



County of Fairfax, Virginia

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March 11, 2011

Inda E. Stagg, Land Use Coordinator
Walsh, Colucci, Lubeley, Emrick & Walsh, P.C.
2200 Clarendon Blvd., Thirteenth Floor
Arlington, VA 22201-3359

Re: Interpretation for PCA C-696-7 and FDPA C-696-2, Dulles Station, Tax Map Parcel 15-4
((5)) 2B (Building I) and 3A (Building K): Unit Shift

Dear Ms. Stagg:

This is in response to your letters of January 10, 2011, and February 11, 2011, requesting an interpretation of the proffers accepted by the Board of Supervisors and the Final Development Plan Amendment (FDPA) approved by the Planning Commission in conjunction with the approval of the above referenced applications. As I understand it, the question is whether shifting seven units from Building I to Building K would be in substantial conformance with PCA C-696-7 and FDPA C-696-2. This determination is based on your letters, the proffers, and the approved development plan. Copies of your letter and relevant exhibits are attached.

The subject property is located within Dulles Station at Dulles Corner, a 63.12 acre mixed use development in the PDC District that was rezoned from the RE-1 District to the PDC District on August 25, 1975 to permit a convention center, commercial office space, and research and development at an overall FAR of 0.33. Subsequently, in 1989, PCA/FDPA C-696 were approved to permit an increase in the overall FAR to 0.70 for the development of office, hotel, and retail uses. On October 16, 2000, the Board of Supervisors approved PCA C-696-2 to permit a mixed use development of office, retail, and multi-family uses with an overall FAR of 0.99. Concurrent FDPA C-696-2 was approved by the Planning Commission on September 7, 2000. The site is currently governed by the proffers accepted with PCA C-696-7, which was approved by the Board of Supervisors on October 20, 2008, to permit modifications to the proffers to clarify the principle and secondary uses permitted on the site and to clarify the proffered term "restaurant" to include eating establishments and fast food restaurants per the Zoning Ordinance definitions, and FDPA C-696-2.

The area under discussion in your letter is located in Land Bay II located in the southern part of the development and consists of two building, Buildings I and K that are both shown as six-story residential structures in the tabulations on Sheet 3 of the approved development plan. Building I was approved for 240,000 square feet of gross floor area and 218 dwellings/rooms. Building K was approved for 278,000 square feet of gross floor area and 250 dwellings/rooms. As I understand it, neither building has been developed.

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You indicate that the owner would like to relocate seven dwelling units from Building I to Building K and reduce the number of dwelling units in Building I accordingly. The total number of dwelling units in the two buildings would remain at the approved 468. You also state that six of the relocated units within Building K would be live/work units and built to commercial standards. Specifically, you state that the question is whether the construction of 257 dwelling units including six live/work units within Building K and 211 units in Building I would be in substantial conformance with the approved proffers and development plan. Six of the proposed live/work units are proposed to be constructed within the "Flex Space" described in Proffer 10g and the seventh relocated unit is a standard rental unit.

In your letter of January 10, 2011, you cite two proffers, Proffers 10e and 10g of the proffers accepted with PCA C-696-4. Proffer 10e states the following:

"A minimum of 8,000 square feet of retail, office, service and/or a combination of residential and office, residential and retail, or residential and service uses shall be designed and constructed on the ground level of Building I adjacent to the central spine road as depicted in Exhibit B and shall have direct public access and windows oriented toward the central spine road. This space shall be designed in accordance with this proffer and shall meet the appropriate building codes for non-residential uses. The applicant shall retain a qualified commercial broker to market this space upon commencement of construction. If the retail, office, service and/or a combination of residential and office, residential and retail, or residential and service uses are not occupied within twelve months of issuance of the first Non-RUP or RUP for building I, then temporary residential occupancy of this space may occur. However, prior to issuance of a RUP for this space, proof of best effort to lease this space for retail, office, service and/or a combination of residential and office, residential and retail, or residential and service uses shall be provided to the Director of the Planning and Zoning Department to demonstrate the failed attempts and within five years of issuance of the first RUP or Non-RUP for Building I, this area must be leased exclusively for retail, office, services and/or a combination of residential and office, residential and retail, or residential and service uses."

Exhibit B referenced above, contains a table for Buildings B through K with the minimum amounts of retail/restaurant/service square footage required and the minimum area required to be designed and constructed for flex uses. Flex uses are defined as retail, office or a combination of residential and retail, residential and office and service uses. Note 2 states that additional retail/restaurant and flex uses are permitted in all buildings.

Proffer 10g states the following:

"The Applicant shall use best efforts to provide retail, office service and/or a combination of residential and office, residential and retail, or residential and service uses in the ground level space oriented toward the central spine road in Building K as shown on Exhibit B with direct public access and windows oriented to the central spine road. Best efforts shall include retaining a qualified retail broker and marketing the space for a twelve (12) month period beginning no more than twenty-four (24) months prior to commencement of construction. In the

event the marketing efforts are not successful in attracting the stated uses, the applicant may construct and lease ground level spaces as residential dwellings."

Note 18 of the General Notes on Sheet 8 of the development plan permits minor modifications to the size, dimensions, footprints and location of buildings, among other things. It also states that the footprints represented "*are approximate and may be increased or decreased and the number of units in each building may be modified, so long as the minimum open space provided in the tabulation and the minimum dimensions to the peripheral lot lines are not diminished.*"

As I understand it, no changes to the building footprints or in the overall approved density are proposed. Your proposal would permit six live/work units and one market unit to shift from Building I to Building K, which has more latitude in developing ground level residential spaces. Subject to meeting the marketing conditions specified in Proffer 10g, there is the possibility that residential units at ground level could remain permanently, whereas in Building I they could not.

It is my determination that the shifting of seven residential units from Building I to Building K, with six of the relocated units being constructed as live/work units on the ground floor and one unit as a market rate rental unit, as discussed above, would be in substantial conformance with the proffers and the FDPA. Please note that this determination in no way modifies the proffered commitments contained in Proffer 10e regarding the leasing requirements for the ground level of Building I.

This determination 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 Mary Ann Godfrey at (703) 324-1290.

Sincerely,



Barbara C. Berlin, AICP, Director
Zoning Evaluation Division, DPZ

MAG/O:\mgodf2\DullesStation, Bldgs. K, I (PCA C-696-7, FDPA C-696-7) shift units New 1.doc

Attachments: A/S

cc: Catherine Hudgins, Supervisor, Hunter Mill District
Frank De La Fe, Planning Commissioner, Hunter Mill District
Diane Johnson Quinn, Deputy Zoning Administrator, ZAD, DPZ
Kenneth Williams, Plan Control, Land Development Services, DPWES
Angela Rodeheaver, Chief, Site Analysis Section, DOT
Kevin J. Guinaw, Chief, Special Projects/Applications Management Branch, DPZ
Audrey Clark, Director, Building Plan Review Division, DPWES
File: PCA C-696-7, FDPA C-696-2, PI 1101 004, Imaging, Reading File



Inda E. Stagg
Land Use Coordinator
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WALSH COLUCCI
LUBELEY EMRICH
& WALSH PC

February 11, 2011

RECEIVED
Department of Planning & Zoning
FEB 15 2011
Zoning Evaluation Division

Via Hand Delivery

Mary Ann Godfrey
Senior Staff Coordinator, DPZ/ZED
12055 Government Center Parkway; Suite 801
Fairfax, Virginia 22035

Re: Interpretation Request for Dulles Station
Additional Information as Requested
PCA C-696-7 (the "PCA") and FDPA C-696-2 (the "FDPA") (together, the
"Approvals")
TM 15-4 ((5)) 3A (Building K) and 2B (Building I)

Dear Ms. Godfrey:

Thank you for meeting with Graham Brock and Marty Mankowski of JLB Partners, and me on Tuesday of this week to discuss the January 10, 2011 interpretation request submitted to Barbara Berlin. During our meeting, you requested that I submit an addendum to that request in order to clarify the question. This letter is submitted to you as clarification and is to be considered an addendum to the previously submitted interpretation request.

As stated in the previous letter, there are 218 dwelling units approved for Building I and 250 dwelling units approved for Building K, which results in a total of 468 dwelling units for the two buildings combined. The owners are proposing that seven dwelling units from Building I be permitted to be constructed in Building K. This would result in a total of 211 dwelling units in Building I and 257 dwelling units in Building K. The total number of dwelling units constructed for both buildings combined would remain at 468.

The owner is proposing that the six relocated units be constructed as live/work units within Building K as is permitted pursuant to Proffer 10g, and that one of these relocated units be a standard rental unit. These additional six live/work units within Building K must be constructed to commercial standards pursuant to proffered commitments; however, a Residential Use Permit ("RUP") must be issued in order to occupy the residential portion of the live/work unit. Therefore, the question is, "Would the construction of 257 dwelling units within Building K be in substantial conformance with the approved proffers and plans if the number of dwelling units in Building I were reduced to 211 and if six of the additional units within Building K are located and

constructed within the "Flex Space" as described in Proffer 10g, and one of the relocated units is a standard rental?"

As always, we appreciate your attention to these matters. Please do not hesitate to contact me if you should have any questions or require additional information.

Very truly yours,

WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.

A handwritten signature in cursive script that reads "Inda E. Stagg". To the right of the signature, there are initials "CS" written in a similar cursive style.

Inda E. Stagg
Land Use Coordinator

cc: Paul R. Johnston
Graham Brock
Martin Mankowski
Martin D. Walsh



WALSH COLUCCI
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& WALSH PC

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RECEIVED
Department of Planning & Zoning
JAN 11 2011
Zoning Evaluation Division

January 10, 2011

Via Hand Delivery

Barbara C. Berlin
Director, Fairfax County Department of Planning & Zoning
Zoning Evaluation Division
12055 Government Center Parkway; Suite 801
Fairfax, Virginia 22035

Re: Request for Interpretation
PCA C-696-7 (the "PCA") and FDPA C-696-2 (the "FDPA") (together, the
"Approvals")
TM 15-4 ((5)) 3A (Building K) and 2B (Building I)
Density as it Relates to "Live Work" Units within Certain Areas of Buildings I
and K of Dulles Station Land Bay II

Dear Ms. Berlin:

Please accept this letter as a request for an interpretation of the proffers and development plan associated with the PCA and FDPA, particularly as the Approvals permit construction of a certain number of residential units within Buildings I and K.

I have researched the zoning history of Buildings I and K and find that by zoning approval 218 dwelling units and a minimum of 8,000 square feet of retail, office, service and/or a combination of residential and office, residential and retail, or residential and service uses are to be designed and constructed on the ground level of Building I, and that 250 dwelling units and an undetermined amount of retail, office, service and/or a combination of residential and office, residential and retail, or residential and service uses may be constructed in Building K. Although not specifically stated, it appears that the proffers' references to "a combination of residential and office, residential and retail, or residential and service uses" would be more commonly known as "live/work" units. After speaking to Daryl Varney in the Zoning Permits and Review Division, it is my understanding that there is no particular permitting process in Fairfax County to obtain an occupancy permit for a live/work unit, that the commercial portion of that unit must obtain a NonRUP, and that the residential portion of that unit must obtain a RUP. If this is true, then there appears to be an implied increase in the number of dwelling units over and above the approved 218 dwelling units in Building I and 250 dwelling units in Building K if the flex space within each of those buildings is constructed as live/work

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ATTORNEYS AT LAW

units. My question is, "Is an increase in dwelling units over and above 218 in Building I and 250 in Building K in substantial conformance with the proffers and applicable FDPA, assuming that the increase in dwelling units is created by the construction of live/work units within the flex space proffered for Buildings I and K?"

A copy of all proffers that apply to Building I and Building K have been included for reference. Proffer 10e and Proffer 10g, which are specifically applicable to the question are quoted below.

Proffer 10e outlines the use of Flex Space within Building I (see proffers for PCA C-696-4). This proffer states,

"A minimum of 8,000 square feet of retail, office, service and/or a combination of residential and office, residential and retail, or residential and service uses shall be designed and constructed on the ground level of Building I adjacent to the central spine road as depicted in Exhibit B and shall have direct public access and windows oriented toward the central spine road. This space shall be designed in accordance with this proffer and shall meet the appropriate building codes for non-residential uses. The applicant shall retain a qualified commercial broker to market this space upon commencement of construction. If the retail, office, service and/or a combination of residential and office, residential and retail, or residential and service uses are not occupied within twelve months of issuance of the first Non-RUP or RUP for Building I, then temporary residential occupancy of this space may occur. However, prior to issuance of a RUP for this space, proof of best effort to lease this space for retail, office, service and/or a combination of residential and office, residential and retail, or residential and service uses shall be provided to the Director of the Planning and Zoning Department to demonstrate the failed attempts and within five years of issuance of the first RUP or Non-RUP for Building I, this area must be leased exclusively for retail, office, service and/or a combination of residential and office, residential and retail, or residential and service uses."

Proffer 10g outlines the use of the Flex Space within Building K (see proffers for PCA C-696-4). This proffer states,

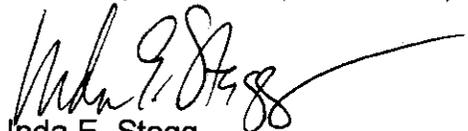
"The Applicant shall use best efforts to provide retail, office, service and/or a combination of residential and office, residential and retail, or residential and service uses in the ground level space oriented toward the central spine road in Building K as shown on Exhibit B with direct public access and windows oriented to the central spine road. Best efforts shall include retaining a qualified retail broker and marketing the space for a twelve (12) month period beginning no more than twenty-four (24) months prior to

commencement of construction. In the event the marketing efforts are not successful in attracting the stated uses, the Applicant may construct and lease ground level spaces as residential dwellings.”

I have received a Zoning Compliance Letter from Cathy Belgin dated September 17, 2010 that confirms the applicable Zoning approvals for Building I and Building K as well as the number of residential units and flex space approved for each building. This letter has not been attached, but could be provided if you believe that it would be helpful. I have also performed extensive research into the proffers and approvals for these buildings. If the Staff person assigned to this interpretation would find it helpful, I would welcome an opportunity to meet with them in order to provide a summary of the zoning history and to determine what additional materials may be useful. I appreciate your attention to this request. Please do not hesitate to contact me if you should have any questions or require further information.

Very truly yours,

WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.



Linda E. Stagg
Land Use Coordinator

Enclosures

cc: Paul R. Johnston
Martin D. Walsh