



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

December 20, 2011

Mary Matthews and Richard Melanson
7027 Little Leaf Linden Lane
McLean, VA 22101

Re: Interpretation for RZ/FDP 2003-DR-049; Tax Map Number 30-4 ((1)) 3, 3A, 4, 5, 5A, 6;
Rosewood Building & Development LLC: Garage Limitations

Dear Ms. Matthews and Mr. Melanson:

This is in response to your letter of October 24, 2011, requesting an interpretation of the proffers and the Conceptual Development Plan (CDP) accepted by the Board of Supervisors in conjunction with the approval of Rezoning RZ 2003-DR-049, and the Final Development Plan (FDP) and development conditions approved by the Planning Commission in conjunction with the approval of FDP 2003-DR-049. As I understand it, the question is whether the proffered restrictions on the use of garages for any purpose other than the storage of motor vehicles apply to one or two motor vehicles. This determination is based on your letter and the proffers, copies of which are attached.

On November 14, 2004, the Board of Supervisors approved RZ 2003-DR-049, subject to proffers to rezone the property to Planned Development Housing District (PDH-12) and the Commercial Revitalization District (CRD) to permit residential development of 26 townhouse units. The townhouse units were each developed with garages for two vehicles and 18-foot long driveways for two vehicles. Proffer 12, relevant to this interpretation, states:

Garages and Driveways. The Applicant shall place a covenant on each residential lot that prohibits the use of the garage for any purpose which would preclude motor vehicle storage. This covenant shall be recorded among the land records of Fairfax County prior to the sale of lots and shall run to the benefit of the HOA and to the Board. Prior to recordation, the covenant shall be approved by the Fairfax County Attorney's office. The HOA documents shall expressly state this use restriction. The driveway provided for each unit shall be a minimum of eighteen (18) feet in length to permit the parking of two (2) vehicles without overhanging into the sidewalk. Garages shall be designed to accommodate two (2) vehicles. The minimum number of off-street parking spaces provided shall be the aforementioned two (2) per dwelling unit (provided in the garages) plus 0.5 visitor spaces per unit.

According to your letter, you are asking if the use of garages for any purpose other than motor vehicle storage would be in substantial conformance with the proffers and the development conditions. In addition, you ask if the parking of one vehicle in the garage while using the remainder of the garage for personal storage would be in substantial conformance with the proffers and development conditions.

Department of Planning and Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509
Phone 703 324-1290
FAX 703 324-3924
www.fairfaxcounty.gov/dpz/



Mary Matthews and Richard Melanson

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You state that some of the garages have been utilized for personal storage rather than motor vehicle parking, which precludes the use of the garages for vehicle parking. You indicate that this results in crowded parking conditions within the development, since personal vehicles are parked in off-street spaces. You note that the McLean Cove Board of Directors has determined that the proffers mean one vehicle, because it refers to the use of the garage for any purpose which would preclude motor vehicle (singular) storage. However, it is your contention that the proffers require residents who own multiple vehicles to provide garage space to park two vehicles, since the HOA covenant states that garages shall be used only for purposes which will not interfere with the parking of vehicles (plural).

You provided a partial copy of the Home Owners' Association (HOA) restrictive covenant, Article VIII, Powers and Duties of the Association, Section 17, which states:

Garages. Garages shall be used only for purposes which will not interfere with the parking of vehicles. No garage may be converted into living space. This covenant may also be enforced by the appropriate officials of Fairfax County, Virginia as provided in the Proffers. Furthermore, Section 12 of the covenant states: Proffers. The Property is also subject to proffers (the "Proffers"), dated December 16, 2004. These Proffers must be complied with and run with the land. In the event of a conflict between the Declaration (or other Founding Documents) and the Proffers, then the Proffers shall control....

It is my determination that Proffer 12 and the approved CDP/FDP which shows two-car garages requires the capacity to park two vehicles in the garages of the residential units and prohibits the use of the garages for any purpose that would preclude motor vehicle storage. As such, the use of garages for any purpose that would preclude motor vehicle storage would not be in substantial conformance with the proffers, the CDP/FDP and development conditions. However, should a unit resident possess only one car, as documented to the HOA, it is my determination that the capacity to park only one car would be in substantial conformance with the proffers, the CDP/FDP and development conditions, and the remaining garage bay would not be restricted by the proffer. This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator and only addresses the issues discussed herein. If you have any questions regarding this interpretation, please contact Carrie Lee at (703) 324-1290.

Sincerely,



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

BCB/CDL/O:\clee01\Interpretations\RZ\Rosewood_garage limitations.doc

Attachments: A/S

cc: John W. Foust, Supervisor, Dranesville District
Jay Donahue, Planning Commissioner, Dranesville District
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ
Ken Williams, Technical Processing, Land Development Services, DPWES
Kevin Guinaw, Chief, Special Projects/Applications Management Branch, ZED, DPZ
File: RZ/FDP 2003-DR-049, PI 11 01 116, Imaging, Reading File

RECEIVED
Department of Planning & Zoning

OCT 27 2011

Zoning Evaluation Division

October 24, 2011

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

Dear Ms. Berlin,

We own a town home in the McLean Cove community located at the intersection of Chain Bridge and Davidson Roads in McLean within Fairfax County Virginia. In requesting an Interpretation of an Approved Zoning Application, we are providing the following information.

Contact Information

Mary Matthew and Richard Melanson
7027 Little Leaf Linden Lane
McLean, VA 22101
Mary's cell number: 703-635-6190

Reference to Rezoning Application

RZ/FDP 2003-DR-049, Rosewood Building & Development LLC
Tax Map Parcels 30-4-(1)-3,3A,4,5,5A,6
Proffer Statement November 8, 2004

Interpretation Question

The interpretation question relates to proffered condition 12. Garages and Driveways which is excerpted below and attached in its entirety. **Specifically, does the proffered condition mean that an owner's garage should not be used for any purpose which would preclude storage of 1 vehicle or 2 vehicles?**

Board of Directors Decision-September 29, 2011

The McLean Cove Board of Directors decided, without soliciting a legal opinion, that the proffered condition means 1 vehicle because it refers to the use of the *garage* for any purpose which would preclude motor *vehicle* storage (vehicle excludes an "s" and therefore is singular rather than plural). The Board acknowledged that HOA restrictive covenant Section 17.Garages in the Declarations contains different language by stating that garages shall be used only for purposes which will not interfere with the parking of *vehicles* (vehicles includes an "s" meaning more than 1). However, the Board referred to HOA documents, Article VIII, Powers and Duties of the Association 12. Proffers which states that in an event of a conflict between the Declaration (or other Founding Documents) and the Proffers, then the Proffers shall control. Following are excerpts

from the above mentioned documents. The attachments show entire paragraphs or sections from the documents.

Excerpt Proffer Statement dated November 8, 2004

12. Garages and Driveways states that the Applicant (Rosewood) shall place a covenant on each residential lot that prohibits the use of the garage for any purpose which would preclude motor *vehicle* storage and requires Rosewood to expressly state this use restriction in HOA documents. The proffer paragraph further specifies that the driveway provided for each unit shall be a minimum of 18 feet in length to permit the parking of two (2) vehicles without overhanging into the sidewalk. Garages shall be designed to accommodate two (2) vehicles.

Excerpt HOA Restrictive Covenants from Declaration

17. Garages states that garages shall be used only for purposes which will not interfere with the parking of *vehicles*.

Our Argument with respect to proffered condition 12. Garages and Driveways

In the context of the entire proffered paragraph on garages, the proffer clearly relates to a single garage that permits parking two vehicles as each home Rosewood constructed has one garage with space for parking two vehicles. Although almost all homes have 2 vehicles, if a resident has only 1 vehicle and stores it in the garage, the remaining garage space could be used for storage. However, we object to residents who have multiple vehicles but can park only 1 car in the garage due to storing household goods in the garage and park other vehicle(s) in off-street parking spaces.

If the proffered condition intended to mean only 1 vehicle, it would have stated that the covenant prohibits the use of the garage for any purpose which precludes the storing of one vehicle. Furthermore, the language "vehicle storage" is similar to other phrases such as "no car parking" or "car parking across the street" which do not include an "s" for the plural form of car since it would be obvious in these situations as it is in the proffered paragraph.

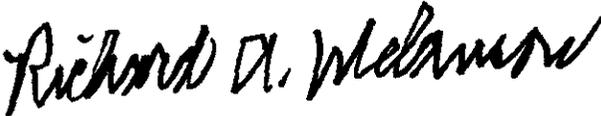
Request for Interpretation

The interpretation and explanation that we request relates to whether the proffered condition means 1 or 2 vehicles. The Board and we would not be satisfied with a response that says the HOA Restrictive Covenant in the Declarations is in "substantial conformance" with proffered condition 12. Garages and Driveways. Therefore, if you have questions please contact us to discuss. We have enclosed a check for \$520 required to process our interpretation request. This is a substantial sum for an individual to pay for an interpretation so please do not cash the check unless you can answer our question by explaining if the proffered condition means 1 or 2 vehicles.

Sincerely,



Mary Matthews and Richard Melanson



as adjusted for inflation from the date of these proffers, based on the Engineering News Record Construction Cost Index, or the amount equivalent to three years of the HOA's annual payment to the underground facilities replacement reserve fund, as determined by DPWES, whichever is greater.

- The Applicant agrees, prior to site plan approval, to escrow with Fairfax County for future assignment by the County to the HOA, the amount equivalent to 20-years of maintenance of the underground facilities, as determined by DPWES. These monies shall not be made available to the HOA until after final bond release.

1) The Applicant agrees to ensure that development of Mclean Cove shall not result in an increase in the amount of surface stormwater runoff that flows onto the Stoneleigh Subdivision from the rear portion of the project.

10. Public Schools Contribution At the time of issuance of the first building permit, Applicant shall contribute to Fairfax County \$76,600.00 for capital improvements to Longfellow Middle School. Said contribution shall be deposited by DPWES into the County Schools Proffer Account for distribution by the Board of Supervisors to the Fairfax County Public Schools for application to public school construction projects in the vicinity of the subject property.

Recreational Facilities. The Applicant shall comply with Paragraph 2 of Section 6-110 and with Section 16-404 of the Zoning Ordinance as follows:

Contribution to Fairfax County of \$955.00 per unit, credited against that contribution shall be the cost of the design and construction of on-site recreational improvements. In the event the total cost of the on-site recreation expenses is less than the proffered \$955.00 per market rate unit, the Applicant shall provide a cash contribution to the Park Authority for the remainder of the recreational facility contribution ("Park Contribution"), payable at the time of issuance of each building permit and to be used solely for development of park facilities in the vicinity of this development.

12. * Garages and Driveways. The Applicant shall place a covenant on each residential lot that prohibits the use of the garage for any purpose which would preclude motor vehicle storage. This covenant shall be recorded among the land records of Fairfax County prior to the sale of lots and shall run to the benefit of the HOA and to the Board. Prior to recordation, the covenant shall be approved by the Fairfax County Attorney's office. The HOA documents shall expressly state this use restriction. The driveway provided for each unit shall be a minimum of eighteen (18) feet in length to permit the parking of two (2) vehicles without overhanging into the sidewalk. Garages shall be designed to accommodate two (2) vehicles. The minimum number of off-street parking spaces provided shall be the aforementioned two (2) per dwelling unit (provided in the garages) plus 0.5 visitor spaces per unit.

3. Open Space. A minimum of thirty-one (31) percent of the site shall be retained in open space. At the time of recordation of the final record plat/subdivision plat, the Applicant

ARTICLE VIII

POWERS and DUTIES OF THE ASSOCIATION

incurred by Fairfax County, which costs, if and when so assessed, shall constitute a continuing lien on each lot in the same character as that described in Article IV hereof; provided that in the event that Fairfax County makes such an assessment against each lot, said lien shall nonetheless be subordinate to the lien of any prior recorded first mortgage or deed of trust on any Lot. This covenant shall run with the Property and be binding on all parties having any right, title or interest in any lot therein.

* Section 12. Proffers. The Property is also subject to proffers (the "Proffers"), dated December 16, 2004, pursuant to Rezoning Application Number RZ 2003-DR-049, adopted by the Fairfax County Board of Supervisors on or about December 16, 2004. These Proffers must be complied with and run with the land. In the event of a conflict between the Declaration (or other Founding Documents) and the Proffers, then the Proffers shall control. A copy of the Proffers is attached hereto as Exhibit A and incorporated by reference.

Section 13. No Third-Party Beneficiaries. This Declaration is only for the benefit of the parties expressly provided herein, and no third-party beneficiaries, rights or remedies shall be created hereby.

WITNESS the following signatures and seals:

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

HOA RESTRICTIVE COVENANTS

any other Owner or Occupant. No sign advertising the presence of such home office shall be permitted. Except for such home office use, no industry or profession of any kind, commercial, religious, educational or otherwise, shall be conducted, maintained or permitted on the Property.

*Section 17. Garages. Garages shall be used only for purposes which will not interfere with the parking of vehicles. No garage may be converted into living space. This covenant may also be enforced by the appropriate officials of Fairfax County, Virginia as provided in the Proffers.

Section 18. Additional Rules. The Declarant and the Association shall have the authority to adopt such rules and regulations regarding this Article as it may from time to time consider necessary or appropriate.

Section 19. Enforcement of Rules. The Declarant, the Association, and any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of any such party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 20. Further Subdivision. No Lot shall be subdivided. The Declarant, however, for itself, and its successors and assigns, reserves the right to alter, amend and