



FAIRFAX COUNTY

DEPARTMENT OF PLANNING AND ZONING

Zoning Evaluation Division
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V I R G I N I A

February 14, 2005

Mr. Mark Looney
Cooley Godward LLP
One Freedom Square
Reston Town Center
11951 Freedom Drive
Reston, Virginia 20190-5656

Re: Interpretation for RZ 86-C-121, Oracle, Reston Town Center:
Permitted Uses, FAR, Building Height

Dear Mr. Looney:

This is in response to your letter of December 29, 2004, (attached) requesting an interpretation of the Development Plan and proffers accepted by the Board of Supervisors in conjunction with the approval of RZ 86-C-121, for the Reston Town Center, as it affects the Oracle Property. The subject property is designated as Reston Section 95, Block 2, or Tax Map 17-4 ((1)) Parcel 7A. As I understand it, you inquire as to whether high-density residential use would be permitted for the property, how the residential density would be calculated for the property, what the maximum permitted building height would be, whether a Health Club is a permitted use for the property, whether uses below grade or within cellar space would be counted against the maximum gross floor area of the property, and whether a hotel is a permitted use on the property. This determination is based on your letter dated December 29, 2004, and the attached exhibits, Exhibit A entitled "Rezoning Plats and Development Plans, Parts 4, 5, 6, 7, 8, 9, 10, 11, 12, & 13, Town Center-Reston," which consists of 13 sheets, prepared by Urban Engineering and Associates, Inc., dated November, 1986, and Exhibits B, C, and D, which are previous interpretation letters issued by this office.

The Board of Supervisors approved RZ 86-C-121 on March 9, 1987, as part of one of the four rezoning applications collectively referred to as the "Reston Town Center Rezoning." These approvals included development plans with general information such as land uses, maximum heights and floor areas, but did not include specific development details. Included in the proffers accepted by the Board of Supervisors in conjunction with the approval of these rezonings was a provision for approval by the Planning Commission of Conceptual Plans, prior to receiving approval of a site plan, which would include the more detailed plans for development of each area, and provide Conceptual Plan Notes containing specific commitments from the developer.

This property was designated as Part 11 on the approved Development Plan (DP). The approved DP for Part 11 permits up to a maximum of 729,000 square feet of non-residential gross floor area, a

maximum non-residential FAR of 0.70, and a maximum building height of up to 15 stories (180 feet). In addition, uses approved for this property include all uses permitted by-right in the PRC-Town Center District, as well as certain other specified Special Exception and Special Permit uses. Further, the Master Conceptual Plan for the Reston Town Center, which was approved by the Planning Commission on April 2, 1992, reflects permitted uses for Section 95, Block 2 of "Office, Retail, Residential, and/or Parking," with a maximum height of 180 feet and a maximum non-residential FAR of 0.70.

On February 26, 1997, the Planning Commission approved Conceptual Plan CP 86-C-121-8, which permitted development of four office buildings on the subject property, with a maximum gross floor area of 725,000 and a FAR of 0.73. On September 15, 1999, the Planning Commission approved a Conceptual Plan Amendment, CPA 86-C-121-8, to permit an increase in building height of one of the approved office buildings from six to eight stories. On June 27, 2001, the Planning Commission approved CPA 86-C-121-8-2, to permit a change in building height and relocation of floor area between the two of the approved office buildings. To date, two of the four approved office buildings have been constructed on the property.

Your first question is regarding the provision of "high-density" residential uses for the property. The subject property is zoned PRC, with a Town Center designation. Multi-family residential uses are a permitted use by-right in this Zoning District. Although no residential density was designated on the approved development plan for RZ 86-C-121, the Comprehensive Plan states: "*The proposed Town Center development will also include hospital uses and a minimum of 1,400 dwelling units, incorporating a mixture of multi-family and single-family housing unit types at up to 50 dwelling units per acre.*" Other residentially developed properties within the Town Center have been designated "high-density residential," and as such, it is my determination that this property would also include a designation of "high-density residential." Therefore, development of the subject property with a maximum of 50 dwelling units per acre could be permitted, provided that a maximum overall density of 13 persons per acre for the entire PRC District is not exceeded, and provided that a maximum of 60 persons per acre for all areas within the PRC designated for high-density residential development is not exceeded. It is my determination that the construction of 500 dwellings on the subject property would be in substantial conformance with the approved development plan and proffers, provided that the aforementioned thresholds are not exceeded. Such a proposal would be subject to approval of a Conceptual Plan Amendment by the Planning Commission, and subject to demonstration of conformance with the maximum permitted densities for the PRC and for the High-Density Residential Districts.

Your second question is regarding the maximum permitted building height. You state that the number of stories constructed on this property should be permitted to exceed 15 stories, provided the overall height does not exceed 180 feet. The approved Development Plan (DP) for Part 11 states: "Maximum building height shall not exceed 15 stories (180 feet)." It is my determination that a building in excess of 15 stories but which did not exceed an overall height of 180 feet would be in substantial conformance with the approved DP.

Your third question is regarding the establishment of a Health Club on the subject property. Health Clubs are a permitted use in the PRC District for properties within the Town Center. In addition, the DP indicates permitted uses for Parts 9, 10, 11, and 12 which include "Group 5 commercial recreation uses such as health clubs and other similar commercial recreation uses." It is my

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determination that a Health Club would be in conformance with the approved DP and proffers, but would be subject to approval of a Conceptual Plan Amendment by the Planning Commission.

Your fourth question is requesting confirmation that the establishment of uses such as a Health Club or other uses within a building that are below-grade or within a cellar space are not included within the maximum gross floor area calculations. The definition of gross floor area in Sect. 20-300 of the Zoning Ordinance states that gross floor area calculations do not include cellar space. Therefore, it is my determination that uses proposed within a building's cellar are not included in the maximum gross square footage calculations permitted by the DP and proffers for the subject property.

Your fifth question is regarding the establishment of a hotel on the subject property. Hotels are a permitted use within the PRC-Town Center District by-right, but only if designated on the approved Development Plan. If not designated on the DP, hotels are permitted within the PRC-Town Center District with Special Exception approval. A hotel use is not designated on the approved DP for Part 11, therefore it is my determination that a hotel could be permitted on the property if a Special Exception or Development Plan Amendment for the use were approved by the Board of Supervisors, and further if a Conceptual Plan Amendment were approved by the Planning Commission.

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,



Barbara A. Byron, Director
Zoning Evaluation Division, DPZ

BAB/N:\CASES- ACTION ITEMS\ORACLE LETTER.DOC

Attachments: A/S

cc: Catherine Hudgins, Supervisor, Hunter Mill District
Frank de la Fe, Planning Commissioner, Hunter Mill District
Leslie Johnson, Chief, Permit Review Branch, ZAD, DPZ
Michelle Brickner, Assistant Director, Land Development Services, DPWES
Angela Rodeheaver, Section Chief for Site Analysis, DOT
Craig Carinci, Director, Environmental and Facilities Inspection Division, DPWES
File: No. RZ 86-C-121, CPA 86-C-121-8-2, PI 0501 002, Imaging, Reading File

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December 29, 2004

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Department of Planning & Zoning

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Zoning Evaluation Division

**Re: Zoning Interpretation Request and
Confirmation for Reston Section 95, Block 2 -
Oracle Campus**

Dear Barbara:

I write to request your interpretation of certain development rights associated with Reston Section 95, Block 2, Fairfax County Tax Map 17-4 ((1)), Parcel 7A (the "Property"). Further, I request your confirmation that certain proposed uses are in substantial conformance with the approved Development Plan and the PRC Zoning District Provisions of the Fairfax County Zoning Ordinance. Finally, I request your conformation of the approvals required to establish hotel uses on the Property.

As you know, the Property is zoned Planned Residential Community ("PRC") under the Fairfax County Zoning Ordinance. It is subject to rezoning application RZ 86-C-121, which was one of four rezoning applications creating the Reston Town Center District. The Property is also subject to the Development Plan (Part 11) approved with RZ 86-C-121, a copy of which is attached hereto as Exhibit A (the "Development Plan"), and the Proffers for the Reston Town Center District. The Development Plan permits the Property to be developed with up to 729,000 square feet of commercial/office/research and development uses. The Development Plan further provides that the maximum permitted height is "15 stories (180 ft.)." Finally, the Development Plan permits the by-right establishment of certain special exception (Category) and special permit (Group) uses that otherwise would be permitted only upon approval of a separate application by the Fairfax County Board of Supervisors or Board of Zoning Appeals.

The Property also is subject to a Town Center Concept Plan ("Concept Plan") permitting the establishment of four (4) office buildings and associated parking structures totaling 725,000 square feet of gross floor area. To date, two of the four approved office buildings, totaling 412,125 gross square feet, have been constructed on the Property. The balance of the approved nonresidential development has yet to be constructed.

A client of this Firm is contemplating filing an amendment to the currently approved Concept Plan to establish a mix of uses on the Property in accordance with the underlying Development Plan and Town Center Proffers. By this letter, we seek your confirmation that the proposed mix

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of uses is permitted under the zoning approvals for the Property, subject to approval of an amendment to the applicable Concept Plan, along with approval of a separate PRC Plan and Site Plan. Further, we request your confirmation of the approvals necessary to establish hotel uses as part of the planned mixed-use development.

I. Establishment of Residential Uses and Number of Units

Our client is contemplating amending the Concept Plan for the Property to establish high density residential uses on the Property in accordance with the Development Plan and Proffers. To this end, we request your confirmation that (a) the Property may be developed with High Density Residential uses in accordance with the PRC-Town Center zoning district provisions and the applicable Development Plan and Proffers; and (b) the construction of 500 residential units on the Property would be permitted based on the Zoning Ordinance's allowance of 50 dwelling units per acre measured across the 22.24 acres of the Property, representing the full area of Part 11 of the Development Plan approved with RZ 86-C-121.

A. Property May Be Developed for High Density Residential Uses

The Property is designated on the Reston Master Plan as part of the Town Center area. As such, under Section 6-302(D) of the Fairfax County Zoning Ordinance, areas designated as Town Center on a PRC Master Plan are permitted to develop with residential uses. Section 6-308 further provides that the overall density within the PRC District may not exceed 13 persons per acre. That section also lists the residential densities at which areas designated for Low, Medium and High Density residential uses may be developed.

By letter dated October 11, 1999, a copy of which is attached as Exhibit B, your office determined that areas designated as Town Center on the Reston Master Plan were permitted to develop with High Density Residential uses in accordance with Section 6-308 of the PRC District provisions, provided that the proposed development conformed with the Ordinance's provisions with respect to no more than 60 persons per acre across all High Density Residential Areas and no more than 50 dwelling units per acre in any one area designated High Density Residential. It is our view, therefore, that the Property may be developed for High Density Residential uses in accordance with Section 6-308 of the Zoning Ordinance, subject to the approval of an amendment to the existing Concept Plan. We ask for your confirmation of our interpretation.

B. Maximum Density of Proposed Residential Development

We also ask for your confirmation that our client may develop the Property with up to 500 residential units, representing a portion of the maximum 1,112 residential units allowed on the Property under the PRC district provisions of the Zoning Ordinance, subject to approval of the required Concept Plan amendment, PRC Plan and Site Plan. This request is consistent with the

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October 11, 1999, determination from your office, Exhibit B, with respect to how one determines the maximum density allowed under Section 6-308 of the Zoning Ordinance for any single High Density Residential site.

In that earlier determination, your office was asked to opine as to whether the unit/acre calculation for the Town Center Urban Core, which includes a mix of uses much like those our client is exploring for the Property, was to be measured based on the acreage of each individual development block or based on the area of the overall Urban Core development plan, totaling 84.25 acres. In response, your office ruled that maximum residential density for the Urban Core was to be measured based on the 84.25 acres subject to the development plan approved with RZ 85-C-088, noting that such a determination did not relieve the developer from demonstrating that its development satisfied the other criteria found in Section 6-308 of the Ordinance.

Our client is requesting confirmation of a similar determination with respect to the Property. The Property is designated as Part 11 on the Development Plan approved with rezoning application RZ 86-C-121. It is one four parcels included on the same Development Plan. Each of the four parcels was assigned a permitted amount of nonresidential development, with the Development Plan permitting construction of up to 729,000 square feet of gross floor area on the Property. Consequently, it is our view that the development potential for residential uses on the subject Property should be measured based on the same 22.24 acres as the 729,000 square feet of permitted commercial development.

Accordingly, it is our contention that our client's plans to construct 500 residential units on the Property would be in conformance with applicable provisions PRC zoning district, which permits development of up to 50 dwelling units per acre on areas designated as High Density Residential (50 du/ac. x 22.24 acres of Part 11 = 1,112 units), provided the same are approved as part of an amendment to the currently applicable Concept Plan. While an argument could be made, based on the October 1999 determination, that the maximum permitted residential density for the Property should be calculated based on the entire acreage of the four parcels covered by the Development Plan, rather than its individual parts, we request no such interpretation here. We respectfully request your confirmation that our client may develop up to 500 residential units on the Property, subject to the necessary Concept Plan and other approvals.

II. Maximum Permitted Height of 180 ft.

We also request your confirmation that the Property may be developed with structures exceeding 15 stories in height, provided no structure exceeds a maximum 180 feet in height. The applicable Development Plan provides that the maximum permitted height of any structure to be constructed on the Property is "15 stories (180 ft.)." Your office previously interpreted a similar height restriction applicable to Reston Section 95, Block 1 (Part 12 of the Development Plan), which is being developed as the Carlton House condominium project across Sunset Hills Road

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from the subject Property. In your determination, a copy of which is attached as Exhibit C, you confirmed that development on that adjacent parcel could exceed the 10 story limitation, provided the development did not exceed a maximum 120 feet in height.

We submit that the subject Property similarly should be permitted to develop up its maximum permissible height of 180 feet, regardless of the number of stories. The Property's location represents a gateway into the Reston Town Center District from the south and features prominently from the Dulles Toll Road. Notably, the Plaza America buildings located next to the subject Property already have developed at a similar height, ensuring that the Property's development at up to 180 feet would be consistent with its surroundings. We also note that buildings constructed on the Property are subject to review and approval by the Reston Town Center Design Review Board, which consistently has maintained a high degree of quality and compatibility of designs throughout the Town Center District. Accordingly, we respectfully request your confirmation that the Property may be developed at more than 15 stories, but no more than 180 feet in height, provided the development is approved as part of an amendment to the currently applicable Concept Plan.

III. Confirmation of a Health Club as a Permitted Use.

We also request your confirmation that, as part of a mixed-use development on the Property, a health club would be a permitted, by-right use in accordance with the approved Development Plan. Further, we request your determination that the establishment of a health club facility in the cellar of any building constructed on the Property would not count toward the total 729,000 square feet of gross floor area that may be established on the Property.

A. Establishment of Group 5 Health Club Use

The approved Development Plan (Part 11) lists the total gross floor area and maximum height of permitted development on the Property. The Development Plan also includes notations indicating that "uses will include all of those permitted by-right within the PRC Town Center zoning category, plus all of the following special permit and special exception uses which are designated on the Development Plan:

- Group 5 commercial recreation uses such as health clubs and other similar commercial recreation uses"

It is our belief that by listing Group 5 commercial recreation uses on the Development Plan – specifically, health clubs – the Board of Supervisors, in effect, pre-approved the by-right establishment of such uses in accordance with the requirements of Section 6-303 of the PRC zoning district regulations. Had Group 5 commercial recreation uses not been included on the approved Development Plan, their establishment on the subject Property would require approval

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of a separate special permit by the Board of Zoning Appeals. In our view, no such special permit is required to construct a health club on the Property.

For your information and reference, attached as Exhibit D is a letter from your office dated December 2, 1996, confirming that the listing of certain category special exception uses and group special permit uses on the approved development plan of a PRC District property permits the establishment of such uses without the need to file and have approved a separate special exception or special permit application, provided such uses are part of an approved Town Center Concept Plan. We believe the establishment of a Group 5 health club use on the subject property would be consistent with both the provisions of Section 6-303 and the 1996 interpretation. We respectfully request your conformation of our interpretation.

B. Below-Grade Health Club or Similar Uses Do Not Count as Gross Floor Area

Although our client has yet to finalize its development plans or submit a Town Center Concept Plan for approval by the Planning Commission, it is our expectation that any Group 5 health club use or similar permitted use constructed on the Property would be located below grade or in the cellar of one or more buildings. As such, we do not believe the square footage associated with the health club or such other use would count toward the overall commercial development cap of 729,000 s.f. permitted on the Property by the Development Plan.

Section 20-300 of the Zoning Ordinance provides that “[g]ross floor area shall not include cellars,” which means that any “portion of a building partly underground, having one-half (½) or more than one-half (½) of its clear height below the grade plane,” would be excluded from calculations of gross floor area for purposes of compliance with proffered caps on gross square footage. Using this definition, then, any private health club or other use located in the cellar of a structure constructed on the subject Property would not be considered gross floor area, provided its location met the definition of “cellar” set forth in the Zoning Ordinance; in effect, a location that is below the average grade of the building’s exterior.

Accordingly, none of the square footage allocated to such a health club or other use would count against the maximum permitted 729,000 square feet of gross floor area that may be developed on the Property. We respectfully request your confirmation of our interpretation.

IV. Establishment of Hotel Use on Property

In addition to the residential and health uses noted above, our client also is considering the establishment of hotel uses on the Property as part of its mixed use development. Accordingly, we request conformation from your office as to the approvals needed to establish such hotel uses on the Property.

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Section 6-304 of the Fairfax County Zoning Ordinance provides that a hotel use is permitted in areas zoned PRC-Town Center only upon approval of a special exception by the Board of Supervisors, except where a hotel use was specifically identified as a pre-approved use on the applicable Development Plan. As noted above, the approved Development Plan for the Property (Exhibit A) designates a series of special exception and special permit uses that may be established by-right on property subject to the Development Plan without the need to secure additional approvals from the Board of Supervisors or Board of Zoning Appeals. Had such uses not been listed as "pre-approved" uses on the Development Plan, their establishment would have required approval of either a special exception or a special permit, as applicable.

Based on our analysis of the Development Plan, hotel uses do not appear to have been among the special exception uses listed on the Development Plan as being pre-approved PRC-Town Center uses that could be developed by-right on the Property. Accordingly, it is our interpretation that the establishment of hotel uses on the Property requires the approval of a special exception by the Board of Supervisors, as well as approval of the otherwise-required Concept Plan, PRC Plan and Site Plan. We respectfully request your confirmation of our interpretation.

V. Conclusion

In summary, we have requested confirmation from your office of the following issues:

- A. That the Property may be developed with High Density Residential uses in accordance with the PRC-Town Center zoning district provisions and the applicable Development Plan and Proffers;
- B. That the maximum number of residential dwelling units that may be established on the Property is 1,112 units, calculated based on 50 dwelling units per acre measured across the 22.24 acres of the Property;
- C. That the Property may be developed with structures exceeding 15 stories in height, provided no structure exceeds a maximum 180 feet in height;
- D. That, as part of a mixed-use development on the Property, a Group 5 health club would be as a permitted, by-right use in accordance with the approved Development Plan, without the need to file and have approved a separate special permit application;
- E. That any Group 5 health club or similar use located in the cellar of a structure constructed on the subject Property would not be considered gross floor area, provided its location met the definition of "cellar" set forth in the Zoning Ordinance; and

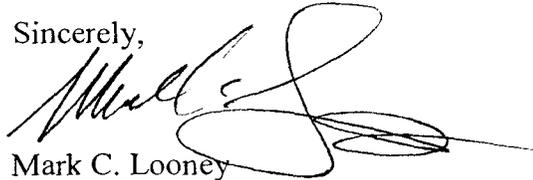
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- F. That the establishment of hotel uses on the Property will require approval of a special exception by the Board of Supervisors.

We appreciate your assistance with these numerous and complicated issues. Thank you in advance for your cooperation and assistance. Should you have any questions or need additional information, please do not hesitate to contact me at 703-456-8652.

Sincerely,



Mark C. Looney

Enclosures

cc: John H. Toole, Esquire, Cooley Godward LLP

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