

PROFFERS

RZ 2007-MV-004

June 4, 2007

Pursuant to Section 15.2-2303(a) Code of Virginia, 1950, as amended, BADCO, LLC d/b/a DAKS Restaurant (hereinafter referred to as the "Applicant"), for itself, its successors and assigns in RZ 2007-MV-004, filed for property identified as Tax Map reference 101-3 ((1)) 96 (hereinafter referred to as the "Application Property") hereby proffers the following, provided that the Board of Supervisors approves a rezoning of the Application Property to the C-6 District in conjunction with a Generalized Development Plan (GDP) for an eating establishment.

1. GENERALIZED DEVELOPMENT PLAN

- a. Subject to the provisions of Section 18-204 of the Fairfax County Zoning Ordinance (hereinafter referred to as the "Zoning Ordinance"), development of the Application Property for use as an eating establishment shall be in substantial conformance with the GDP, entitled "DAKS Restaurant/Woodlawn Court" consisting of seven (7) sheets prepared by Dewberry and Davis, LLC, dated February 5, 2007, and revised through May 18, 2007.
- b. Pursuant to Paragraph 5 of Section 18-204 of the Zoning Ordinance, minor modifications to the GDP may be permitted as determined by the Zoning Administrator. The Applicant reserves the right to make minor adjustments to the layout and building footprint at the time of site plan submission based on final engineering and utility locations, provided that the changes are in substantial conformance with the GDP, and there is no substantial decrease to the amount of open space, setbacks, or distances to peripheral lot lines as dimensioned on the GDP.
- c. The Applicant shall provide written notification to the Mount Vernon District Supervisor's office of any proffer interpretation request submitted to the Zoning Administrator pursuant to Proffer 1.b. concurrent with the submission of such request. Said notification shall include a copy of the request.

2. CLEARING AND GRADING

The Applicant shall generally conform to the limits of clearing and grading as shown on the GDP, subject to minor modifications as may be required for the installation of fences, utilities and/or trails as determined necessary by the Department of Public Works and Environmental Services (DPWES). If it is determined necessary to install fences, utilities and/or trails in areas protected by the limits of clearing and grading as shown on the GDP, they shall be located in the least disruptive manner necessary as determined by DPWES.

3. TREE PRESERVATION/TRANSPLANTATION

- a. The Applicant shall retain the services of a certified arborist or landscape architect, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to a pre-construction meeting that will be held between the Applicant's certified arborist or landscape architect and an Urban Forestry Management (UFM) representative. Before or during the pre-construction meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with the UFM representative to determine where adjustments to the clearing limits can be made to permit areas of preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustments shall be implemented.
- b. The Applicant shall provide a transplanting plan as a part of the first and all subsequent submissions of the site plan for review and approval by the Forest Conservation Section. The plan shall be prepared by a professional with experience in the preparation of tree transplanting plans, such as a certified arborist or landscape architect. The plan shall address, among other things, the feasibility of transplanting the American holly located near the front of the existing dwelling located on the Application Property.
- c. At time of landscaping installation or transplantation, the Applicant shall coordinate an on-site meeting with a representative of UFM to review and approve the plantings process.

4. STORMWATER MANAGEMENT/BEST MANAGEMENT PRACTICES

The Applicant shall implement stormwater management (SWM) and Best Management Practices (BMP) techniques to control the quantity and quality of stormwater runoff from the Application Property in accordance with the standards of the Fairfax County Public Facilities Manual (PFM) as determined by DPWES and in substantial conformance with the GDP. The Applicant shall provide a SWM dry pond and an underground SWM facility as depicted in the general locations shown on the GDP and in accordance with the requirements of the Chesapeake Bay Preservation Ordinance, as determined by DPWES. The Applicant shall also utilize, if acceptable to DPWES, low impact development techniques including, but not limited to, bio-retention basins/filters, percolation trenches, vegetated swales and porous pavers, provided such techniques are in substantial conformance with the GDP. Alternative innovative techniques may also be used as determined by DPWES, provided said techniques are in substantial conformance with the GDP.

5. TRANSPORTATION

- a. Subject to Virginia Department of Transportation (VDOT) and DPWES approval, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way up to a width of seventy-seven (77) feet from the centerline along the Application Property's Richmond Highway frontage as shown on the GDP. Dedication shall be made at time of site plan approval, or upon demand of either Fairfax County or VDOT, whichever should first occur.

- b. Subject to VDOT and DPWES approval, the Applicant shall construct frontage improvements to Woodlawn Court measuring approximately thirteen (13) feet from the centerline to the face of curb as shown on the GDP. Said frontage improvements shall be constructed concurrently with the development of the Application Property.
- c. Prior to site plan approval, the Applicant shall record a public access easement to the benefit of Fairfax County over the parking lot and connection to the service drive west of the Application Property as shown on the GDP. Said easement shall be in a form as reviewed and approved by the Fairfax County Attorney's office and recorded among the Fairfax County Land Records.
- d. The Applicant reserves density credit as may be permitted by the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance for all dedications described herein and as may be reasonably required by Fairfax County or VDOT whether such dedications occur prior to or at time of site plan approval.
- e. Prior to site plan approval, an interparcel access easement shall be provided along the western property line of the Subject Property as generally shown on the GDP. The final location of the interparcel access shall be determined at time of site plan approval. Said easement shall be in a form as reviewed and approved by the Fairfax County Attorney's office and recorded among the Fairfax County Land Records. The Applicant shall cooperate, at no cost, with the relocation of said easement, if necessary, upon redevelopment of the adjacent property identified among the Fairfax County tax map records as 109-2 ((1)) 24. The final location of the easement shall not interfere with the Applicant's established traffic circulation pattern.

6. STREETSCAPE

- a. The Applicant shall install a streetscape consisting of landscaping and a trail along the Application Property's Richmond Highway frontage as shown on the GDP. Modifications to the trail location as shown on the GDP shall be permitted to preserve existing vegetation. The Applicant shall coordinate the plant selection and installation of the proposed streetscape with UFM, DPWES and VDOT.
- b. Prior to site plan approval, the Applicant shall enter into a license agreement with Fairfax County and/or VDOT, as may be necessary, to permit landscaping to be maintained in the area to be dedicated along the Application Property's Richmond Highway frontage, as specified in Proffer 5.a and as shown on the GDP.
- c. The Applicant shall install a streetscape consisting of landscaping and a trail along the Application Property's Woodlawn Court frontage as shown on the GDP. Modifications to the trail location as shown on the GDP shall be permitted to preserve existing vegetation. The Applicant shall coordinate the plant selection and installation of the proposed streetscape with UFM, DPWES and VDOT.

- d. Prior to site plan approval, the Applicant shall enter into a license agreement with Fairfax County and/or VDOT, as may be necessary, to permit landscaping to be maintained within the Woodlawn Court right-of-way as shown on the GDP.

7. ENVIRONMENTAL DESIGN

The Applicant shall incorporate environmentally sustainable elements into its building program that include, but are not necessarily limited to, high-efficiency mechanical systems, use of materials with recycled content, a high performance and insulated building envelope, water efficient fixtures, low volatile organic compounds in paints, sealants and finish materials, construction waste management and storage and collection of recyclables. These measures shall be provided to an extent and in a manner that is consistent with the most current version of the United States Green Building Council's Leadership in Energy and Environmental Design rating system for new construction (LEED-NC), including alternative credit language and compliance measures as may be permitted through the most current version of any LEED-NC program specifically applicable to retail projects, as documented through a statement to be provided to DPWES, prior to bond release, that certifies to this level of performance for each of these elements. This statement shall be certified by a LEED-accredited professional.

8. LIGHTING

Any outdoor lighting shall be of full cutoff type and otherwise meet the performance standards of Part 9 of Article 14 of the Zoning Ordinance.

9. SIGNS

All signs located on the Application Property shall comply with the requirements of Article 12 of the Zoning Ordinance.

10. HOURS OF OPERATION

- a. The hours of operation for the eating establishment shall be limited to between the hours of 10:00 a.m. and 2:00 a.m. the following day.
- b. The playing of live music, amplified or non-amplified, on the patio shall be limited to between the hours of 5:00 p.m. and 11:00 p.m., Monday through Saturday. The playing of live music, either amplified or non-amplified, on the patio shall be prohibited on Sunday. Televisions shall not be permitted on the patio.
- c. Trash removal and deliveries by outside vendors shall be limited to between the hours of 7:00 a.m. and 7:00 p.m.

11. HERITAGE RESOURCES

Prior to site plan approval, the Applicant shall provide one (1) copy of a Phase I Archaeology Survey of the Application Property to the Park Authority Resource Management Division within thirty (30) days of the study or survey completion. If potentially significant archaeological resources are discovered, Phase II testing and Phase III data recovery shall be performed by the Applicant as may be recommended by the Park Authority Resource Management Division. Copies of subsequent studies shall also be forwarded to the Park Authority Resource Management Division within thirty (30) days of the study or survey completion.

12. COUNTERPARTS

These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute but one and the same instrument.

13. MISCELLANEOUS

These proffers shall bind and inure to the benefit of the Applicant and its successors and assigns.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

Title Owner of Tax Map 101-3 ((1)) 96

ESTATE OF VIOLA FRANCES CORNELIA
GRUBBS, DECEASED



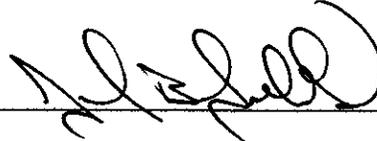
By: John B. Grubbs, Administrator and Beneficiary

ESTATE OF JOAN E. JOHNSTON,
INCAPACITATED



By: John B. Grubbs, Conservator

ESTATE OF BONNIE J. GRUBBS,
INCAPACITATED



By: John B. Grubbs, Conservator

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

Applicant/Contract Purchaser of Tax Map 101-3 ((1)) 96

BADCO, LLC D/B/A DAKS RESTAURANT



By: Barry H. Clark, Jr.

Its: Member/Manager



By: David J. Giampietro

Its: Member/Manager

[SIGNATURES END]