

**RZ-1999-DR-012 – ROBERT FRANK PENCE
PROFFER STATEMENT**

APRIL 8, 1999

MAY 7, 1999

MAY 27, 1999

JUNE 8, 1999

JUNE 16, 1999

JUNE 17, 1999

JUNE 22, 1999

Pursuant to Section 15.2-2303(A) of the Code of Virginia, as amended, and subject to the Board of Supervisors' approval of rezoning application RZ-1999-DR-012, as proposed, for rezoning from the C-6, HC, SC and CRD Districts to the C-3, HC, SC and CRD Districts, Robert Frank Pence (the "Applicant"), for himself and his successors and assigns, hereby proffers that development of Tax Map Parcels 30-2-((1))-17 and 18 (the "Property"), containing approximately 2.3974 acres, shall be in accordance with the following proffered conditions:

1. Substantial Conformity for Hotel Use. Subject to the provisions of Section 18-204 of the Zoning Ordinance, if the Property develops pursuant to special exception approval for a hotel use, the Property shall be developed in substantial conformance with the Generalized Development Plan entitled "Grand Duke Hotel, McLean" prepared by The Engineering Groupe, dated February 25, 1999; as revised through June 22, 1999 (the "GDP"), as further modified by these proffered conditions.
2. Substantial Conformity for Office Use. Subject to the provisions of Section 18-204 of the Zoning Ordinance, as an alternative to the hotel use should the hotel use not be implemented, the Property may be developed for office and mixed uses, not to exceed .7 FAR provided: (i) the building footprint for the office structure is located within the hotel building footprint and the expanded building envelope for office use as depicted on the GDP; (ii) those portions of the first floor of the office building fronting on Beverly Road and Old Dominion Drive shall be used for retail, financial institution, eating establishment, personal service establishment, business service and supply establishment and/or health club facility uses subject to the provisions of Section 4-300 and Article 10 of the Zoning Ordinance; however, the Applicant may use the entire first floor for such uses; (iii) the office structure shall be predominantly earth-toned red brick ("Virginia Brick") and of an architectural style similar to that depicted on sheet 4 of the GDP; (iv) parking for the office structure shall be in conformance with Article 11 of the Zoning Ordinance as modified by Section A7-300 (the McLean Commercial Revitalization District) of the Zoning Ordinance; (v) if the pool and recreation area depicted on the GDP are not constructed, this area may be converted to parking, loading spaces, and/or landscaping in which event access may be provided where loading spaces are presently shown or at such other location as may be approved by DPWES; and (vi) the office use shall be in substantial conformance with the GDP and these proffers.

3. Minor Modifications to Design. Pursuant to Paragraph 5 of Section 18-204 of the Zoning Ordinance, the Applicant may make minor adjustments to the GDP, if such changes are in substantial conformance with the GDP and these proffers, and if the changes do not increase total square footage, exceed maximum heights, decrease the minimum amount of open space, or decrease the amount of setback along the property boundaries. Such changes may include, without limitation, adjusting the size and location of building footprints and shifting parking spaces between surface and garage spaces.
4. Land Use. The maximum floor area ratio ("FAR") for the entire property shall not exceed 1.0 for hotel and Article 10 accessory and accessory service uses, or .70 for the office/mix and accessory uses permitted pursuant to Proffers 2 and 12. The Applicant reserves the right to develop a full service restaurant as a use accessory to the hotel or otherwise consistent with Article 4, Part 3 (the C-3 Office District) of the Zoning Ordinance.
5. Right-of-Way Dedication. As depicted on the GDP and/or as otherwise consistent with Proffer 9, the Applicant shall dedicate right-of-way along the Beverly Road frontage of the Property as depicted on the GDP. All right-of-way dedicated in conjunction with these proffers and as depicted on the GDP shall be conveyed to the Board of Supervisors in fee simple upon demand by the County or at the time of recordation of the approved final site plan, whichever occurs first.
6. Utilities. Subject to approval by the appropriate utility provider, the Applicant shall relocate, underground, any overhead utility lines located on or traversing the Property, within an approved utility easement, located in consultation with Fairfax County Department of Public Works and Environmental Services ("DPWES") at the time of site plan approval; however, the Applicant shall not be required to underground any utility lines traversing streets.
7. Architecture. The hotel structure shall be of an architectural style and quality comparable to the elevations on Sheet 4 of the GDP. Brick portions of the building façade shall be predominantly earth-toned red brick ("Virginia Brick").
8. Landscaping, Streetscaping and Plaza. Landscaping and streetscaping shall be provided in substantial conformance with the location, quality and quantity of plantings depicted on Sheets 2 and 3 of the GDP. The location and design of the plaza located on Beverly Road ("Plaza") and the location and design of the corner feature/amenity area at the intersection of Old Dominion Drive and Beverly Road shall be in substantial conformance with the illustrative plans on Sheet 3 of the GDP. If, during the process of site plan review, any landscaping shown on the GDP is removed or moved to locate utility lines as determined necessary by DPWES, an area of additional landscaping of equivalent value may be substituted at another location or locations on the Property; to facilitate approval by DPWES of the design and location of the Plaza as shown, the Applicant shall commit to restoration, to the approved design, should maintenance access by DPWES cause removal or destruction. It shall be the responsibility of the

Property owner/Applicant to prune trees planted within the VDOT right-of-way or within an easement maintained by VDOT to ensure adequate sight distance. If utility easements or line of sight issues preclude the planting of trees as depicted on Old Dominion Drive, the trees will be relocated to another portion of the site and the planting strip along Old Dominion Drive will be landscaped with a combination of low growing shrubs and flower beds. The Plaza shall be privately owned and maintained by the Applicant. Use of the Plaza for community sponsored public events will be evaluated by the Applicant on a case by case basis and, while it is the Applicant's intent to generally allow such uses so long as they are not detrimental to the Property and its users, such uses shall be permitted in each instance at the Applicant's sole discretion; in the absence of a PCA approved by the Board of Supervisors, the Plaza shall not be converted to parking, expanded structure, or other uses inconsistent with its design intent as a focal point and gathering place. Plant species, lighting fixtures and street furniture, including benches and trash receptacles actually provided, shall be in substantial conformance with the applicable McLean Central Business Center (CBC) Open Space Design Standards for Sub-area 22a as defined and described in Plan Amendment 95-30.

9. Sidewalks. As depicted on the GDP, and subject to approval by the Virginia Department of Transportation ("VDOT") and/or approval by DPWES, the Applicant shall construct (i) a 7 ½' brick sidewalk with adjacent planting strip extending along the Property's Old Dominion Drive frontage and extending along the Property's Beverly Road frontage to the plaza area; and (ii) a 5' brick sidewalk with adjacent planting strip along the Property's Beverly Road frontage from the plaza area to the southwestern property boundary. Said sidewalks shall be designed in conformance with VDOT standards defined in Special Design Section A-97 or an alternative standard provided by DPWES; however, if required by VDOT or Fairfax County for maintenance purposes, said sidewalks may be constructed to a lesser width than noted in (i) and (ii) above, or of a lesser paving material (such as stamped concrete resembling brick or concrete paving units). All such sidewalk improvements shall be constructed within the public right-of-way, which may require additional right-of-way dedication from the Applicant, unless it is determined at the time of site plan approval that the improvements shall be accepted by VDOT for maintenance within a public access easement. If there is dedication of right-of-way to the Board of Supervisors in conjunction with sidewalk improvements, all intensity of use attributable to land areas dedicated and conveyed to the Board of Supervisors pursuant to these proffers shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the residue of the subject Property.

10. Pedestrian Crosswalk. At the time of final site plan approval, the Applicant shall escrow \$27,360 to DPWES for construction by others of a brick/paver "crosswalk" across Beverly Road, within the VDOT right-of-way, in conformance with the design guidelines for the McLean Central Business Center. If said crosswalk has not been constructed by others within thirty-six (36) months of the aforesaid escrow deposit by Applicant, the escrow shall be released to Applicant by DPWES.

11. Signage. Signage shall be limited to monument and building mounted signs permitted per Article 12 of the Zoning Ordinance. The location and design of signs shall generally conform to the illustratives shown on Sheet 3 of the GDP.

12. Conversion of Hotel to Office Use. If the Property is developed for hotel use, future conversion of the hotel to office/mixed use may be permitted subject to the following conditions: (i) there shall be no piecemeal conversion of hotel rooms to office/mixed use; if conversion is proposed, all hotel space must be converted at the same time; (ii) the first floor of the structure will be used for retail, restaurant and/or financial institution uses consistent with Proffer 2 above; (iii) prior to issuance of a Non-Residential Use permit, the Applicant shall certify in writing to the Zoning Administrator and demonstrate to the Zoning Administrator's satisfaction that the total square footage for the office and mixed uses permitted pursuant to Proffer 2 above shall not exceed a .7 FAR; (iv) parking for uses located within the structure must conform to Article 11 of the Zoning Ordinance as modified by Section A7-300 (the McLean Commercial Revitalization District) of the Zoning Ordinance; (v) the basic exterior elements of the structure (such as the roofline, architectural style and materials) shall remain in substantial conformity with Sheet 4 of the GDP and Proffer 7. The Applicant acknowledges that conversion of the hotel structure to office/mixed use may involve significant design, engineering and construction costs and the Applicant is willing to accept the economic risk of such conversion.

13. Density Credit. All intensity of use attributable to land areas dedicated and conveyed to the Board of Supervisors pursuant to these proffers shall be subject to the provisions of Paragraph 4 of Section 2-308 of the Zoning Ordinance and is hereby reserved to the residue of the subject Property.

14. Successors and Assigns. Each reference to "Applicant" in this proffer statement shall include within its meaning and shall be binding upon, Applicant's successor(s) in interest and/or developer(s) of the site or any portion of the site.

15. Counterparts. To facilitate this 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 the parties to the Proffer Statement appear on each counterpart of this Proffer Statement. All counterparts of this Proffer Statement shall collectively constitute a single instrument.

*Robert Frank Pence by Francis A. Mc Dermott,
Agent and Attorney-in-Fact*

ROBERT FRANK PENCE
 BY FRANCIS A. MCDERMOTT, AGENT
 AND ATTORNEY-IN-FACT
 Applicant and Contract Purchaser

[SIGNATURES CONTINUE]

GEO. H. RUCKER REALTY CORPORATION
Title Owner of Parcels 30-2-((1))-17 and 18

By: Richard Wolf
Name: RICHARD C. WOLF
Title: EXEC. V. P.

POWER OF ATTORNEY TO EXECUTE PROFFERS

KNOW ALL MEN BY THESE PRESENTS that I, Robert Frank Pence, of 1359 Beverly Road, McLean, Virginia 22101, applicant in Fairfax County rezoning application No. RZ 1999-DR-012, have made, constituted and appointed Francis A. McDermott, 1751 Pinnacle Drive, McLean, Virginia 22102, my true and lawful attorney to execute on my behalf any and all proffers in connection with Fairfax County Application RZ 1999-DR-012 pursuant to Section 15.2-2303A of the 1950 Code of Virginia, as amended, and for that purpose, for me and in my name, place, and stead, and as my act and deed, to do and execute, or to concur with persons jointly interested with me therein in the execution of said proffers, in the same manner and with the same effect as I myself might or could.

KNOW ALL MEN FURTHER that this power of attorney, and the authority herein granted, shall not terminate on disability, incompetence, or incapacity of the principal.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of June, 1999.

Robert Frank Pence (SEAL)
ROBERT FRANK PENCE

STATE OF Virginia
COUNTY OF Fairfax, to wit:

I, the undersigned Notary Public in and for the State and County aforesaid, do hereby certify that Robert Frank Pence, whose name is signed to the foregoing, has this day personally appeared before me and acknowledged the same to be his act and deed.

GIVEN under my hand this 11th day of June, 1999.

Jeanne A. Hathorn
NOTARY PUBLIC

My Commission Expires: 7.31.99