



County of Fairfax, Virginia

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

January 10, 2011

Molly M. Novotny
Senior Land Use Planner
Cooley, LLP
11951 Freedom Drive
Reston, Virginia 20190

Re: Interpretation for RZ 2011-LE-008, Belvoir Corporate Park, Tax Map 99-2 ((1)) 8 and 99-2 ((1)) 7A: Proffer II.A and II.B

Dear Mrs. Novotny:

This is in response to your letter of November 15, 2011 (copy attached), requesting an interpretation of the proffers accepted by the Board of Supervisors in conjunction with the approval of RZ 2011-LE-008. As I understand it, the question is whether the proposed tracking method for office uses in the development would be in substantial conformance with the proffers.

On November 1, 2011, the Board of Supervisors approved RZ 2011-LE-008, subject to proffers dated October 27, 2011. The application rezoned two parcels on 24.68 acres from the R-1 District to the C-3 District to allow the development of up to 200,000 square feet of office and up to 50,000 square feet of cellar space. Proffers II.A and II.B define uses proposed on the site and uses considered "non-office" for the purposes of developing the property.

You propose a tracking method for office uses to ensure compliance with the approved proffers and to avoid confusion at the time of building permit review. First, you propose that the Fairfax County Department of Public Works and Environmental Services (DPWES) include a condition with the approval of any site plan that requires a statement from the applicant identifying office and non-office uses consistent with Proffers II.A and II.B as each interior building permit application is submitted. Second, you propose that the Applicant and its successors would submit such a statement and a cumulative spreadsheet identifying how much of the total square footage of the development as of the date of the permit application consists of office and non-office uses consistent with Proffers II.A and II.B. Third, you propose that Fairfax County issue a written statement confirming that the development remains in compliance with Proffers II.A. and II.B. at the time the building permit is issued.

Your proposal would not conflict with the approved proffers for RZ 2011-LE-008 and would provide a vehicle for tracking the uses defined by the proffers. However, implementation of this process is entirely

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contingent upon DPWES review and approval of the site plan and initiation of site plan conditions they deem necessary. The proposed tracking method should not include additional administrative tasks for DPWES. DPWES would also have to agree to require the building permit reviewer to issue a written statement confirming that the development remains in compliance with Proffers IIA. and IIB., as you have proposed, at the time the building permit is issued. Such a step is not necessary because issuance of the building permit based upon the tabulations will confirm that the development is in compliance with the proffers.

Therefore, it is my determination that the proposed tracking method, with the exception of the third step which requires written confirmation by the County, would be in substantial conformance with the proffers, subject to acceptance and approval by DPWES.

This determination has been coordinated with DPWES and has been made in my capacity as the duly authorized agent of the Zoning Administrator and address only the issues discussed herein. If you have any questions regarding this interpretation, please feel free to contact Erin Grayson at (703) 324-1290.

Sincerely,



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

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Attachments: A/S

cc: Jeffrey McKay, Supervisor, Lee District
James Migliaccio, Planning Commissioner, Lee District
Diane Johnson-Quinn, Deputy Zoning Administrator
Gursharan Sidhu, Chief Site Review Engineer, Land Development Services, DPWES
Ken Williams, Plan Control, Land Development Services, DPWES
Regina C. Coyle, Assistant Director, Zoning Evaluation Division, DPZ
Kevin J. Guinaw, Chief, Special Projects/Applications Management Branch, ZED, DPZ
File: RZ 2011-LE-008, PI 11 01 125, Imaging, Reading File



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RECEIVED
PLANNING & ZONING DIVISION
NOV 15 2011
Zoning Evaluation Division

November 15, 2011

Barbara Berlin
Director, Zoning Evaluation Division
Fairfax County Department of Planning and Zoning
12055 Government Center Parkway
Fairfax, VA 22035

RE: Proffer Interpretation for RZ 2011-LE-008 Proffer II.A and II.B

Dear Barbara:

The recent approval of the above-referenced application (the "Development") included with it a proffer that specifically permits the Applicant to exclude from the definition of "office" uses certain features, facilities and activities that might otherwise be considered "office" uses under Fairfax County's ordinances and permitting policies. This letter proposes a procedure by which this distinction can be administered by both Fairfax County and the Applicant, thereby providing both parties an easy and systematic way for the County to issue Non-Residential Use Permits ("Non-RUPs") for the Development.

Belvoir Corporate Campus was approved as a 250,000 square foot development, of which no more than 200,000 square feet could be used for "office" uses. Proffer II.B specifically excludes from the definition of office uses the following facilities and activities within the proposed buildings:

1. Core area used by the building tenants or owners (such as rest rooms, mechanical rooms, electrical rooms, janitor and building maintenance rooms);
2. Accessory uses and accessory service uses as permitted by Article 10;
3. Specialty areas used by building tenants or owners (such as computer rooms, telecommunications centers, research centers, computer labs, datacenter space, battery rooms, secure ("SCIF") conference or training rooms, conference centers, bulk storage for documents, paper and office supplies, goods and products of the building tenants or janitorial supplies, libraries, etc.);

In light of this language, the Applicant is permitted, when demonstrating compliance with the office density limitation set forth in the approved Proffers, to exclude from its calculations those portions of the building(s) that constitute the building core area, along with any other areas of the building(s) in which activities other than employee work desks are located, such as shared conference rooms, storage areas, utility closets, etc. Said another way, any space that is not occupied by a desk and otherwise would be considered complementary or accessory space to a



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building's office employees is considered Non-Office use and is permitted above and beyond the 200,000 square feet of traditional office space.

We understand that many of the facilities and functions that are excluded from the definition of office uses under the approved Proffers nonetheless would be considered "office" uses for purposes of obtaining building permits ("BP") and Non-RUPs under applicable Fairfax County codes and ordinances. As a result, such facilities and activities can and will be considered "office" uses in connection with the County's approval of site plan, BP and Non-RUP applications, yet still be excluded from the definition of "office" uses when demonstrating compliance with the proffered density limitation. Clearly, this has the potential to create confusion and uncertainty absent a process to properly track this distinction.

To that end, we suggest the following as a means to establish and facilitate a standard tracking mechanism by which the County and the Applicant can ensure future compliance with the office density limitation:

1. Fairfax County will include as a Post-Approval Site Plan Condition a requirement that the Applicant and its successors shall include with each interior BP application a statement identifying how much of the interior building area covered by such application will be used for Office or Non-Office uses as defined in the Proffers.
2. In connection with each interior BP application submitted for the Development, the Applicant and its successors shall comply with the development condition outlined in No. 1 above, as well as provide Fairfax County a spreadsheet identifying how much of the total square footage of the Development as of the date of the permit application is being used for Office or Non-Office uses as defined in the Proffers.
3. Fairfax County will, in connection with its issuance of each BP and Non-RUP for the Development, issue written confirmation that the Development remains in compliance with the proffered density limitations for Office and Non-Office uses as defined in the Proffers.



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We believe this process will ensure continued compliance with Proffers II.A and II.B and provide a reasonable and effective tracking mechanism for both the County and the Applicant and its successors.

We look forward to working with the County to memorialize this, or some other mutually agreed upon process, by which we can ensure compliance with these proffers. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Molly Novotny".

Molly M. Novotny
Senior Land Use Planner

cc: Regina Coyle, Department of Planning
Erin Grayson, Department of Planning
Audrey Clark, Building Permit Review Division
Mark C. Looney, Cooley LLP
Steve W. Schmitz, Loisdale 24 LLC

enc. Proffers for RZ 2011-LE-008

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