



# County of Fairfax, Virginia

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

April 16, 2012

Susan K. Yantis  
Hunton & Williams LLP  
1751 Pinnacle Drive, Suite 1700  
McLean, VA 22033

Re: Interpretation for FDPA 82-P-069-06-12, Fair Lakes Land Bay V-B, Tax Map  
55-2 ((1)) 18: Green Building

Dear Ms. Yantis:

This is in response to your letter of March 20, 2012, requesting an interpretation of the development conditions approved by the Planning Commission on October 27, 2011 in conjunction with the approval of FDPA 82-P-069-06-12. As I understand it, your interpretation relates to Development Condition 10, which states:

10. The multiple family building shall be designed and constructed as ENERGY STAR®-qualified homes. Prior to issuance of the Residential Use Permit for each dwelling unit, the applicant will submit to the Environment and Development Review Branch of DPZ documentation from a home energy rater certified through the Residential Energy Services Network (RESNET) program that demonstrates that the dwelling unit has attained the ENERGY STAR for Homes qualification.

In addition, the applicant will include a LEED®-accredited professional as a member of the design team. This professional will also be a professional engineer or architect licensed to practice in the Commonwealth of Virginia. The LEED-accredited professional will work with the team to incorporate sustainable design elements and innovative technologies into the project. Prior to site plan approval, the applicant will provide documentation to the Environment and Development Review Branch of DPZ demonstrating compliance with the commitment to engage such a professional, and shall provide a list of specific green building strategies that will be incorporated into the site.

You seek a clarification of this development condition as it relates to Energy Star qualified homes, given that there have been recent changes to the program which impact your multiple family project.

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Department of Planning and Zoning  
Zoning Evaluation Division  
12055 Government Center Parkway, Suite 801  
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The approved FDPA permits the development of the property with a six-story, C-shaped multiple family building with up to 160 units and 150,000 gross square feet. During the review of the FDPA request, staff requested a commitment to pursue green building certification and your client agreed to design and construct the building as an Energy Star Qualified Home with the understanding that the project would qualify for Energy Star for New Homes Version 2.5, which was in effect at the time of the review and approval of the FDPA application.

Since the approval of the FDPA application, you indicated that there was a change to the Energy Star for New Homes Version 2.5 program, which no longer applies to buildings over five stories tall. You also indicated that this change resulted in the creation of a new program called Energy Star for Multifamily High Rise buildings, which made the qualification requirements, on-site testing and verification protocols more stringent than the previous Energy Star for New Homes Version 2.5 program. Staff has verified that these changes have occurred. You feel that this change would negatively impact the ability for your project to attain Energy Star qualification and comply with the approved development condition.

In your letter, you indicate that your project can still be designed and constructed to meet the requirements of Energy Star for New Homes Version 2.5, but cannot obtain certification through Energy Star for New Homes because the new program (Energy Star for Multifamily High Rise) now applies to your project. You feel that the intended purpose of the approved development condition is to design and construct a multiple family building using established green building practices that could achieve green building certification through an established rating system, which at the time of the review and approval of the FDPA application included Energy Star for New Homes Version 2.5.

As an alternative, you propose to design and construct the building to Energy Star for New Homes Version 2.5 criteria and to obtain certification through the National Association of Home Builders administered ICC 700-2008 National Green Building Standard, which is a nationally recognized program comparable to Energy Star for New Homes that requires 3<sup>rd</sup> party certification. You also propose to include a LEED accredited professional as a member of the design team to work with them to incorporate sustainable design elements and innovative technologies into the project as set forth in the approved development condition. In addition, since the implementation of the National Association of Home Builders administered ICC 700-2008 National Green Building Standard occurs after substantial completion of the multiple family building, in contrast to the Energy Star program, which certifies each individual unit, you propose to provide documentation to the Environment and Development Review Branch of the Department of Planning and Zoning – Planning Division (EDRB DPZPD) demonstrating compliance with National Association of Home Builders administered ICC 700-2008 National Green Building Standard prior to the issuance of Residential Use Permits (RUPs) for units on the sixth floor.

It is my determination that your proposed alternative to design and construct the building to Energy Star for New Homes Version 2.5 criteria and to obtain certification through the National Association of Home Builders administered ICC 700-2008 National Green Building Standard would be in substantial conformance with the FDPA development conditions, subject to the submission of

documentation from a home energy rater certified through the Residential Energy Services Network (RESNET) program to the EDRB DPZPD that demonstrates that the residential units have met Energy Star for New Homes Version 2.5 criteria, at the time of building permit review or prior to the issuance of a Residential Use Permit for the units. In addition, documentation from a home energy rater that demonstrates that the multifamily building is in compliance with the National Association of Home Builders administered ICC 700-2008 National Green Building Standard shall be provided to EDRB DPZPD prior to the issuance of any RUP's for units on the sixth floor (which would equate to approximately 85% of the total number of RUPs issued for the building) with additional documentation that indicates the timeframe to achieve certification from the National Association of Home Builders.

This determination has been coordinated with the Environment and Development Review Branch, Planning Division, Department of Planning and Zoning and has been made in my capacity as the duly authorized agent of the Zoning Administrator.

If you have any questions regarding this interpretation, please feel free to contact William J. O'Donnell Jr. at (703) 324-1290.

Sincerely,



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

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Attachments:

cc: Patrick Herrity Supervisor, Springfield District  
Peter F. Murphy, Jr. Planning Commissioner, Springfield District  
Diane Johnson-Quinn, Deputy Zoning Administrator, DPZ  
Pam Nee, Section Chief Environment and Development Review Branch, PD, DPZ  
Audrey Clark, Director, Building Plan Review Division, DPWES  
Ken Williams, Technical Processing, Land Development Services, DPWES  
Kevin Guinaw, Chief, Special Projects/Applications Management Branch, DPZ  
File: FDPA 82-P-069-06-12; PI 12 03 011, Imaging, Reading File



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Department of Planning & Zoning

MAR 20 2012

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SUSAN K. YANTIS  
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FILE NO: 39704.000035  
PROFESSIONAL PLANNER

March 20, 2012

**HAND DELIVERY**

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

**Interpretation for Fair Lakes Land Bay V-B  
FDPA 82-P-069-06-12  
Tax Map 55-2 ((1)) 18 (the "Property")**

Dear Ms. Berlin:

Pursuant to Par. 4 of Section 16-403 of the Zoning Ordinance, on behalf of the contract purchaser for the Property, The Bainbridge Companies, this letter requests your interpretation of the development conditions approved by the Planning Commission on October 27, 2011 with Final Development Plan Amendment (FDPA) 82-P-069-06-12. A copy of the approved development conditions dated October 12, 2011 are attached for your convenience. Enclosed is a check made payable to the County of Fairfax in the amount of \$520 for the filing fee for this request.

Specifically, the request for the interpretation relates to development condition #10 which states:

10. The multiple family building shall be designed and constructed as ENERGY STAR®-qualified homes. Prior to issuance of the Residential Use Permit for each dwelling unit, the applicant will submit to the Environment and Development Review Branch of DPZ documentation from a home energy rater certified through the Residential Energy Services Network (RESNET) program that demonstrates that the dwelling unit has attained the ENERGY STAR for Homes qualification.

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In addition, the applicant will include a LEED®-accredited professional as a member of the design team. This professional will also be a professional engineer or architect licensed to practice in the Commonwealth of Virginia. The LEED-accredited professional will work with the team to incorporate sustainable design elements and innovative technologies into the project. Prior to site plan approval, the applicant will provide documentation to the Environment and Development Review Branch of DPZ demonstrating compliance with the commitment to engage such a professional, including a list of specific green building strategies that will be incorporated into the site.

The purpose of this interpretation is to clarify the intent of the approved development condition as it relates to Energy Star qualified homes given that there have been recent changes to the program which have impacted multiple family projects: For your background information, the approved proffers associated with PCA 82-P-069-14 which govern the Property include a commitment towards energy efficiency. Specifically, proffer 20 states that "All residential units shall meet the thermal standards of the CABO Model Energy Program for energy efficient homes, or its equivalent, as determined by DPWES." During the review of the FDPA application, staff requested a commitment to pursue green building certification given that the CABO Model Energy Program is an expired program. We indicated to staff at the time that The Bainbridge Companies has built several MF buildings within the last few years that have qualified for Energy Star for New Homes and which included features such as energy efficient appliances, plumbing and lighting fixtures; high-performance windows; and efficient heating and cooling systems. It was the intent of the Bainbridge Cos. to design and construct this project consistent with those same features in order to qualify for Energy Star for New Homes Version 2.5, which was in effect at the time of review and approval of the FDPA application.

However, there has been a significant change to the Energy Star program. There is a brand new program called Energy Star for Multifamily High Rise (MFHR) buildings that applies to buildings over 5 stories which was released in August 2011. Therefore, this project can no longer attain certification through the Energy Star for New Homes program which was envisioned by the approved development condition. The new MFHR program is a significant departure from the Energy Star for New Homes program in terms of its requirements, complexity of on-site testing, and verification protocols which are more involved than Energy Star for New Homes. Specifically, the new program requires additional features relating to kitchen exhaust and mechanical ventilation that will significantly increase the costs associated

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with the project which were not envisioned during the review and approval of the FDPA application. Evidently, there has been considerable resistance to the new MFHR program since other certification programs (Green Communities and LEED for Homes Mid-Rise) have either eliminated their requirement to certify to the MFHR program or created alternative compliance paths that no longer include MFHR.

A new version 3.0 has also been recently released for the Energy Star for New Homes program which begins implementation for projects with building permits issued as of January 1, 2012. However, this program no longer applies to multiple family buildings with five stories or more and also contains significant requirements beyond those required with the earlier versions of the program.

The intended purpose of the development condition is to design and construct the multiple family building using established green building practices in order to achieve green building certification through an established rating system. Bainbridge Companies intended to qualify through the Energy Star for New Homes program based on Version 2.5 which was in effect at the time of the review and approval of the FDPA application. Although the building will still be designed and constructed to meet the requirements of Version 2.5, the project can not attain certification through Energy Star for New Homes given the new MFHR program. However, the multiple family building can obtain certification through the NAHB-administered ICC 700-2008 National Green Building Standard (NGBS), which is another nationally recognized program comparable to Energy Star for New Homes and other programs that require 3rd party certification.

It should also be noted that The Bainbridge Companies has included a LEED accredited professional as a member of the design team to work with them to incorporate sustainable design elements and innovative technologies into the project as set forth in the approved development condition. We will provide a list of the specific green building strategies that will be incorporated into the site prior to site plan approval.

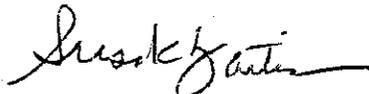
It is our judgment that the intent of implementing green building practices with this project is satisfied through compliance with the earlier Energy Star for New Homes Version 2.5 program and ICC 700-2008 NGBS certification. In addition, please note it is standard Energy Star protocol for multiple family projects that the energy rater does not inspect or test for each individual dwelling unit but uses a sampling approach to demonstrate compliance with the Energy Star requirements for all of the units.

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In summary, the multiple family building will be designed and constructed based on Energy Star for New Homes Version 2.5. Prior to the issuance of the Residential Use Permit for each dwelling unit, the applicant will submit to the Environment and Development Review Branch of DPZ documentation from a home energy rater certified through the Residential Energy Services Network (RESNET) program that demonstrates the multiple family units have satisfied the Energy Star for New Homes Version 2.5 requirements and the multiple family building has attained National Green Building Standard certification.

We would appreciate your favorable consideration of this interpretation request. Please do not hesitate to contact me at (703) 714-7492 if you have any questions or require additional information.

Very Truly Yours,



Susan K. Yantis

Enclosures

cc: Mr. Kevin Guinaw  
Mr. William O'Donnell  
Mr. Joshua Wooldridge  
Mr. Stuart Prince

**FINAL DEVELOPMENT  
PLAN AMENDMENT CONDITIONS**

**FDPA 82-P-069-06-12**

**October 12, 2011**

If it is the intent of the Planning Commission to approve FDPA 82-P-069-06-12 for site modifications to an approved residential development located at Tax Maps 55-2 ((1)) 18, staff recommends that the Planning Commission condition the approval by requiring conformance with the following development conditions, which supersede all previous conditions (those conditions carried forward from previous approval that apply to the subject property and modified are marked with an asterisk\*):

1. Development of the property shall be in substantial conformance with the Final Development Plan Amendment entitled "Fair Lakes Land Bay V-B" prepared by Dewberry & Davis LLC, consisting of six sheets dated June 3, 2011, as revised through August 4, 2011.
2. Signage shall be in conformance with the Fair Lakes Comprehensive Sign Plan as may be amended.\*
3. Landscaping shall be provided in substantial conformance with the concepts shown on the FDPA as determined and approved by Urban Forest Management Division (UFMD). The applicant shall use structural cells, or other solutions acceptable to UFMD, to provide planting spaces that meet the following specifications:
  - A minimum of six feet open soil width and 72 square feet open space area
  - Rooting area shall consist of soil below pervious pavement or pavers that is not compacted for support of pavement or pavers. The rooting area may be less than eight feet for Category II trees, as may be approved by UFMD. A minimum of eight feet in width for rooting area shall be provided for Category III and IV tree species, as indicated in PFM Table 12.17.
  - Soil Volume in the rooting area for Category III or IV (as indicated in Table 12.17 of the Public Facilities Manual) shall be a minimum of 600 cubic feet per tree for single trees. For two trees planted in a continuous planting area, a total soil volume of at least 1,000 cubic feet shall be provided. For three trees or more planted in a continuous area, the soil volume shall equal at least 400 cubic feet per tree.
  - Soil in planting sites shall be as specified in planting notes to be included in site plans reviewed and approved by UFMD.

4. Tree planting space details shall be provided during site plan review to show how soil volume and open soil area requirements will be met. Soil depth shall be a minimum of three feet.
5. The Typical Plant Palette on Sheet 4 of the FDPA shall consist of species that are known to be resistant to impacts from disease and insects, which may include and not be limited to: black gum (*Nyssa sylvatica*); river birch (*Betula nigra*, "Heritage"), single trunk preferred; London planetree (*Platanus acerifolia*, Bloodgood); and Dutch elm disease resistant cultivars of American elm such as *Ulmus Ammericana*, "Valley Forge" or "Princeton."
6. The area labeled on the FDPA with the note "existing trees to be selectively saved" shall be assessed by UFMD at the time of site plan review and trees proposed for preservation shall be based on size, species and condition. Any trees to be preserved and limits of clearing and grading to protect this area of tree preservation and planting area shall be determined at the time of site plan review. Removal of trees from this area protected by the limits of clearing and grading shall be done using chain saws to avoid damage to be existing trees to preserved and disturbance of the soil profile to maximize growing conditions for trees and other material to be planted.
7. As depicted on the "Conceptual Landscape" detail on Sheet 4 of the FDPA, an amenity area with benches, tables and grills, shall be provided adjacent to the tree save at the north end of the multiple family building. Benches and landscaping shall also be provided within the Plaza/Courtyard area on the eastern side of the multiple family building in conformance with the concepts shown on the FDPA.\*
8. If provided, penthouses/rooftop structures shall be for mechanical equipment and shall be provided in accordance with the limitations of Sect. 2-506 of the Zoning Ordinance. Rooftop mechanical equipment shall be shielded from view using parapet walls and designed not to exceed roof coverage limitations of the Zoning Ordinance including the 25% limitation. All building penthouses/rooftop structures shall also be integrated into the architecture of the building below.\*
9. The architectural design of the multiple family building shall be consistent with the general character of the elevations shown on Sheet 5 of the FDPA. The building shall consist of high quality materials, a combination thereof including, but not limited to, masonry, glass, brick, stone, cementitious fiber board, pre-cast concrete, ground and/or split face CMU or comparable materials. The facades of the building shall also consist of at least sixty percent, in combination, masonry, brick and glass.
10. The multiple family building shall be designed and constructed as ENERGY STAR®-qualified homes. Prior to issuance of the Residential Use Permit for each dwelling unit, the applicant will submit to the Environment and Development

Review Branch of DPZ documentation from a home energy rater certified through the Residential Energy Services Network (RESNET) program that demonstrates that the dwelling unit has attained the ENERGY STAR for Homes qualification.

In addition, the applicant will include a LEED®-accredited professional as a member of the design team. This professional will also be a professional engineer or architect licensed to practice in the Commonwealth of Virginia. The LEED-accredited professional will work with the team to incorporate sustainable design elements and innovative technologies into the project. Prior to site plan approval, the applicant will provide documentation to the Environment and Development Review Branch of DPZ demonstrating compliance with the commitment to engage such a professional, and shall provide a list of specific green building strategies that will be incorporated into the site.

11. Space for recyclables within the multiple family building and the collection of those recyclables shall be provided in accordance with Fairfax County Code Chapter 109.1.

The above proposed conditions are staff recommendations and do not reflect the position of the Planning Commission unless and until adopted by the Planning Commission.