

## PROFFERS

### MHI LAUGHLIN AVENUE VENTURE, L.L.C.

RZ 2000-DR-053

March 21, 2001

Pursuant to Section 15.2-2303(a), *Code of Virginia*, 1950 as amended, the owners and MHI-Laughlin Avenue Venture, L.L.C., the Applicant in RZ 2000-DR-053, filed for property identified as Tax Map 30-2 ((9)) 56-66 and the alleys to be vacated (hereinafter referred to as the "Application Property") proffer for themselves, their successors and assigns the following, provided that the Board of Supervisors (hereinafter referred to as the "Board") approves the requested rezoning from R-4 (HC) to PDC-Planned Development Commercial Use District.

1. Development Plan. Development of the Application Property shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan ("CDP/FDP"), prepared by Walter L. Phillips Incorporated, consisting of ten (10) sheets dated August 8, 2000, revised through February 21, 2001.
2. Final Development Plan Amendment. Notwithstanding that the CDP/FDP is presented on 10 sheets and said CDP/FDP is the subject of Proffer No. 1 above, it shall be understood that the CDP shall be the entire plan shown on Sheets 1 and 3 relative to the points of access, the total square footage, the general location of the buildings, the location of the retail and office components within the building and the location of the Civic Place open space area. The Applicant has the option to request a Final Development Plan Amendment ("FDPA") for elements other than CDP elements from the Planning Commission for all of or a portion of the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance, if in conformance with the approved CDP and proffers.
3. Minor Modifications. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the FDP may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layout shown on Sheets 2 and 3 of the FDP without requiring approval of an amended FDP provided such changes are in substantial conformance with the FDP as determined by the Department of Planning and Zoning ("DPZ") and do not increase the approved FAR, decrease the amount of open space or generally alter the location of open space areas.
4. Uses. The maximum Floor Area Ratio ("FAR") for the Application Property shall not exceed 1.57. The primary use of the building shall be multiple family dwellings. The following principal and secondary uses as identified in the PDC District, shall be permitted within the building:
  - (a) Accessory uses and accessory services uses.

While Civic Place Green shall be open for public use and enjoyment, it shall remain under the ownership and control of the to-be-established Unit Owners Association for the Application Property subject to the following stipulations which shall be included in the Unit Owners Association documents:

- (a) A public access easement in a form acceptable to the County Attorney, shall be provided and recorded over the area of Civic Place Green;
- (b) The Unit Owners Association shall be responsible for maintenance of the Civic Place Green (including the repair of any special paving treatment in Lowell Avenue and, in the event of a vacation of a portion of Lowell Avenue, the portion of Civic Place Green included within this vacated area) and the scheduling of events/activities to include an average of two events/activities per month designed to attract the public to Civic Place Green; and
- (c) To ensure that the McLean community as well as unit owners are involved with the activities at Civic Place Green, a Civic Place Green Management Committee shall be established, which Committee shall be comprised of seven (7) members; four (4) representatives from the Unit Owners Association including at least one representative of the retail owners of the retail space fronting directly onto Civic Place Green; one (1) representative from the Bryn Mawr Civic Association; one (1) representative from McLean Mews or The Hamptons community associations; and one (1) representative The McLean Revitalization Corporation. The McLean Community Center shall be included as an advisory (non-voting) member. Additional voting members and advisory (non-voting) members can be added at the discretion of the Civic Place Green Management Committee. The Management Committee shall establish by-laws governing its membership and operations, and procedures for amending its membership and operations.

6. Retail Space. For purposes of these proffers, the term "retail space" shall include retail uses, service uses, and eating establishments as defined in the Fairfax County Zoning Ordinance. The Applicant shall include approximately 11,000 square feet of retail space, on the first floor level of the building fronting on Laughlin Avenue and Civic Place Green. The Applicant shall make good faith efforts to provide a mix of two or three tenants compatible with the Comprehensive Plan and the existing tenants in the McLean CBC, including at least one eating establishment with facilities and services to accommodate an outdoor dining terrace as part of Civic Place Green, all as more particularly shown on the Option A and Option B plans for the design of Civic Place Green. No more than 5,000 square feet of retail space shall be devoted to eating establishments serving alcoholic beverages.

Service hours (i.e., the prescribed time for trash pick-ups and service deliveries, etc.) for retail uses (including eating establishments) will be restricted to the normal business hours of the day (8:00 A.M. to 6:00 P.M.) so as to minimize the impact of any noise or other disruption from servicing these retail uses on the residential units in the Civic Place development and on surrounding residential neighborhoods. Hours of operation for the

9. Design Features. Design elements within the Application Property shall include the following:
- a. A public open space/plaza area known as Civic Place shall be provided as described in Proffer #5. Landscaping of Civic Place shall be in general conformance with that shown on Sheet 9 (Option A) or Sheet 10 (Option B) of the FDP with the plaza trees being a minimum of 6 to 8 inch caliper at the time of planting.
  - b. A second level plaza for use of the residents of the Application Property shall be provided and landscaped in substantial conformance with that shown on the CDP/FDP.
  - c. Streetscape improvements shall be provided along the Application Property's frontages with Emerson, Lowell and Laughlin Avenues, including sidewalks, street trees and landscaping shown on Sheet 2 of the CDP/FDP, all in accordance with the current Open Space Design Standards for the McLean Community Business Center including the revised standards for public sidewalks, as shown on Exhibit I. A public access easement in a form acceptable to the County Attorney shall be recorded on portions of these sidewalks located outside of the rights-of-way.
  - d. A continuous pedestrian walkway connecting Laughlin Avenue and Emerson Avenue across the Application Property shall be provided by the Applicant as shown on the CDP/FDP. A public access easement shall be provided by the Applicant for the pedestrian walkway.
  - e. Benches and street furniture shall be provided in general conformance with the character shown on Sheets 9 and 10 of the CDP/FDP, all in accordance with the current Open Space Design Standards for the McLean Community business Center.
  - f. Site lighting shall be a maximum of 12 feet in height and shall utilize full cut-off fixtures designed to direct light downward and minimize spillage on adjacent properties in accordance with the revised Dark Skies-compliant lighting provisions, as shown on Exhibit II.
10. Emerson Avenue, Lowell Avenue and Laughlin Avenue Improvements.
- a. At time of site plan approval, the Applicant shall dedicate and convey in fee simple to the Board of Supervisors right-of-way along the Application Property's Emerson Avenue, Lowell Avenue and Laughlin Avenue frontages measuring 30 feet from the existing centerline.

Applicant's in accordance with the requirements of the Department of Public Works and Environmental Services ("DPWES").

The design of the facilities shall incorporate the following:

- a. The storage vault, which shall provide BMPs, shall be constructed of concrete.
- b. The pipes, which shall provide stormwater management, may be constructed of corrugated metal or galvanized steel in accordance with requirements of the Public Facilities Manual and as approved by DPWES.
- c. Safety measures shall be provided for the location of said facilities in a residential area, as may be reasonably requested by DPWES, at time of site plan approval. Safety measures may include, but not limited to, Bilco doors or equivalent, to cover the facility entrance with a double locked keyed entry and/or bolted manhole lids.

The proposed facilities shall be maintained by the Applicant, its successors and assigns, in accordance with the regulations of DPWES. Said maintenance responsibility shall be incorporated in an agreement to be reviewed and approved by the Fairfax County Attorney's office and recorded among the Fairfax County land records. Said agreement shall address the following issues:

- a. Future replacements of facilities when warranted.
- b. County inspection and all other issues as may be necessary to ensure that the facilities are maintained by the Applicants in good working order acceptable to the County so as to detain the flow of stormwater which results from development of the Application Property.
- c. Liability and insurance in an amount acceptable to the Applicant and Fairfax County.
- d. A restriction that the Applicant, their successors and assigns, shall not petition DPWES for future maintenance.
- e. Establishment of an initial fund by the Applicant for future maintenance/replacement.

If the proposed underground facility is not approved by DPWES, the Applicant shall install an alternative facility subject to the approval of DPWES. Said alternative may be approved administratively if in substantial conformance to the CDP/FDP as determined by DPZ or may necessitate an FDP/PCA to the Application Property.

16. Recreational Facilities. The Applicant shall comply with Paragraph 2 of Section 6-110 of the Zoning Ordinance regarding developed recreational facilities for the residential uses. The Applicant proffers that the minimum expenditure for the recreational facilities shall

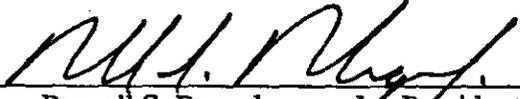
21. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.
22. Counterparts. These proffers may be executed in one or more counterparts, each of one when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one in the same instrument.
23. Severability. Any of the sections may be subject to a Proffered Condition Amendment ("PCA") without joinder and/or consent of the other sections, if such PCA does not affect any other sections. Previously approved proffered conditions applicable to the section(s) that is not the subject of such a PCA shall otherwise remain in full force and effect.

[SIGNATURES BEGIN ON NEXT PAGE]

TITLE OWNERS OF TAX MAP 30-2 ((9)) 56, 57, 58, 59,  
60, 61 AND 62 AND LAND TO THE CENTERLINE OF  
ADJACENT ALLEYS TO BE VACATED

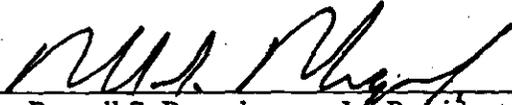
GEORGE Z. KONTZIAS

By: Madison Homes, Inc., Attorney-in-Fact

  
By: Russell S. Rosenberger, Jr., President of Madison  
Homes, Inc.

HELEN G. KONTZIAS

By: Madison Homes, Inc., Attorney-in-Fact

  
By: Russell S. Rosenberger, Jr., President of Madison  
Homes, Inc.

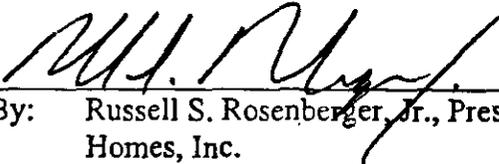
[SIGNATURES CONTINUE ON NEXT PAGE]

PROFFERS  
RZ 2000-DR-053

TITLE OWNER OF LAND TO THE CENTERLINE OF  
THE ALLEY TO BE VACATED ADJACENT TO TAX  
MAP 30-2 ((9)) 67, 68, 69

GEORGE Z. KONTZIAS

By: Madison Homes, Inc., his Agent & Attorney-in-Fact

  
By: Russell S. Rosenberger, Jr., President of Madison  
Homes, Inc.

[SIGNATURES END]