clearing and grading shown on the GDP/SE plat subject to the installation of trails and utility lines, if necessary, as approved by DPWES. The trails and utility lines located within the area protected by the limits of clearing and grading shall be located and installed in the least disruptive manner possible considering cost and engineering, as determined by DPWES. At time of site plan submission, a replanting plan shall be developed and implemented, as approved by the Urban Forestry Branch of DPWES, for any areas within the area protected

B. Monument Drive.

- i. Dedication. Subject to VDOT and DPWES approval, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors those portions of the Monument Drive right-of-way, as shown on the GDP/SE, to accommodate construction for the four-lane divided roadway. The Applicant acknowledges the ultimate right-of-way width for Monument Drive shall be 114 feet. Dedication shall be made at time of the first site plan approval or upon demand from Fairfax County, whichever occurs first.
- ii. Design and Construction.
 1. The Applicant shall be responsible for the design of Monument Drive. Monument Drive shall be designed to a 70 Kph design standard and shall be designed to VDOT standards.
 2. The Applicant shall manage the construction of 4 lanes of Monument Drive from the northern property line of the property associated with RZ 1998-SU-041 to and including at-grade improvements to Route 29, subject to the timely execution of a satisfactory cost-sharing agreement with the County prior to the Board of Supervisors approval of this rezoning.
 3. The Applicant shall construct Monument Drive as described in Paragraph 2 above prior to the issuance of the first non-RUP.
- iii. Interchange. In the event an interchange is constructed by others at the intersection of Monument Drive and Route 29, any remaining right-of-way from Monument Drive not utilized for the interchange shall be returned to the Applicant.

C. Government Center Parkway extension.

- i. Dedication. Subject to VDOT and DPWES approval, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors that portion of right-of-way for the extension of Government Center Parkway as a four-lane divided roadway as shown on the GDP/SE. This dedication shall provide for that portion of Government Center Parkway east of its intersection with Monument Drive to the eastern property line of the shopping center. Dedication shall be made at time of the final site plan approval or upon demand from Fairfax County, whichever occurs first.

by the limits of clearing and grading that are disturbed due to trails and/or utility installation.

6. Transportation.

A. Route 29, Lee Highway.

- i. **Dedication.** Subject to VDOT and DPWES approval, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way from the existing centerline of Route 29 along the Application Property frontage of Route 29, as shown on the GDP/SE together with all necessary ancillary and temporary construction and grading easements. Said easements shall not preclude the Applicant from developing the Application Property as shown on the GDP/SE. Dedication shall be made at time of final site plan approval for the shopping center or upon demand from Fairfax County, whichever occurs first.
- ii. **Construction.** The Applicant shall construct a right turn lane and a third westbound lane along the Application Property frontage of Route 29 as shown on the GDP/SE prior to final site plan approval for seventy-five percent (75%) of the gross floor area of the shopping center if not already done pursuant to RZ 1998-SU-041 or upon request by Fairfax County based upon a funded roadway project for Route 29, whichever occurs first.
- iii. **Funding.** In lieu of constructing , a service drive and a trail along Route 29, the Applicant shall, at the time of final site plan approval for seventy-five percent (75%) of the gross floor area of the shopping center if not already done pursuant to RZ 1998-SU-041 or upon request by Fairfax County based upon a funded roadway project for Route 29, whichever occurs first, escrow with DPWES funds in an amount equal to the total estimated cost of the following improvements to Route 29 as determined by DPWES:
 - a. A 26-foot wide service drive with curb, sidewalk and gutter on the north side of Route 29 along Application Property frontage.
 - b. A 8-foot wide asphalt trail along the Application Property frontage.Said sum shall be estimated by the Applicant's engineers, subject to said estimate being approved by the DPWES.
- iv. This construction and funding for improvements to Lee Highway as described above shall be a credit against the Applicant's Fairfax Center Area Road Fund contribution.

- ii. Construction. Prior to the issuance of the first non-RUP if not already done pursuant to the proffers for RZ 1998-SU-041, the Applicant shall construct Government Center Parkway extension as a four (4) lane divided roadway from Monument Drive to the proposed entrance to the shopping center as shown on the GDP/SE. Said roadway shall be constructed within a 110-foot right-of-way with additional right-of-way as needed for turn lanes.
7. Fairfax Center Area Road Fund Contribution. The Applicant shall contribute to the Fairfax Center Area Road Fund in accordance with the "Procedural Guidelines" adopted by the Board of Supervisors on November 22, 1982, as amended, subject to credits for all creditable expenses, as determined by DPWES and in accordance with Proffer 6 and the cost-sharing agreement between the County and the Applicant.
8. Turn Lanes. The Applicant shall construct right and left turn lanes on Monument Drive and Government Center Parkway extension as required by DPWES and VDOT along the Application Property's frontage. The Applicant shall construct a northbound left turn lane on Monument Drive at Government Center Parkway and shall provide median width for an additional left turn lane in order to provide dual left turn lanes, if necessary, at this intersection based on traffic queues. The Applicant shall construct the additional turn lane if required at time of site plan approval. If construction of the additional turn lane is not required, then the Applicant shall escrow the necessary funds for the construction of the additional left turn lane at time of site plan approval. The funds shall be estimated by the Applicant's engineers, subject to said estimate being approved by DPWES. The Applicant shall submit documentation of traffic queues to Fairfax County and VDOT with the submission of traffic signal plans for the intersection of Monument Drive and Government Center Parkway to determine if construction of the additional left turn lane is required.
9. Roads in Use. The Applicant shall construct Monument Drive and Government Center Parkway in conformance with VDOT standards. For purposes of these proffers, "construct" shall mean that the committed road improvement is open to public traffic, whether or not accepted into the State system. Acceptance of roads by VDOT into its roadway system shall be diligently pursued by the Applicant and shall occur prior to final bond release.
10. Design Detail. The design details shown on Sheets 4-7 submitted with the GDP/SE are provided to illustrate the design intent and overall organization of the proposed development. Landscaping and on-site amenities shall be generally consistent in terms of character and quantity with the illustrations and details presented on these sheets. Specific features such as exact locations of plantings, seating areas, etc., are subject to modification with final engineering and architectural design. Landscaping and on-site amenities shall include, but not be limited to, the following features:

- a. Landscaped entry features shall be provided at the intersections of Monument Drive and Government Center Parkway and Monument Drive and Route 29 to include entrance monumentation and/or signage, ornamental trees and shrubs as shown on Sheets 5 and 6.
11. Environmental Quality Corridor (EQC). The Applicant shall convey in fee simple to the Fairfax County Park Authority for public park purposes, the EQC as depicted on the GDP/SE prior to final site plan approval. The EQC shall not be disturbed except for the construction of Government Center Parkway and the installation of trails and/or necessary utility lines as may be approved by DPWES. The Applicant shall design and construct the Government Center Parkway crossing of the EQC as shown on the GDP/SE to minimize clearing and grading within the EQC to the extent feasible. A conservation easement may be placed on some or all of the open space if necessary to meet the BMP requirements of the Public Facilities Manual. At time of site plan submission, a replanting plan shall be developed and implemented, as approved by the County Urban Forester for any areas located within the EQC that are disturbed due to the installation of utility lines and trails.
12. Trash Receptacles. All loading docks and on-site dumpsters for the office and shopping center uses shall be adequately screened from view at ground level from the adjacent residential uses proposed in conjunction with RZ 1998-SU-041 through the use of architectural walls, berms, fencing, landscaping or combinations thereof.
13. Bicycle Parking. A bicycle parking rack shall be provided at each of the office buildings and the retail center.
14. Indoor Facilities in Office. The Applicant shall provide a location for lockers and shower stalls within Building E so all employees of the office buildings shall have access to such facilities.
15. Density Credit. All density related to all eligible street and public park dedications is hereby reserved pursuant to Paragraph 4 of Section 2-308 of the Zoning Ordinance.
16. Signage. All signage for the shopping center shall be in conformance with Article 12 of the Zoning Ordinance. Signage for the shopping center shall be generally as represented on the sign details shown on the GDP. There shall be no pole-mounted signs. However, decorative seasonal banners shall be permitted.
17. Design Coordination. The individual buildings on the shopping center site shall be designed to create the appearance of a unified and coordinated development and shall be complementary in terms of architectural style and scale. This unified development shall be

accomplished through the use of coordinated building materials, landscaping or other similar design features and the following:

- i. Building materials shall be limited to face brick or architectural concrete block, architectural metal panels, architectural pre-cast concrete, stone, exterior insulation and finish system (E.I.F.S.) and reflective and non-reflective glass.
 - ii. All commercial buildings visible to the public shall be designed with architectural treatments as specified in Par. i above.
18. Hours of Operation. The hours of operation for the service station and fast food restaurant uses shall be from 5:00 a.m. to midnight. These hours of operation will be included in applicable leases.
19. Fast Food Restaurant. No fast food restaurant with delivery service as the primary operation shall be permitted as tenants. This provision shall not exclude those fast food/eating establishments which offer limited delivery service.
20. Antennas. The construction of telecommunication towers or antennas shall be restricted to those facilities which serve the tenants of the Property.
21. Lighting. Any parking lot lighting and security lighting for the shopping center shall be fully shielded and directed downward to minimize off-site glare to adjacent existing and proposed residential uses. The Applicant shall submit a lighting plan to DPWES at time of site plan(s) to identify the specific locations and types of lighting to be provided.
22. Construction Measures.
 - A. The Applicant agrees to take reasonable measures to minimize construction traffic on the existing portion of Government Center Parkway to the west of the Carney-Smith property. The Applicant shall notify all contractors to utilize Route 29 to the shopping center entrance on Monument Drive for construction vehicles. Signage shall be posted along the existing portion of Government Center Parkway west of the Carney-Smith property prohibiting construction traffic.
 - B. The Applicant agrees that construction and delivery of construction materials on any portion of the Application Property, including road construction on Government Center Parkway and Monument Drive, shall be limited to the hours prescribed by the Fairfax County Noise Ordinance.

- C. The Applicant agrees to take reasonable measures which are consistent with the standards of construction in Fairfax County to maintain Government Center Parkway and Carriage Park streets, sidewalks, buildings and storm water ponds free from dirt, gravel, construction materials and debris at all times and will clean these areas as often as necessary at its expense to assure compliance. Should dry weather cause excessive dirt and dust, the Applicant agrees to apply water consistently to the construction site.
 - D. The Applicant shall take reasonable measures to monitor and control pests resulting from construction and agrees to remove, trap or eradicate pests at its expense in accordance with County policies.
23. **Mechanical Equipment.** All rooftop mechanical equipment shall be screened from the ground level. All above-ground or in-ground mechanical structures shall be adequately screened by landscaping and/or a screen wall with a gate which shall be locked at all times, as may be approved by the appropriate utility company.
24. **Parking.** The Applicant agrees to ensure that users of the Application Property are notified that parking at Carriage Park and/or the Ellipse are for the exclusive use of Carriage Park and/or the Ellipse residents and guests. In the event that automobiles from the Application Property park at Carriage Park or the Ellipse, the Applicant acknowledges that such automobiles will be subject to the enforcement of the parking regulations including towing at the automobile owner's expense.
25. **Noise.** The Applicant shall use building materials with characteristics pursuant to commonly accepted industry standards to achieve a maximum interior noise level of 50 dBA Ldn in all commercial buildings which are located within that area impacted by highway noise from Route 29 with projected noise levels above 70 dBA Ldn.
26. **Heritage Resources.** The Applicant shall contract for a Phase I archaeological survey for the eastern portion of the Application Property within the EQC area. If a Phase II archaeological study is found necessary by the County archaeologist, that study shall be performed by the Applicant, provided the performance of said survey does not interfere with or delay the Applicant's construction schedule. If a Phase III archaeological study is found necessary, then the Applicant shall contract for completion of such study provided that performance of said survey does not interfere with or delay the Applicant's construction schedule. The cost of both of the Phase II and Phase III archaeological studies shall not exceed the sum of \$10,000.
27. **Monument Drive Streetscape.** Landscaping shall be provided along Monument Drive as generally shown on the GDP/SE and Sheet 6. This streetscape shall consist of a five-foot (5')

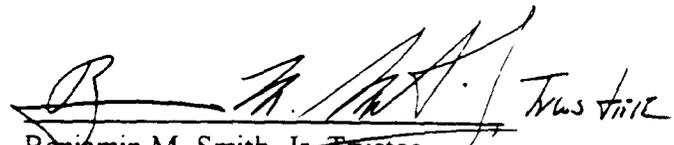
wide concrete sidewalk and street trees at a minimum of 3-inch caliper on the east side of Monument Drive.

28. Government Center Parkway Streetscape. The Applicant shall implement the design elements along Government Center Parkway in accordance with the Government Center Parkway Streetscape Plan shown on Sheet 5 of the GDP/SE.
29. Reforestation. At time of site plan submission, the Applicant shall submit a landscape plan which may include reforestation with seedlings for the existing unvegetated portion of the EQC along the southeastern property line in accordance with Section 12-0808, 7C of the Public Facilities Manual in coordination with the Urban Forestry Branch of DPWES.
30. Severability. Any of the office buildings, freestanding uses and shopping center may be subject to a Special Exception Amendment without joinder and/or consent of the other sections, if such SEA does not affect any other sections. Any of the special exception uses may be the subject of a special exception amendment without the necessity of a PCA. Any additional Special Permit and Special Exception uses shall be permitted for the Application Property without the necessity of a proffered condition amendment. This use flexibility shall not relieve the Applicant from the filing and processing of any Special Exception and/or Special Permit requests through the County's normal review process.
31. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.
32. Counterparts. These proffers may be executed in 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 in same instrument.

[SIGNATURE PAGES BEGIN ON FOLLOWING PAGE]

APPLICANT/TITLE OWNERS

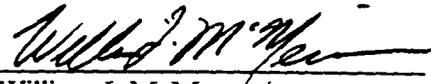

Jack W. Carney, Trustee


Benjamin M. Smith, Jr. Trustee

(SIGNATURES CONTINUE ON THE NEXT PAGE)

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TITLE OWNER
OF TAX MAP 56-2 ((1)) 70, 71



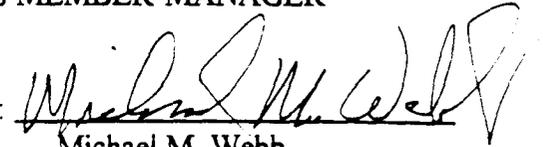
William J. McMenamin

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CONTRACT PURCHASER OF
TAX MAP 56-2 ((1)) 69A
FAIRFAX CENTER, L.L.C.
BY: WEBB DEVELOPMENT, L.L.C.
ITS MEMBER-MANAGER
BY: J. WEBB, INC.
ITS MEMBER-MANAGER

By:



Michael M. Webb
Its President/Chairman

[END SIGNATURES]