

PROFFER STATEMENT

Rezoning Case No.: RZ 2000-LE-023
Applicant / Title Owner: Tavares Concrete Company, Inc.
Title Owner: Drakes Creek Holding Company, LLC
Property: Tax Map 99-2-((1))-17, 18 and 19
Proposed Zoning: I-5
Date: February 21, 2002

Pursuant to Section 15.2-2303(A), Code of Virginia, 1950, as amended, Tavares Concrete Company, Inc., as applicant and title owner of Lot 17 (hereinafter referred to as the "Applicant") and Drakes Creek Holding Company, LLC, as title owner of Lots 18 and 19, for themselves and their successors and assigns, in RZ-2000-LE-023 (the "Application"), filed for property as Tax Map 99-2-((1))-17, 18 and 19 (hereinafter referred to as the "Application Property") agree to the following proffers, provided the Board of Supervisors approves the Application. Each reference to "Applicant" in this proffer statement shall include and be binding upon all owners, successors, assigns, and/or developers of any portion of the Application Property.

1. Generalized Development Plan: Subject to Section 18-204 of the Zoning Ordinance, the Application Property shall be developed substantially in accordance with the Generalized Development Plan ("GDP"), dated April 25, 2000, and last amended on February 1, 2002, prepared by Dewberry & Davis, and consisting of four (4) sheets.
2. Land Use: The Application Property shall only be developed with one or more of the following principal uses:
 - (a) contractor's offices and shops;
 - (b) establishments for printing of any size, production, processing, assembly, manufacturing, compounding, preparation, cleaning, servicing, testing, repair or storage of materials, goods or products, and associated retail sales;
 - (c) establishments for scientific research, development and training;
 - (d) light public utility uses;
 - (e) offices;
 - (f) warehousing; and
 - (g) wholesale trade establishments.

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at Fairfax, Virginia, on the 8th day of April, 2002, the following ordinance was adopted:

AN ORDINANCE AMENDING THE ZONING ORDINANCE
PROPOSAL NUMBER RZ 2000-LE-023

WHEREAS, Tavares Concrete Company, Incorporated filed in the proper form an application requesting the zoning of a certain parcel of land herein after described, from the R-1 District to the I-5 District, and

WHEREAS, at a duly called public hearing the Planning Commission considered the application and the propriety of amending the Zoning Ordinance in accordance therewith, and thereafter did submit to this Board its recommendation, and

WHEREAS, this Board has today held a duly called public hearing and after due consideration of the reports, recommendation, testimony and facts pertinent to the proposed amendment, the Board is of the opinion that the Ordinance should be amended,

NOW, THEREFORE, BE IT ORDAINED, that that certain parcel of land situated in the Lee District, and more particularly described as follows (see attached legal description):

Be, and hereby is, zoned to the I-5 District, and said property is subject to the use regulations of said I-5 District, and further restricted by the conditions proffered and accepted pursuant to Va. Code Ann., §15.2-2303(a), which conditions are in addition to the Zoning Ordinance regulations applicable to said parcel, and

BE IT FURTHER ENACTED, that the boundaries of the Zoning Map heretofore adopted as a part of the Zoning Ordinance be, and they hereby are, amended in accordance with this enactment, and that said zoning map shall annotate and incorporate by reference the additional conditions governing said parcel.

GIVEN under my hand this 8th day of April, 2002.



Nancy Veirs
Clerk to the Board of Supervisors

3. **Storage:** Storage yard use shall be permitted on the Application Property subject to the following restrictions and conditions:

- (a) Outdoor storage shall be permitted on Lot 17 on a temporary basis until the issuance of a Non-Residential Use Permit for property located at 8000 Cinder Bed Road [Tax Map 99-2-((1))-10] provided the Applicant complies with the timeline schedule contained in Proffer No. 18 below. In no event shall outdoor storage be permitted on Lot 17 later than August 31, 2003.
- (b) The type of materials and/or equipment stored outside temporarily on Lot 17 shall be limited to dump trucks, slip-form curb machines, cranes, bulldozers, tractor trailers, forms and molds for concrete work, and other items typically used and stored by contractors.
- (c) The Applicant shall prepare and submit a minor site plan for the outdoor storage on Lot 17 within thirty (30) days after the approval date of this Application. The Applicant shall respond to comments from the Department of Public Works and Environmental Services (DPWES) within thirty (30) days after receipt (including submission of any requested revisions), and shall obtain a Non-Residential Use Permit for the use as soon as the required improvements, if any, are completed, but not later than sixty (60) days after minor site plan approval. If no improvements are required as part of the minor site plan approval, the Applicant shall obtain a Non-Residential Use Permit within ten (10) days after the approval date of the minor site plan.
- (d) After the temporary period, storage of materials and equipment on Lot 17 shall be subject to the limits outlined below.

Any storage yard use on Lots 18 and 19 (and Lot 17 after the temporary period) shall be subject to the following restrictions and conditions:

- (w) No outdoor storage shall be permitted.
- (x) Storage shall be accessory to the principal use.
- (y) Storage of materials and equipment shall only be permitted inside the structures depicted on the GDP. In no event shall storage include the storage of items commonly found in junk yards (e.g., abandoned vehicles and discarded appliances).
- (z) The restrictions and conditions applicable to storage use, as outlined above, shall not be applicable to the parking of vehicles on the Application Property. Storage of vehicles shall only be accessory to the principal use, as limited by Proffer No. 6 below.

4. **Special Exception and Special Permit Uses:** Notwithstanding Proffer No. 2 above, Special Permit and Special Exception uses shall be permitted 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.
5. **Floor Area Ratio:** The total FAR on the Application Property shall not exceed 0.20, which shall not result in an increase in the footprint of the structures depicted on the GDP.
6. **Parking:** The number of parking spaces provided on the Application Property shall meet the parking requirements contained in the Zoning Ordinance, as determined by DPWES. Additional parking spaces shall not be created in landscaped open space areas depicted on the GDP. Finally, no more than ten (10) vehicles containing three (3) or more axles (i.e., dump trucks, tractor trailers, mixers, loaders and other vehicles typically used by contractors) shall be parked outdoors on the Application Property at any one time, and so long as storage of these vehicles is accessory to the principal use occurring within the structures. Vehicles with two (2) axles that are not tagged and licensed for road use (e.g., back hoes and bobcats) shall not be parked or stored outdoors. No garbage trucks shall be parked on the Application Property. All vehicle parking and storage shall be accessory to the principal use occurring within the structures.
7. **Lighting:** All outdoor lighting, if installed, shall be designed and located in accordance with the glare standards as set forth in Part 9 of Article 14 of the Zoning Ordinance in effect at the time of site plan approval for each building. No freestanding lighting shall have poles that exceed 20 feet in height. All lighting shall have full cut off fixtures that direct light downward and inward.
8. **Hazardous Materials:** No hazardous or toxic substances, hazardous waste or petroleum products shall be generated, stored or disposed of on the Application Property in violation of law.
9. **Cinder Bed Road:** At the time of site plan approval, or upon written demand by the Board of Supervisors or the Virginia Department of Transportation, whichever first occurs, the Applicant shall dedicate and convey in fee simple to the Fairfax County Board of Supervisors right-of-way measuring thirty-five (35) feet from the existing center line along the Application Property's Cinder Bed Road frontage, as shown on the GDP. The Applicant shall construct Cinder Bed Road as a one-half section of a two (2) lane undivided roadway (up to 26 feet of pavement from centerline. The entrance to the Application Property shall be constructed pursuant to Virginia Department of Transportation standards. The fence depicted on the GDP shall be constructed to ensure adequate sight distance for vehicles entering and exiting the Application Property.
10. **Access Easement Abutting Lots 18 and 19:** There shall be no vehicular access to the Application Property via the existing easement, recorded in Deed Book 455 at Page 186 among the Fairfax County land records, that is located on the abutting property, known as the Hawthorne Property and located on Tax Map 99-2-((1))-24. Further, the Applicant shall employ all reasonable efforts, as determined by DPWES, to vacate and abandon its interests

in the easement as it applies to Lots 18 and 19 within four (4) months after the approval date of the Application.

11. **Architecture**: The Applicant reserves the right to construct the building on Lot 17 as a three (3) sided building with the west side (facing Cinder Bed Road) remaining open. The building on Lot 17 may be constructed of metal, similar in style and appearance to the buildings depicted on Attachment A. The buildings on Lots 18 and 19 shall be constructed to have exterior facades that are at least 50% brick, architectural block, architectural precast concrete, glass, job cast architectural concrete or other similar quality material (collectively, "Architectural Block"). The southern (i.e., rear) side of each building on Lots 18 and 19 shall be constructed of Architectural Block and shall not have any windows or doors. The buildings shall be connected by a matching Architectural Block seven foot (7') wall, in the location depicted on the GDP.
12. **Landscaping**: Landscaping of the Application Property shall be generally consistent in terms of character and quantity with that indicated on the GDP, subject to final approval by the Urban Forestry Division of DPWES. Specific features such as the exact locations of plantings shall be subject to modification with final engineering and architectural design. The landscaping to be planted on Lots 18 and 19 shall be installed prior to the issuance of a Non-Residential Use Permit for any use on the Application Property, other than the temporary storage. With respect to Lot 17, the Applicant shall plant the landscaping depicted on the north side of the existing fence located on the northern end of Lot 17 (as depicted on the GDP) as soon as reasonably possible after the Application is approved, but in no event later than the issuance of the Non-Residential Use Permit for the temporary storage use. Such landscaping on the northern end shall be depicted on the minor site plan for Lot 17 referenced in Proffer No. 3 above. The remainder of the landscaping to be planted on Lot 17 (as depicted on the GDP) shall be installed as soon as reasonably possible after site plan approval for the building to be constructed on Lot 17. All landscaping shall maintained in good health by the Applicant and, if it dies or becomes severely diseased, the landscaping shall be replaced as soon as reasonably possible, based on the growing season for the particular replacement materials. The Applicant shall not use, or permit the use by others of, the transitional screening areas for any unauthorized purpose. The barriers (i.e., fences and walls) depicted on the GDP shall be maintained, repaired or replaced by the Applicant.
13. **Oak Tree**: The Applicant shall make good faith best efforts, as determined by the Urban Forestry Division of DPWES, to preserve the existing oak tree on Lot 18 that is noted on the GDP. The Applicant shall coordinate its efforts to preserve this tree with the Urban Forestry Division of DPWES. If the tree can not, or does not, survive construction, then the Applicant shall replace the tree with three (3) additional 3.5' to 4" caliper deciduous trees in the eastern transitional screening area.
14. **Phase I Environmental Study**: At the time of site plan approval, the Applicant shall prepare a Phase I Environmental Study of the Application Property. The study shall be submitted to the Department of Public Works and Environmental Services for review and approval in coordination with the Fire and Rescue Department, the Health Department and other appropriate agencies, as reasonably determined by DPWES (hereinafter referred to as the "reviewing agencies"). The Phase I Environmental Study shall be generally consistent with

the procedures described within the American Society for Testing and Materials document entitled "*Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*," as determined by DPWES in coordination with the reviewing agencies. If warranted by the results of the Phase I investigation, as reasonably determined by DPWES in coordination with the reviewing agencies, a Phase II monitoring program shall be pursued in order to determine if soil, surface water or ground water contaminants are present on the Application Property and/or have migrated from the Application Property. If such a program is pursued, monitoring parameters shall be subject to the approval of DPWES in coordination with the reviewing agencies. If contaminants are detected in concentrations requiring remedial action, a remediation program shall be performed in accordance with all applicable Federal, State and County requirements. Sufficient documentation of completion of the remediation program (with the exception of long term follow-up monitoring efforts or an appropriate corrective action exception of long term follow-up monitoring efforts) or an appropriate corrective action plan consistent with the proposed development (as reasonably determined by DPWES in coordination with the reviewing agencies) shall be provided to DPWES prior to site plan approval.

15. **Noise Ordinance:** The Applicant shall comply with the regulations and restrictions contained in the Fairfax County Noise Ordinance.
16. **Signage:** The Applicant shall comply with Article 12 of the Zoning Ordinance for purposes of erecting signage on the Application Property.
17. **Island Creek Clean-Up:** The Applicant shall coordinate with the Lee District Supervisor and the Island Creek Homeowners Association to clean up the open space area adjacent to the Application Property. Specifically, the parties may designate a day for such clean up and the Applicant shall provide dumpsters and assist with some labor for the work; provided, however, that the value of the Applicant's contribution shall not exceed \$3,000.00. The Applicant shall not be responsible for any dump or disposal fees associated with the clean-up work. The Applicant's obligation to coordinate with the other parties and to contribute shall expire and terminate one (1) year after the approval date of this Application if such clean up has not occurred by that date.
18. **Timing of Construction and Occupancy of 8000 Cinder Bed Road:** In order to minimize the need for temporary outdoor storage on Lot 17, as noted in Proffer No. 3 above, the Applicant shall proceed diligently and in good faith with the site planning and construction of the property now owned by the Applicant located at 8000 Cinder Bed Road [Tax Map 99-2-((1))-10]. Specifically, the Applicant shall comply with the timeline attached as Attachment B, such compliance being subject to (i) extreme or unusual weather conditions, (ii) timely review, comment and approval of the site plan and other necessary permits by Fairfax County and its reviewing agencies and (iii) force majeure (acts of God). Notwithstanding the preceding two sentences, in no event shall outdoor storage be permitted on Lot 17 later than August 31, 2003.
19. **Geotechnical Study:** The Applicant shall submit a geotechnical engineering study to DPWES for review and approval prior to final site plan approval, and recommendations generated by this study shall be implemented as required by DPWES.

20. **Loading Areas:** The loading area for the building developed on Lot 17 shall be located on either the western or northern sides of the building. The loading areas for the buildings developed on Lots 18 and 19 shall be located on the northern side of the buildings.
21. **Density Credit:** Density credit shall be reserved for the Application Property as permitted by the provisions of Section 2-308 of the Zoning Ordinance for all dedications described herein and/or on the GDP or as may be reasonably required by Fairfax County or VDOT at the time of site plan approval.
22. **Severability:** Any of the lots may be subject to a Proffered Condition Amendment application without joinder and/or consent of the other lot owners, if such PCA does not effect any other lots. Previously approved proffered conditions applicable to the lot(s) which is/are not subject of such a PCA shall otherwise remain in full force and effect. Further, the Applicant reserves the right to file for a special exception application without filing for an amendment to the GDP so long as the floor area ratio is not increased and all proffered conditions are satisfied.
23. **Successors and Assigns:** Each reference to "Applicant" in this Proffer Statement shall include within its meaning, and shall be binding upon, the Applicant's successor(s) in interest and/or developer(s) of the Application Property, or any portion thereof.
24. **Counterparts:** To facilitate execution, this Proffer Statement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of all of the parties to this Proffer Statement appear on each counterpart of this Proffer Statement. All counterparts of this Proffer Statement shall collectively constitute a single instrument.

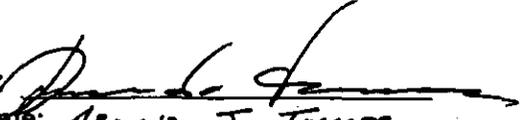
Attachments:

Attachment A - Building Description Type for Lot 17

Attachment B - Timing Schedule for 8000 Cinder Bed Road

Applicant / Title Owner of Lot 17:

Tavares Concrete Company, Inc.

By: 

Name: Armando J. TAVARES

Title: PRESIDENT

Title Owner of Lots 18 and 19:

Drakes Creek Holding Company, LLC

By: 

Name: Charles W. DANNER

Title: MANAGER

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