



COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

July 14, 1989



STAFF REPORT

APPLICATION NUMBER PCA C-547-3  
(Concurrent with PCA 76-P-046-2)

PROVIDENCE DISTRICT

Applicant: N.V. Commercial, Inc. et al

Present Zoning: R-8

Request: Proffered Condition  
Amendment

Proposed Use: Residential

Acreage: 5.34 acres

Subject Parcels: 48-1 ((1)) pt. 101A

Planning Commission Public Hearing: July 27, 1989

Board of Supervisors Public Hearing: August 7, 1989

Staff Recommendation: Staff recommends that PCA C-547-3 and PCA 76-P-046-2 be approved subject to the execution of proffers consistent with those contained in Appendix 1 and Appendix 2 of the staff report.

It should be noted that it is not the intent of the staff to recommend that the Board, in adopting any conditions proffered by the owner, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be noted that the content of this report reflects the analysis and recommendation of staff; it does not reflect the position of the Board of Supervisors.

MAG/30



COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

July 14, 1989



STAFF REPORT

APPLICATION NUMBER PCA 76-P-046-2  
(Concurrent with PCA C-547-3)

PROVIDENCE DISTRICT

Applicant: N.V. Commercial, Inc. et al

Present Zoning: R-8

Request: Proffered Condition  
Amendment

Proposed Use: Residential

Acreage: 4.82 acres

Subject Parcels: 48-1 ((1)) 99, 101, pt. 101A

Planning Commission Public Hearing: July 27, 1989

Board of Supervisors Public Hearing: August 7, 1989

Staff Recommendation: Staff recommends that PCA C-547-3 and PCA 76-P-046-2 be approved subject to the execution of proffers consistent with those contained in Appendix 1 and Appendix 2 of the staff report.

It should be noted that it is not the intent of the staff to recommend that the Board, in adopting any conditions proffered by the owner, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be noted that the content of this report reflects the analysis and recommendation of staff; it does not reflect the position of the Board of Supervisors.

MAG/30

# PROFFERED CONDITION AMENDMENT

## PCA C-547-3

PCA C-547-3

FILED 06/12/89

NVCDMMERCIAL, INC., ET AL.

PROFFERED CONDITION AMENDMENT

PROPOSED: RESIDENTIAL

APPROX. 5.34 ACRES OF LAND; DISTRICT - PROVIDENCE

LOCATED: NORTH SIDE OF RT. 66 AND SOUTH SIDE OF COUNTRY CREEK RD.

ZONING: R-8

OVERLAY DISTRICT(S):

MAP REF

048-1- /01/ / pt. 101A



# PROFFERED CONDITION AMENDMENT

## PCA C-547-3

PCA C-547-3

FILED 06/12/89

NVCOMMERCIAL, INC., ET AL.

PROFFERED CONDITION AMENDMENT

PROPOSED: RESIDENTIAL

APPROX. 5.34 ACRES OF LAND; DISTRICT - PROVIDENCE

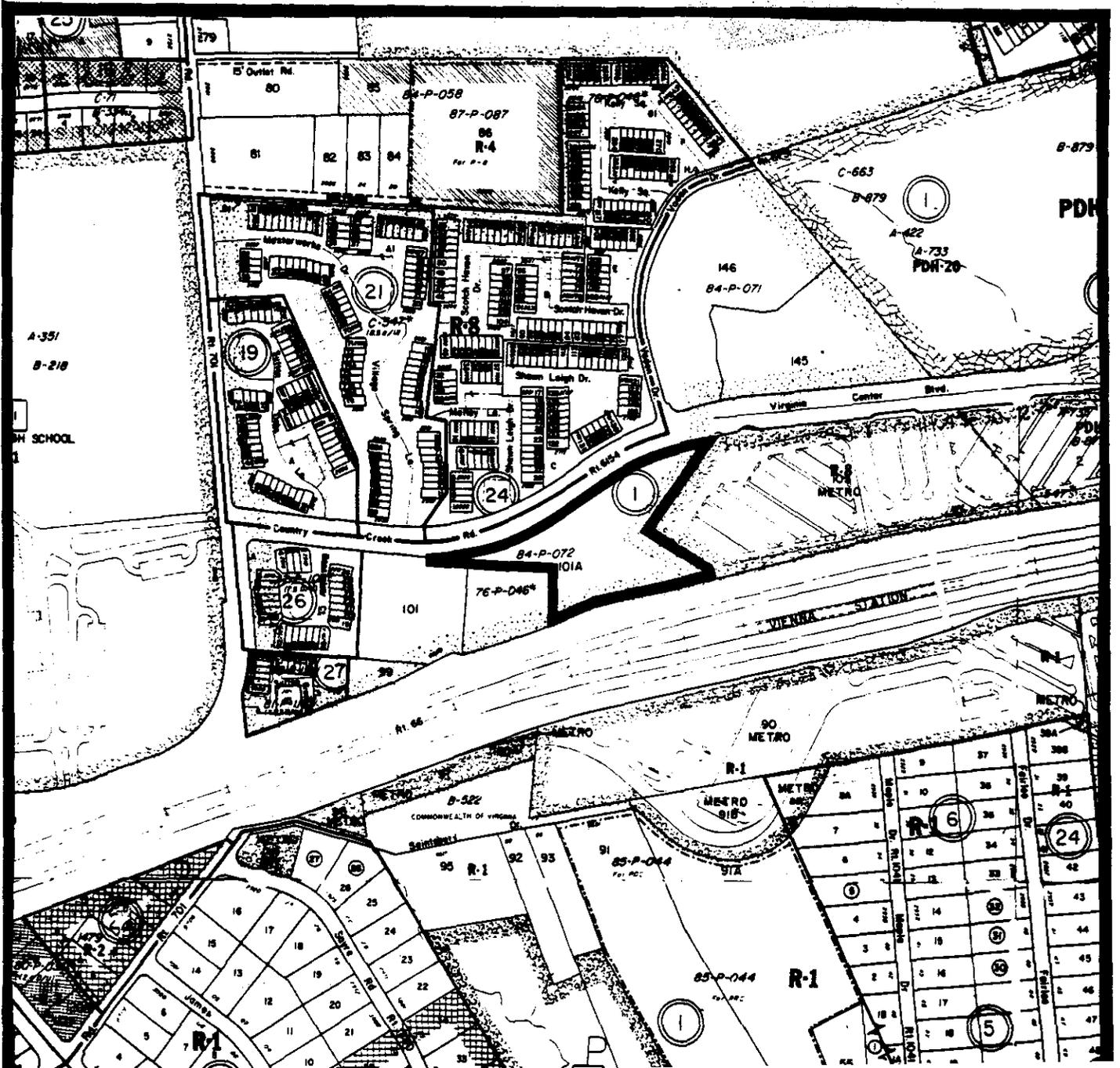
LOCATED: NORTH SIDE OF RT. 66 AND SOUTH SIDE OF COUNTRY CREEK RD.

ZONING: R-8

OVERLAY DISTRICT(S):

MAP REF

048-1- /01/ / pt. 101A



# PROFFERED CONDITION AMENDMENT

## PCA 76-P-046-2

CA 76-P-046 -02 NVCOMMERCIAL, INC., ET AL.  
FILED 06/12/89 PROFFERED CONDITION AMENDMENT  
PROPOSED: RESIDENTIAL  
APPROX. 4.82 ACRES OF LAND; DISTRICT - PROVIDENCE  
LOCATED: NORTH SIDE OF RT. 66 AND SOUTH SIDE OF COUNTRY  
CREEK RD.  
ZONING: R-8  
OVERLAY DISTRICT(S):  
MAP REF 048-1- /01/ /0099- ,0101- , pt. 101A





A GLOSSARY OF TERMS FREQUENTLY  
USED IN STAFF REPORTS WILL BE  
FOUND AT THE BACK OF THIS REPORT

DESCRIPTION OF THE APPLICATION

The applicant, NV Commercial, Inc. et al, is requesting approval of two (2) concurrent proffered condition amendment applications to amend the proffers for PCA C-547-3 and PCA 76-P-046-2 which govern development of the Country Creek residential development to permit the modification of the language of the existing proffer which pertains to the provision of affordable housing to permit a cash contribution in lieu of land for 33 residential lots. In addition, the applicants are committing through this PCA to dedicate to the County within 60 days of approval of the PCA road right-of-way for access to the Vienna Metro Station and for parking at the Metro station site.

The original proffers along with the applicant's proposed modifications are contained in Appendix 1 of this report.

LOCATION AND CHARACTER OF THE AREA

The application property is located on the north side of Route 66 and south of Country Creek Road adjacent to the west side of the Vienna Metro Station. The property is currently zoned R-8 (Residential- Eight Dwelling Units per Acre).

BACKGROUND

On January 12, 1976, the Board of Supervisors approved a rezoning request of the Presley Development Company (C-547) that rezoned 66.383 acres from the RE-1 to the RTC-10 District. The approved density was 8.5 dwelling units per acre due to the provision of Proffer 9 (low-moderate housing proffer). The Generalized Development Plan indicated 531 dwelling units. Ninety-three (93) of those units were in the area which is approximately 11.6 acres and which was subsequently purchased by WMATA for the Metro station site. The total number of units approved was 438 on the land excluding the WMATA site plus the 33 lots to be conveyed to the housing authority resulting in a total of 471 units. The development plan portraying 531 townhouses was approved with proffers which provided for an additional density of one-half unit per acre only if the Fairfax County Housing Authority agreed to purchase the 33 lots at infrastructure costs. Other proffered conditions dealt with access to a proposed Metro rail station to be located on the property within this application, phasing of development, and eventual access to Nutley Street to the east. A copy of those proffers is contained in Appendix 1 of this report.

A Generalized Development Plan Amendment was approved on April 18, 1977. At that time, the subject property excluding the WMATA property was approximately 54.78 acres in size and the total number of dwelling units was 471, including the lots to be conveyed to the housing authority.

On June 20, 1977, the Board of Supervisors approved the rezoning of application Number RZ 76-P-046 that requested rezoning from RE-1 to RT-8 on 7.939 acres consisting of four (4) parcels. This rezoning approval incorporated this 7.9 acre property into Country Creek and was subject to all the proffers approved by the Board in rezoning C-547 and attached in Appendix 1. Rezoning 76-P-046 resulted in approval for 64 townhouses above the 471 previously approved.

The original rezoning application yielded 471 total units which included 33 lots to be conveyed to the housing authority. The addition of 64 units brings the total units to 535 on approximately 62.7 acres which is a density of 8.5 units per acre.

Based upon information provided by Dewberry and Davis, there are 352 townhouse units already constructed on approximately 42.33 acres in the Country Creek Subdivision resulting in a density of 8.31 units per acre. Therefore, 183 dwelling units on approximately 20.39 acres remain to be developed which results in a density of 8.97 units per acre. An agreement has been reached between the Wills Group and Hazel/Peterson that the Wills Group is entitled to 91 development lots on the Wills parcel and the remaining 92 units will be developed on the Hazel/Peterson property (Parcels 48-1 ((1)) 145 and 146). A letter from Hazel/Peterson is attached as Appendix 4. This letter confirms this agreement and further states agreement with the requested amendment to Proffer 9 regarding the 33 lots that were to be conveyed to the housing authority.

Staff concurs with the information submitted by Dewberry and Davis that 92 units remain to be constructed on the Hazel/Peterson tract leaving a maximum of 91 units for the Wills tract. A Proffer Interpretation Letter dated June 23, 1989 to that effect is attached as Appendix 7 of this report.

Since approval of the original zoning on this property, the Vienna Metro Station has been built. Access roads were constructed by right of entry but right-of-way and additional pieces of the Wills property were never dedicated to the County.

## ANALYSIS

### Development Analysis

The major change to the previously approved proffered condition amendment applications is additional wording in Proffer #9 to permit the substitution of a cash payment in lieu of the 22

Fairfax County Redevelopment and Housing Authority (FCRHA) providing pro rata infrastructure costs were paid by the FCRHA. The revised proffer will require a that a cash contribution payable to the FCRHA be substituted for the 33 lots. The actual amount of this contribution will be determined later through negotiation.

In addition, the applicant has amended Proffer 3 relating to land dedication. This change represents a refinement of the original language that was not possible at the time of the original rezoning as final engineering was not complete. Plats showing the areas of dedication are contained in Appendix 6 of this report.

## CONCLUSIONS AND RECOMMENDATIONS

### Conclusions

The only changes to the previously approved GDP and/or proffers include the proposed substitution of a cash payment in lieu of the 33 lots in Proffer #9 and a rewording of Proffer 3 to specify areas of dedication. The remaining proffers are unchanged. The substitution of the cash contribution for residential lots is acceptable to the Fairfax County Redevelopment and Housing Authority (FCRHA) as long as an agreement is reached with the property owner concerning the amount of the cash contribution and the terms, especially the timing, of the payment. (See attached letter from HCD in Appendix 3) Further, a letter of concurrence with the requested amended proffer language has been received from the Virginia Center Limited Partnership and is contained in Appendix 4. The Department of Public Works has reviewed the proffer language regarding dedication and has found it acceptable.

### Recommendations

Staff recommends that PCA 76-P-046-2 and PCA C-547-3 be approved subject to the execution of proffers consistent with those contained in Appendix 1 of this report.

It should be noted that it is not the intent of the staff to recommend that the Board, in adopting any conditions proffered by the owner, relieve the applicant/owner from compliance with the provisions of any applicable ordinances, regulations, or adopted standards.

It should be noted that the content of this report reflects the analysis and recommendation of staff; it does not reflect the position of the Board of Supervisors.

APPENDICES

1. a. Draft Proffers PCA C-547-3 and PCA 076-046-2  
b. Proffers PCA C-547-2, RZ 76-P-046
2. Affidavit
3. Statement of Justification
4. Letter from HCD
5. Letter from Hazel/Peterson
6. Plats showing road dedication
7. Proffer Interpretation Letter dated June 23, 1989
8. Glossary of Terms

PROFFERS

PCA C-547-3

PCA 76-P-046-2

July 13, 1989

APPENDIX 1a.

Pursuant to §15.1-491(a), Code of Virginia 1950 edition as amended, subject to the Board of Supervisors approving the request for the above-referenced Proffered Condition Amendments, the Applicant commits to the following proffers:

1. Applicant hereby reaffirms the Proffers for Application No. C-547, dated December 2, 1975 and April 8, 1977 and Proffers for Rezoning Application 76-P-046, dated May 5, 1977 attached hereto, subject to the following amendments.

2. Proffer No. 9 of the Proffers for Application No. C-547, dated December 2, 1975 shall be deleted and replaced with the following commitment:

In the event the rezoning action now pending results in grant of a density of 8.5 units per acre on the site which is the subject of this application, the Applicant will convey a total of 33 lots suitable for construction of dwelling units to the Fairfax County Housing Authority (Authority), or its successor, at such locations as applicant or successor and Authority may mutually select, providing pro rata costs of infrastructure including road, storm drainage and utility extensions shall be paid by the Authority, or its successor, at the time said facilities are constructed.

Applicant shall advise the Authority at the time of the site plan filing for each phase of the availability of the lots which may be in such section and Authority shall commit reimbursement for infrastructure 60 days after site plan filing.

In the event the Authority declines to commit infrastructure reimbursement as aforesaid within sixty days of notice of site plan filing, this provision shall terminate as to those lots tendered.

The provisions of this paragraph shall apply to land only and nothing herein shall be deemed a commitment by Applicant to construct dwelling units, nor shall Applicant be entitled to develop any of the 33 lots tendered by this paragraph in the event the Authority declines to accept said lots. However, a cash payment by the Applicant may be provided in lieu of the said 33 lots by mutual agreement of the Applicant and Fairfax County, and in that event the Applicant will be entitled to develop the 33 lots as market units.

3. Within 60 days from approval of this PCA Application, the Applicant will dedicate to the Board of Supervisors and convey in fee simple land owned by Applicant upon which roads have been constructed but not yet dedicated. Said rights of way

dated March, 1988, and revised through July 13, 1989, and are described as follows:

- (a) Approximately 25,992 square feet for the "hook ramp" which accesses the Metro station from westbound Interstate 66 and also the widenings of Interstate 66 consisting of approximately 9,749 square feet and Country Creek Road consisting of approximately 1,014 square feet.
- (b) A portion of the Connector Road consisting of approximately 41,408 square feet leading across Interstate 66 to the Vienna Metro Station parking.
- (c) Approximately 3,686 square feet identified as Parcel A and approximately 16,597 square feet identified as Parcel B on the east side of the Connector Road for permanent parking for the Vienna Metro Station.

Density for all said land areas, approximately 98,446 square feet, shall be reserved pursuant to §2-308 of the Fairfax County Zoning Ordinance.

Applicant reserves the right to maintain an easement to provide storm water management facilities on the property east of the connector road should that be necessary.

NVCOMMERCIAL, INC.

By: \_\_\_\_\_, President

WILLS INVESTMENT, INC.

By: \_\_\_\_\_, President

SCHAR, LTD.

By: \_\_\_\_\_, President

\_\_\_\_\_  
P. REED WILLS, II

## PROFFER

Re: Application No. C-547  
Presley Company East, Inc.

The undersigned proffers that, providing rezoning is granted by the Fairfax County Board of Supervisors at the scheduled hearing on January 12, 1976, for a density allowing a minimum of eight dwelling units per acre, development of the property which is the subject of this application shall be in accordance with the development plan prepared by Richard P. Browne Associates dated July 1, 1975, and revised to November 11, 1975, and shall further be subject to the following additional terms and conditions:

1. Density shall not exceed eight dwelling units per acre (except as provided in paragraph "9" hereof), and general road alignment and open space area shall be as shown on the referenced development plan. Walk ways and bike trails as, reasonably required to facilitate access to Metro, adjacent Park Authority land, and Oakton High School shall be provided with specific location to be determined at time of site plan submission.

2. Deletion by Metro from acquisition and construction plans of the proposed connection between the Metro station and Sutton Place. In lieu of the prior Metro proposal; the applicant shall provide a 90 foot right of way from Sutton Place to the planned access point at the northwest corner of the Metro station site and shall construct in said right of way a three land (36 foot) paved road providing two travel lanes and a left turn lane. The road construction shall be completed by March 1979, or within one year after award by Metro of a contract for the construction of the Metro station, whichever date shall last occur.

3. The applicant shall reserve and dedicate, as requested by Fairfax County, a 60 foot right of way from the Metro access road referred to in paragraph "2" hereof to the proposed bridge crossing over Route 66. This right of way shall be generally in accord with the development plan to which this memorandum is attached. Applicant may elect to construct within said right of way such road as it deems appropriate for applicant's project, but nothing herein shall be construed to be a commitment or requirement for construction by applicant, providing that any road which applicant may construct within the right of way provided for by this paragraph, shall be compatible with road construction proposals by governmental authorities for the proposed bridge access.

4. Access between the subject application and Nutley Road is deemed desirable by either (1) connection from the Metro access road northeastward through and along the Park Authority southern boundary and thence to Nutley or (2) through the Metro and/or DeLuca parcels in conjunction with Metro and DeLuca access to Nutley Road.

5. Prior to the submission of site plans for construction beyond Phase I of 141 dwelling units as shown on the development plan, one of the above options for access to Nutley Road may be selected by the applicant, in cooperation with other interested parties, and the applicant, at its option, may dedicate necessary right of way and construct therein an appropriate road connection. In the event applicant does not elect to provide access to Nutley Road and the County desires access to Nutley Road, the applicant shall dedicate right of way for one of the above routes to Nutley Road as the County may select, and shall construct therein a two-lane roadway on-site only to applicant's boundary. In no event shall applicant be required other than by voluntary election to construct a connection from applicant's site through other property to Nutley Road.

6. In the event a connection through Park Authority land is selected, Park Authority and applicant shall cooperate in a trade of land sufficient to provide right of way through Park Authority holdings.

7. Development of the 11.6 acre site of the proposed Metro station shall be deferred for one year pending Metro acquisition or termination of Metro interest. In the event Metro does not proceed to acquire the site within one year from the date of this proffer, Fairfax County shall have an additional year to acquire the site. In the event neither Metro nor Fairfax County acquire the 11.6 acre site proposed for Metro use within two years from the date of this proffer, the applicant may proceed with development pursuant to such schedule as applicant may elect.

8. Development of the subject tract, with the exception of the Metro site, shall be in three or more phases. The first phase shall not exceed 141 units as shown on the development plan and shall not be occupied prior to 12 months from the date of this proffer. Thereafter, no more than 150 units shall be occupied in each succeeding 12 month period. Units constructed on lots provided to the Housing Authority pursuant to paragraph "9" shall not be included in computations pursuant to this paragraph.

9. In the event the rezoning action now pending results in grant of a density of 8.5 units per acre on the site which is the subject of this application, the applicant will convey a total of 33 lots suitable for construction of dwelling units to the Fairfax County Housing Authority (Authority), or its successor, at such location as applicant or successor and Authority may mutually select, providing pro rata costs of infrastructure including road, storm drainage and utility extensions shall be paid by the Authority, or its successor, at the time said facilities are constructed. Applicant shall advise the Authority at the time of the site plan filing for each phase of the availability of the lots which may be in such section and Authority shall commit reimbursement for infrastructure 60 days after site plan filing.

In the event the Authority declines to commit infrastructure reimbursement as aforesaid within 60 days of notice of site plan filing, this provision shall terminate as to those lots tendered.

The provisions of this paragraph shall apply to land only and nothing herein shall be deemed a commitment by applicant to construct dwelling units, nor shall applicant be entitled to develop any of the 33 lots tendered by this paragraph in the event the Authority declines to accept said lots.

PRESLEY COMPANY EAST, INC.

By: *Walter B. Hart*  
VICE-PRES.

Date:

12/2/75

*in witness whereof + American DHA Inc  
by *Edw. J. Whitaker*, Atty & agent.*

Re: Rezoning Application 76-P-046  
Presley Company East, Inc.

PROFFER

May 5, 1977

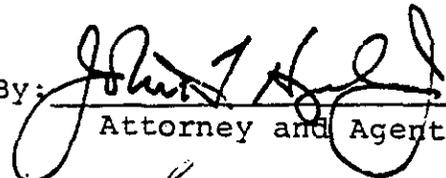
The undersigned hereby proffers that in the event the subject application is granted by the Board of Supervisors at the hearing scheduled for June 20, 1977, for density allowing a minimum of 8 units per acre, development shall be in accord with the development plan prepared by Richard P. Browne Associates dated July 1, 1975, as revised through November 11, 1975 in Rezoning Application C-547, and as revised further April 8, 1977 and filed previously among the papers of this case, and shall further be subject to the following additional terms and conditions:

1. Density shall not exceed eight dwelling units per acre and general road alignment and open space area shall be as shown on the referenced development plan. Walkways and bike trails, as reasonably required to facilitate access to Metro, adjacent Park Authority land, and Oakton High School shall be provided with specific location to be determined at time of site plan submission. The density limit of this paragraph shall be subject to the provisions of Paragraph 9 of the Proffer previously submitted in Rezoning Application C-547.

2. All terms and conditions of the Proffer in application C-547 shall apply to the subject case to the extent relevant and this Proffer shall be deemed an addendum to the Proffer submitted in C-547 and accepted by the Board of Supervisors.

3. Noise attenuation measures shall be used during construction of all units within the 250 ft. I-66 noise impact area.

PRESLEY COMPANY EAST, INC.

By:   
Attorney and Agent

*Mason East + American I H m*  
*by Edward A. [unclear], Atty + Agent*  
*Edward A. [unclear]*

REZONING AFFIDAVIT APPENDIX 2 89-1486

I, Stephen M. Cumbie, do hereby make oath or affirmation that I am an applicant in Rezoning Application Number PCA 76-P-046-2 and PCA C-547-3 and that to the best of my knowledge and belief, the following information is true:

1. (a) That the following constitutes a listing of names and last known addresses of all applicants, title owners, contract purchasers, and lessees of the land described in the application, and if any of the foregoing is a trustee, each beneficiary having an interest in such land, and all attorneys, real estate brokers, architects, engineers, planners, surveyors, and all agents who have acted on behalf of any of the foregoing with respect to the application:

Table with 3 columns: Name, Address, Relationship. Row 1: See Attached.

(b) That the following constitutes a listing of the shareholders of all corporations of the foregoing who own ten (10) per cent or more of any class of stock issued by said corporation, and where such corporation has ten (10) or less shareholders, a listing of all the shareholders:

Table with 3 columns: Name, Address, Relationship. Row 1: See Attached.

(c) That the following constitutes a listing of all partners, both general and limited, in any partnership of the foregoing:

Table with 3 columns: Name, Address, Relationship. Row 1: See Attached.

2. That no member of the Fairfax County Board of Supervisors or Planning Commission owns or has any interest in the land to be rezoned or has any interest in the outcome of the decision. EXCEPT AS FOLLOWS: (If none, so state)

See Attached

3. That within the five (5) years prior to the filing of this application, no member of the Fairfax County Board of Supervisors or Planning Commission or any member of his immediate household and family, either directly or by way of partnership in which any of them is a partner, employee, agent, or attorney, or through a partner of any of them, or through a corporation in which any of them is an officer, director, employee, agent, or attorney, or holds outstanding bonds or shares of stock with a value in excess of fifty dollars (\$50), has or has had any business or financial relationship, other than any ordinary depositor or customer relationship with or by a retail establishment, public utility, or bank, including any gift or donation having a value of fifty dollars (\$50) or more with any of those listed in Par. 1 above. EXCEPT AS FOLLOWS: (If none, so state)

None

Handwritten signature of Stephen M. Cumbie

ATTACHMENT

89-1486

1(a). NVCommercial, Inc. Owner/Applicant  
1355 Beverly Road  
Suite 300  
McLean, Virginia 22101  
Stephen M. Cumbie Agents  
Peter H. Lunt  
Matthew B. Slepín

Wills Investment Inc. and Owner/Applicant  
Schar, Ltd. (former owner)  
1355 Beverly Road  
Suite 300  
McLean, Virginia 22101  
Conrad C. Heer Agents for Wills  
P. Reed Wills, II Investment, Inc.

P. Reed Wills II Owner/Applicant  
410 Pine Street  
Vienna, Virginia 22180

Dewberry and Davis Engineers  
8401 Arlington Boulevard  
Fairfax, Virginia 22031  
Susan Yantis Agents  
Philip G. Yates

Walsh, Colucci, Stackhouse, Attorneys  
Emrich & Lubeley, P.C.  
950 N. Glebe Road, Suite 300  
Arlington, Virginia 22203  
Martin D. Walsh Agents  
Lynne J. Strobel

1(b). Dwight C. Schar, Stephen M. Cumbie, William A. Moran -  
all shareholders of NVCommercial, Inc.

P. Reed Wills, II, Joanne T. Wills, P. Reed Wills, III,  
Timothy Burch Wills and Jessica Moore Wills - all  
shareholders of Wills Investment, Inc.

Schar, Ltd. no longer exists. All assets have been  
absorbed by NVCommercial, Inc.

Martin D. Walsh, Thomas J. Colucci, Peter K. Stackhouse, Jerry K. Emrich, Michael D. Lubeley, Nicholas Malinchak, Charles L. Shumate and Keith C. Martin - all shareholders of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C.

89-1486

- 1(c). Sidney O. Dewberry, Barry K. Dewberry, KMT Limited Partnership, William H. Edwards, John P. Fowler, II and David P. Habib - all partners of Dewberry and Davis.

Karen S. Grand Pre, general partner, Michael S. Dewberry Trust, limited partner, and Thomas L. Dewberry Trust, limited partner - all partners of KMT Limited Partnership.

Michael S. Dewberry Trust  
Reva A. Dewberry - trustee  
Michael S. Dewberry - sole beneficiary  
Thomas L. Dewberry Trust  
Reva A. Dewberry - trustee  
Thomas L. Dewberry - sole beneficiary

2. Dwight C. Schar, Stephen M. Cumbie and William A. Moran are Limited Partners in Northpoint Limited partnership, whose Managing General Partner is Cambridge Development, Inc. In its role as Managing General Partner, Cambridge entered Northpoint Limited Partnership into an additional partnership, without the knowledge of the aforesaid three individuals that such a partnership had been entered into (agreement and endorsement of the three was not required). The resulting partnership was Northpoint Richard Limited Partnership, whose general partner is Northpoint Limited Partnership (i.e., Cambridge) and whose limited partners are Northpoint Limited Partnership and The Richards Family Trust. Applicant is not aware whom the trustees or beneficiaries of The Richards Family Trust are, but is led to believe that members of the family of Supervisor Richards are somehow related to this Trust. Schar, Cumbie and Moran have no control over, and only a minority, limited partnership participation in Northpoint Limited Partnership.

89-1486

ATTACHMENT

Rezoning Affidavit

1. (a)

Walsh, Colucci, Stackhouse,                      Attorneys  
Emrich & Lubeley, P.C.  
950 North Glebe Road  
Suite 300  
Arlington, Va. 22203

Martin D. Walsh  
Thomas J. Colucci  
Peter K. Stackhouse  
Jerry K. Emrich  
Michael D. Lubeley  
Nicholas Malinchak  
Charles L. Shumate  
Keith C. Martin

---

Nan E. Terpak  
William A. Fogarty  
James E. Barnett, Jr.  
David J. Bomgardner  
Sarah L. Stewart  
Daniel M. Rathbun  
Lynne J. Strobel

---

Of Counsel  
Julia T. Cannon

1. (b)

Martin D. Walsh, Thomas J. Colucci, Peter K. Stackhouse,  
Jerry K. Emrich, Michael D. Lubeley, Nicholas Malinchak,  
Charles L. Shumate, Keith C. Martin - All shareholders of  
Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C.

3. None.

M05

WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
950 NORTH GLEBE ROAD, SUITE 300  
ARLINGTON, VIRGINIA 22203  
(703) 528-4700  
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MARTIN D. WALSH  
THOMAS J. COLUCCI  
NICHOLAS MALINCHAK  
PETER K. STACKHOUSE  
JERRY K. EMRICH  
MICHAEL D. LUBELEY  
CHARLES L. SHUMATE

KEITH C. MARTIN  
NAN E. TERPAK  
WILLIAM A. FOGARTY  
JAMES E. BARNETT, JR.  
DAVID J. BONGARDNER  
SARAH L. STEWART  
DANIEL M. RATHBUN

OF COUNSEL  
JULIA T. CANNON

PRINCE WILLIAM OFFICE  
VILLAGE SQUARE  
13885 OFFICE PLACE, SUITE 201  
WOODBRIDGE, VIRGINIA 22182  
(703) 680-4664  
METRO 680-4847  
TELECOPY (703) 680-2412

LOUDOUN OFFICE  
WAVERLY PARK  
804 SOUTH KING STREET, SUITE 200  
LEESBURG, VIRGINIA 22075  
(703) 777-6677  
METRO 478-1340  
TELECOPY (703) 478-1348

June 5, 1989

Ms. Jane Gwinn  
Zoning Administrator  
County of Fairfax  
4050 Legato Road  
8th Floor  
Fairfax, Virginia 22030

Re: Letter of Justification Concerning  
Proffered Condition Amendment for Wills/Nutley  
Property near Vienna Metro Station

Dear Ms. Gwinn: *JANE*

As you are aware, based upon our numerous meetings concerning the above-referenced rezoning, the County Executive and the Fairfax County Housing and Redevelopment Authority have reached an agreement with my client to satisfy the requirement for conveyance of 33 lots for affordable housing which were provided in Proffer #9 in the original rezoning for this particular case. This agreement substitutes a cash payment in lieu of the 33 lots. It is my understanding that Barbara Byron and you have determined that a cash payment in lieu of the 33 lots is not permitted based upon the existing proffer and that a proffered condition amendment is necessary in order to permit us to provide cash in lieu of the subject lots. An agreement has been reached to pay Fairfax County \$1.8 million in lieu of the said lots and the purpose of this application is to request that a cash payment in lieu of the 33 lots be added to the proffer language in order to accommodate this agreement.

Upon resolution of this matter, we are willing to provide the following dedications:

Ms. Jane Gwinn  
June 5, 1989  
Page 2

widenings which have reduced the amount of land area owned by us but have never been dedicated.

2. Dedicate a portion of the roadway leading across I-66 to the Vienna Metro Station parking which is on the subject property but has also never been dedicated.
3. Dedicate land on the east side of the connector road to Fairfax County for its permanent parking for the Vienna Metro Station.

All of these dedications would be subject to advanced dedication and reservation of density or a letter from the Zoning Administrator which states that the subject property would be entitled to 91 units. It may also be necessary to provide stormwater management facilities on the property east of the connector road and the reservation of an easement for that purpose would be a condition precedent to the dedication.

This application is to amend the text of Proffer #9 only to read as follows:

"9. In the event the rezoning action now pending results in grant of a density of 8.5 units per acre on the site which is the subject of this application, the applicant will convey a total of 33 lots suitable for construction of dwelling units to the Fairfax County Housing Authority (Authority), or its successor, at such location as applicant or successor and Authority may mutually select, providing pro rata costs of infrastructure including road, storm drainage and utility extensions shall be paid by the Authority, or its successor, at the time said facilities are constructed. Applicant shall advise the Authority at the time of the site plan filing for each phase of the availability of the lots which may be in such section and Authority shall commit reimbursement for infrastructure 60 days after site plan filing.

In the event the Authority declines to commit infrastructure reimbursement as aforesaid within 60 days of notice of site plan filing, this provision shall terminate as to those lots tendered.

The provisions of this paragraph shall apply to land only and nothing herein shall be deemed a commitment by applicant to construct dwelling units, nor shall applicant be entitled to develop any of the 33 lots tendered by this paragraph in

Ms. Jane Gwinn  
June 5, 1989  
Page 3

lots. However, a cash payment by the applicant may be provided in lieu of the said 33 lots and in that event the applicant will be entitled to develop the 33 lots as market units.

This application does not affect the approved Generalized Development Plan. Consequently, may this letter serve as a request for a waiver of the Generalized Development Plan in accordance with Paragraph 6 of Section 18-204 of the Zoning Ordinance.

As always, I appreciate your cooperation and assistance and if any further information is required, please contact me.

Very truly yours,

WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY, P.C.



Martin D. Walsh

MDW/ms

GWINN 6/2:W02

**FAIRFAX COUNTY, VIRGINIA****MEMORANDUM**

TO: Mary Ann Godfrey, Planner  
Office of Comprehensive Planning

DATE: June 29, 1989

FROM:  Michael J. Scheurer, Director  
Housing Development Division, HCD

FILE No.: 240.169

SUBJECT:

REFERENCE: PCA-C-547-3  
PCA-76-P-046-2  
Country Creek/Wills Property

The existing housing proffer referenced above called for the applicant to convey a total of 33 lots suitable for construction to the Fairfax County Redevelopment and Housing Authority (FCRHA) providing pro rata infrastructure costs were paid by the FCRHA. The owner of the property has proposed that a cash contribution payable to the FCRHA be substituted in lieu of the 33 lots.

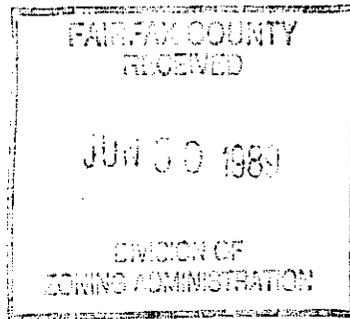
Please be advised that the proposed substitution is acceptable to the FCRHA based upon the FCRHA reaching agreement with the owner as to the amount of the cash contribution and the terms, especially timing, of the payment.

If I may provide you with any further information, please do not hesitate to contact me.

2545H

**RECEIVED**  
OFFICE OF COMPREHENSIVE PLANNING

JUL 3 1989



**Hazel/Peterson**  
C O M P A N I E S

RECEIVED  
OFFICE OF COMPREHENSIVE PLANNING

JUL 3 1989

ZONING EVALUATION DIVISION

June 27, 1989

Ms. Jane Gwinn  
Zoning Administrator  
Office of Comprehensive Planning  
Zoning Administration Division  
4050 Legato Road, 8th Floor  
Fairfax, Virginia 22033

Re: PCA 76-P-046-2

Dear Ms. Gwinn:

It is our understanding that NV Commercial, Inc., Wills Investment, Inc. and Schar, Ltd., and P. Reed Wills, III (the Wills Group) have filed a proffered condition amendment to clarify a proffer to permit them to provide cash in lieu of 33 lots suitable for construction of affordable housing units.

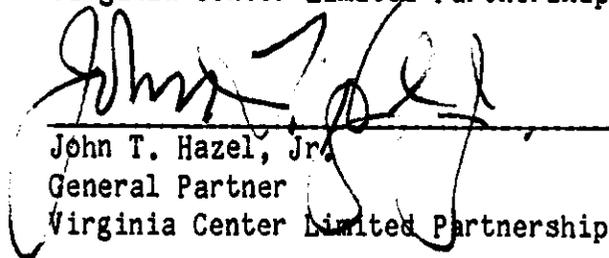
It is my understanding that you have requested the following statements from Virginia Center Limited Partnership (Partnership), as we are the current owner of Parcels 48-1 ((1)) 145 and 146.

1. It has been agreed between the parties that the Wills Group is solely responsible for the fulfillment of Proffer #9 to provide 33 lots suitable for construction of affordable housing units.
2. An agreement has been reached between the Wills Group and the Partnership that the Wills Group is entitled to 91 development lots on their parcel, while we are entitled to 92 development lots on our parcels. We commit that a maximum of 92 units will be developed on Parcels 48-1 ((1)) 145 and 146 under the existing zoning.
3. The Partnership has no objection to the Wills Group seeking the subject proffered condition amendment, and The Partnership recognizes and consents to the fact that said amendment is limited to Proffer #9 and that all other proffers that are applicable to the subject property will remain in full force and effect.

Ms. Jane Gwinn  
June 27, 1989  
Page Two

If any further information would be helpful, please advise.

Very truly yours,  
Virginia Center Limited Partnership



John T. Hazel, Jr.  
General Partner  
Virginia Center Limited Partnership

/bjb

cc: Barbara A. Byron  
Conrad C. Heer  
P. Reed Wills, III  
Philip G. Yates

CLIMATE TABLE

NO	RADIUS	DELTA	AREA	TOTAL	CH. BEARING
1	420.00	0750' 20"	58.10	20.14	N04A130E
2	737.00	13' 52" 56"	174.05	87.84	N75 W
3	1008.00	13' 52" 27"	308.82	185.00	S56.10 W
4	690.00	205' 52" 24"	437.04	225.15	N055.25 E
5	735.00	04' 35" 08"	37.862	204.07	N07.50 E
6	740.00	04' 35" 08"	38.003	204.07	N07.50 E
7	507.00	04' 35" 08"	26.421	154.00	N07.50 E
8	450.00	01' 22" 13"	157.84	84.51	S02.24 E
9	1155.00	03' 40" 02"	124.62	67.52	S75.50 W
10	1155.00	03' 40" 02"	124.62	67.52	S75.50 W
11	650.00	03' 40" 02"	124.62	67.52	S75.50 W
12	1750.00	11' 24" 00"	225.00	142.87	N04.55 E
13	1750.00	11' 24" 00"	225.00	142.87	N04.55 E
14	2100.00	02' 12" 41"	102.85	414.00	N01.15 W
15	1550.00	03' 40" 02"	124.62	67.52	S75.50 W
16	1550.00	03' 40" 02"	124.62	67.52	S75.50 W
17	2100.00	02' 12" 41"	102.85	414.00	N01.15 W
18	2100.00	02' 12" 41"	102.85	414.00	N01.15 W

NOTES:  
 1. THE PROPERTY DELINEATED ON THIS PLAT IS LOCATED ON A RESUBDIVISION MAP OF 1914.  
 2. THE PROPERTY DELINEATED ON THIS PLAT IS PART OF THE PROPERTY SHOWN HEREON AS ACQUIRED BY COMMERCIAL INC. IN 1914.  
 3. THE PROPERTY SHOWN HEREON WAS ACQUIRED BY WILLS INVESTMENT INC. IN 1914.  
 4. THE PROPERTY SHOWN HEREON WAS ACQUIRED BY WILLS INVESTMENT INC. IN 1914.  
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 17. THE PROPERTY SHOWN HEREON WAS ACQUIRED BY WILLS INVESTMENT INC. IN 1914.  
 18. THE PROPERTY SHOWN HEREON WAS ACQUIRED BY WILLS INVESTMENT INC. IN 1914.

AREA TABULATION

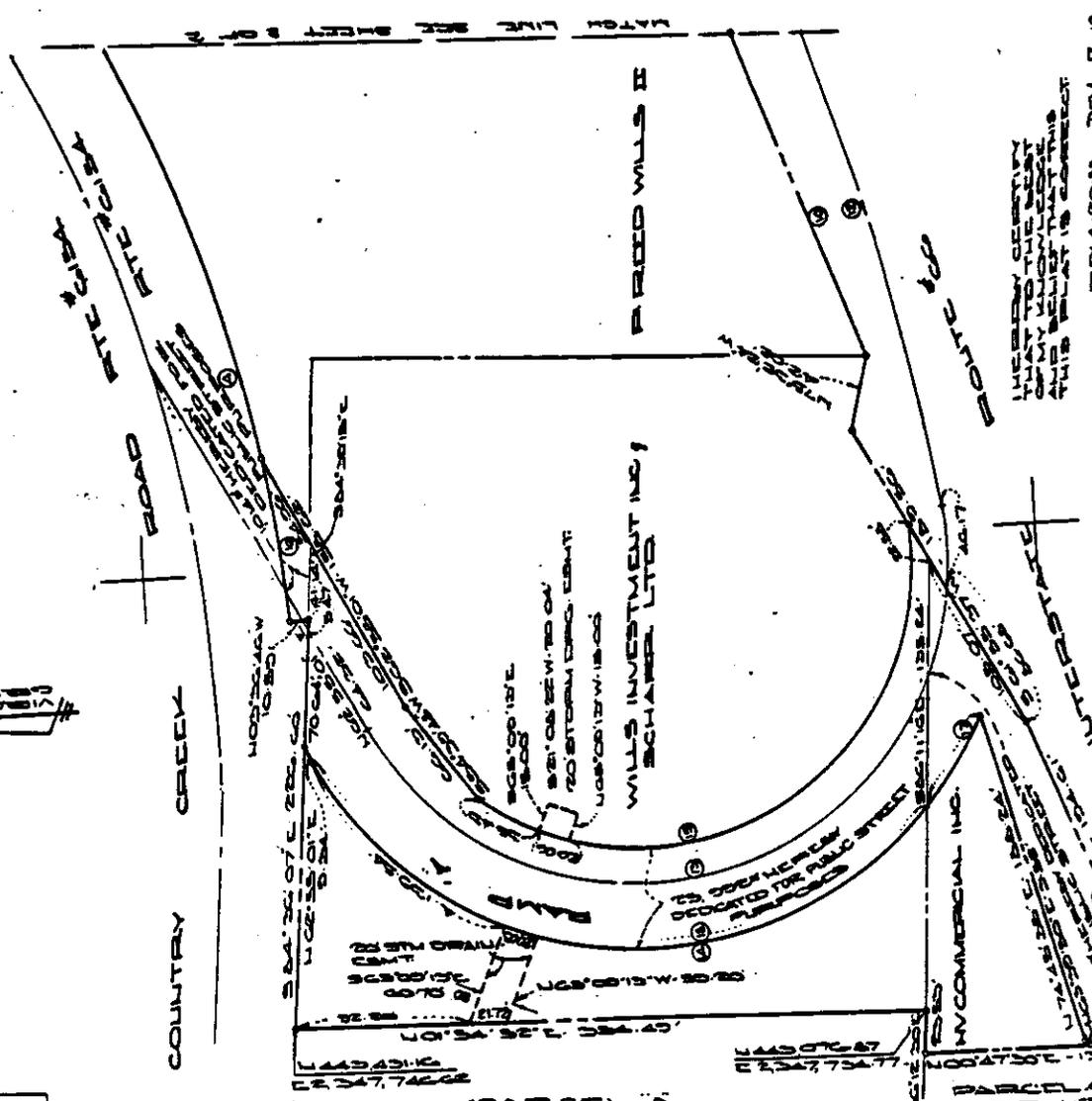
WILLS INVESTMENT INC.	28.7424
SCHAMBER LTD.	28.7424
P. REED WILLS II ET AL	41.2084
TOTAL	179.6932

PLAT SHOWING  
 STREET DEDICATION  
 THEREIN THE PROPERTY OF  
 P. REED WILLS II ET AL  
 PROVIDENCE DISTRICT  
 FAIRFAX COUNTY, VIRGINIA

SCALE 1" = 50' MARCH 1988

DEWBERRY AND DAVIS  
 ARCHITECTS-ENGINEERS-PLANNERS-SURVEYORS  
 5300 ARLINGTON BOULEVARD, SUITE 100  
 FARMERSVILLE, VIRGINIA 22935

PLAT 2477



REV 7-13-89



DEWBERRY AND DAVIS  
 ARCHITECTS-ENGINEERS-PLANNERS-SURVEYORS  
 5300 ARLINGTON BOULEVARD, SUITE 100  
 FARMERSVILLE, VIRGINIA 22935





COMMONWEALTH OF VIRGINIA  
**COUNTY OF FAIRFAX**

Office of Comprehensive Planning  
 Zoning Evaluation Division  
 4050 Legato Road, Suite 700  
 Fairfax, Virginia 22033  
 246-1290  
 June 23, 1989



Martin D. Walsh  
 Walsh, Colucci, Stackhouse, Emrich & Lubeley  
 950 North Glebe Road, Suite 300  
 Arlington, Virginia 22203

Re: Interpretation for C-547 and RZ 76-P-046, Country Creek

Dear Mr. Walsh:

This is in response to your letter of April 28, 1989 requesting an interpretation of the proffers adopted by the Board of Supervisors in conjunction with the approval of RZ 76-P-046 and C-547. As I understand it, the question is whether the proffered commitment to provide land for the construction of 33 low to moderate housing units may be converted to a cash contribution to a "County housing assistance fund." A corollary request to the above is for a determination of the permissible number of dwelling units on Tax Map Parcels 48-1 ((1)) 99, 101 and 101A.

It is my determination that converting the proffered commitment to provide land for 33 units to a cash contribution will require approval of a Proffered Condition Amendment (PCA) by the Board of Supervisors. It is my understanding that such a PCA has been filed. Regarding the issue of the number of dwelling units, based on the approved density, the number of units constructed and the assumption that 92 units will be constructed on the Hazel/Peterson tract, a maximum of 91 units may be constructed on the Wills Tract. This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator. If you have any questions regarding this letter, please feel free to contact me.

Sincerely,

*Barbara A. Byron*

Barbara A. Byron, Director  
 Zoning Evaluation Division, OCP

BAB/PB/B:136

cc: Katherine K. Hanley, Providence District Supervisor  
 Patrick Hanlon, Providence District Planning Commissioner  
 Jane W. Gwinn, Zoning Administrator  
 Edward Jankiewicz, Acting Director, DRD, DEM  
 Assistant County Attorney

**WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY**

**A PROFESSIONAL CORPORATION**

**ATTORNEYS AT LAW**

**950 NORTH GLEBE ROAD, SUITE 300**

**ARLINGTON, VIRGINIA 22203**

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**TELECOPY (703) 525-3197**

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NICHOLAS MALINCHAK  
PETER K STACKHOUSE  
JERRY K EMRICH  
MICHAEL D LUBELEY  
CHARLES L SHUMATE**

**KEITH C MARTIN  
NAN E TERPAK  
WILLIAM A FOGARTY  
JAMES E BARNETT JR  
DAVID J BONGARDNER  
SARAH L STEWART**

**OF COUNSEL  
JULIA T CANNON**

**PRINCE WILLIAM OFFICE  
VILLAGE SQUARE  
13883 OFFICE PLACE, SUITE 201  
WOODBIDGE VIRGINIA 22192  
(703) 880-4684  
METRO 890-4647  
TELECOPY (703) 890-2412**

**LOUDOUN OFFICE  
WAVERLY PARK  
604 SOUTH KING STREET, SUITE 200  
LEESBURG, VIRGINIA 22075  
(703) 777-8977  
METRO 478-1340  
TELECOPY (703) 478-1348**

**April 28, 1989**

**Ms. Barbara A. Byron  
Zoning Evaluation  
4050 Legato Road  
Suite 700  
Fairfax, Virginia 22033**

**RE: RZ C-547  
RZ 76-P-046**

**RECEIVED  
OFFICE OF COMPREHENSIVE PLANNING**

**APR 28 1989**

**ZONING EVALUATION DIVISION**

**Dear Ms. Byron:**

Over the course of the last several weeks we have met separately with Assistant County Attorney Bob Howell and Zoning Administrator Jane Gwinn concerning several interpretations associated with the property that is the subject of the above-referenced rezoning applications. More particularly, the interpretations concern the development rights that remain for lots 48-1((1))-99, 101 and 101A. The interpretations in question are two-fold:

1. Can the developer of the above-referenced lots pay Fairfax County an agreed upon amount to satisfy the proffered condition relating to the convergence of 33 low-moderate income lots?

o Paragraph 9 of the proffers (enclosed herein) previously submitted in rezoning application C-547 states:

"In the event the rezoning action now pending results in grant of a density of 8.5 units per acre on the site which is the subject of this application, the applicant will convey a total of 33 lots suitable for construction of dwelling units to the Fairfax County Housing Authority (Authority), or its successor, at such location as applicant or successor and authority may mutually select, providing pro rata cost of infrastructure including road, storm drainage and utility expense and shall be paid by the Authority or its successor at the time said facilities are

- o Zoning Ordinance Amendment 249 provided for the provision of affordable housing in the ordinance and its applicability included the RT-5 Zoning District.
  - o The subject property was initially zoned to the RT-8 District.
  - o Although the RT-8 District did not exist at the time of the implementation of Zoning Ordinance Amendment 249 (which was adopted on May 28, 1975). It specifically permitted all uses permitted in RT-5 and RT-5 does provide for low and moderate income housing in Column 1. Therefore, Zoning Ordinance Amendment 249 did apply to the RT-8 District.
  - o The Code section of the then-existing ordinance which applies is Code Section 30-3.14 permits housing incentives which "shall never exceed a factor of 125 percent of the number of dwelling units otherwise permitted by the provisions of the district in which located". The ordinance also provides for cash contributions in lieu of units in the Paragraph IVB4 which states "according to provisions developed by the DHCD and FCRHA and approved by the Board of Supervisors, applicants may lease or sell units to the appropriate individual or agency; provide land in lieu of MPH units; or make payments to a County housing assistance fund" (emphasis added). It is clear therefore that in providing for payments to a County housing assistance fund, the applicants are entitled to the incentives provided in Section 30-3.14. In addition, since the then existing Ordinance provided for "housing incentives" the additional units would be permitted to be utilized in its site plan in consideration for the said payment.
2. Can the above-referenced lots, which were partially rezoned to the RT-8 District under application 76-P-046, be developed at a density in excess of eight (8) dwelling units/acre?
- o The said property consists of approximately 10 acres and was a part of the original zoning application of C-547. This application consisted of approximately 66.383 acres and was identified on the Fairfax County Zoning Map as 48-1((1)) Parcels 88, 88A and 89. The application requested the property be rezoned from RE-1 to RM-2M. The Board of Supervisors denied this request but granted the application for the RTC-10 District on January 12, 1976, subject to proffered conditions. A copy of the Board resolution, executed proffers and approved Generalized Development Plan are attached for your reference.
  - o The rezoning application was approved for 471 single family attached dwelling units at a density of 8.5 dwelling units per acre. The density of 8.5 dwelling units per acre was

Ms. Barbara A. Byron

April 28, 1989

Page 3

indicated 531 dwelling units but 93 of those units were in the area of which approximates 11.6 acres and reserved for the Metro station site which was purchased by WMATA. The total number of units approved was 438 plus the 33 lots to be conveyed to the housing authority which results in a total of 471 units.

- o \ Generalized Development Plan Amendment was approved on April 18, 1977. At that time, the balance of the subject property was approximately 54.78 acres and the total number of dwelling units was 471, including the lots to be conveyed to the housing authority.
- o Rezoning application 76-P-046 consisted of approximately 7.939 acres and it was identified as Tax Map 48-1((1)) 87, 99, 100 and 101. Three of these parcels were shown on the Generalized Development Plan for rezoning application C-547 but were not rezoned due to an error in the legal description. Parcel 101 was acquired subsequent to the original rezoning application. The property was rezoned from RE-1 to RT-8 on June 20, 1977, for 64 townhouses, subject to the proffers approved as a part of C-547. A copy of the proffers are attached for your reference.
- o The original rezoning application yielded 471 total units which included 33 lots to be conveyed to the housing authority. The addition of 64 units brings the total units to 535 on approximately 62.7 acres which is a density of 8.5 dwelling units per acre.
- o Based upon the information provided by Dewberry and Davis, there are 352 townhouse units already constructed on approximately 42.33 acres in the Country Creek subdivision which results in a density of 8.31 dwelling units per acre. Therefore, 183 dwelling units on approximately 20.39 acres is remaining to be developed which results in a density of 8.97 dwelling units per acre. It is my understanding that a preliminary plan has been submitted by Hazel Peterson for 92 units, thus leaving a balance of 91 units which may be constructed on the remaining undeveloped parcels. Further, it is my understanding that Hazel Peterson and Reed Wills have reached an agreement which corresponds with units attributable to the two (2) sites. Mr. Howell of the County Attorney's office would like a confirmation of that agreement which we will provide to him.

In conclusion, I would appreciate your confirmation that a cash payment satisfactory to FCRHA and County Attorney office satisfies proffer 9 and that the Wills property is permitted 92 units under its existing zoning approvals. There are certain other issues which must be satisfied to Ms. Gwinn's satisfaction related to open space provided for under the approved Generalized

Ms. Barbara A. Byron  
April 28, 1989  
Page 4

There are a number of items which will be resolved with the determination by you concerning these issues. Mr. Wills has agreed to convey land for road purposes for Virginia Department of Transportation. These roads provide necessary transportation access to the Metro station from I-66 and to the metro parking facility from south of Interstate 66. In addition, there are certain lands located proximate to the Metro station which will be conveyed at no cost to Fairfax County in order to provide for permanent Metro parking. The owner would like to reserve the right to utilize these areas for stormwater maintenance facilities. It is also understood that all conveyances and dedications would be subject to the Board accepting advanced dedication and reservation of density for those areas.

Recognizing the complexity of the above analysis and the fact that both Jane Gwinn and Phil Yates are familiar with these issues, it might be helpful for us to set a meeting to go over these facts in detail with you. We have reviewed these facts and issues with Jane Gwinn and I think it is fair to say that she agrees with our analysis.

As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY, P.C.



Martin D. Walsh

MDW:tgb

cc: Bob Howell  
Jane Gwinn  
Verdia Haywood  
Katherine Hanley

BYRON 4/20/89:LTRW01

---

# Dewberry & Davis

Architects Engineers Planners Surveyors

---

8401 Arlington Boulevard  
Fairfax, VA 22031-4666  
703 849-0100

---

May 12, 1989

Jane W. Gwinn, Zoning Administrator  
Zoning Administration Division  
4050 Legato Road, 8th Floor  
Fairfax, Virginia 22033

RE: RZ C-547  
RZ 76-P-046

Dear Ms. Gwinn:

At our meeting on May 11, 1989 on the above-referenced matter, the issue was raised by Mr. Howell as to whether the proposed number of units in the two remaining undeveloped sections of Country Creek conform to the number of units represented for the respective areas on the approved Generalized Development Plan (GDP). We have prepared the attached graphic which represents the number of units on the approved GDP, the number currently approved in Section 1 through 6 of Country Creek and the proposed number of units in the two remaining undeveloped land bays. As you can conclude, the proposed number of units in the two remaining undeveloped land bays are less than the number of units represented on the approved GDP for these two areas.

I trust this document will assist you in your determination that the proposed number of units are in conformity with the approved GDP for the two subject areas. Should you have any questions in reference to the document, please feel free to give me a call.

Sincerely,

*Susan K. Yantis*

Susan K. Yantis

SKY:dln549

Attachment: A/S

cc: Barbara A. Byron  
Robert L. Howell  
Martin D. Walsh

RECEIVED  
OFFICE OF COMPREHENSIVE PLANNING

MAY 12 1989

ZONING ADMINISTRATION DIVISION

2AD  
 Don 6/8  
 Mike Compton

COUNTY CREEK - STATUS REPORT

	<u>Area</u>	<u>Lots</u>	<u>Density</u>
Section 1	7.51	52	6.92
Section 2	12.32	89	7.22
Section 3	10.35	104	10.04
Section 4	4.95	35	7.06
Section 5	1.19	12	10.05
Section 6	<del>5.99</del>	<del>60</del>	10.0
(Hazel) Section 7 (Revised preliminary under review)	9.3	84	<u>9.0</u>
(Hazel) Section 7 (Not Submitted)	.98	8	8.16
(Wills) Section 8 (Not Submitted)	10.16	<del>85</del>	8.36
<u>Total</u>	62.75	<del>529</del>	<del>8.43</del>

4 = 2.1

~~60~~  
352

92

4.12

**WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

950 NORTH GLEBE ROAD, SUITE 300

ARLINGTON, VIRGINIA 22203

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DANIEL M. RATHBUN

OF COUNSEL  
JULIA T. CANNON

PRINCE WILLIAM OFFICE

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TELECOPY (703) 880-2412

LOUDOUN OFFICE

WAVERLY PARK

604 SOUTH KING STREET, SUITE 200  
LEESBURG, VIRGINIA 22075

(703) 777-6977

METRO 478-1340

TELECOPY (703) 478-1348

June 5, 1989

Ms. Jane Gwinn  
Zoning Administrator  
County of Fairfax  
4050 Legato Road  
8th Floor  
Fairfax, Virginia 22030

Re: Letter of Justification Concerning  
Proffered Condition Amendment for Wills/Nutley  
Property near Vienna Metro Station

Dear Ms. Gwinn: *JG/ML*

As you are aware, based upon our numerous meetings concerning the above-referenced rezoning, the County Executive and the Fairfax County Housing and Redevelopment Authority have reached an agreement with my client to satisfy the requirement for conveyance of 33 lots for affordable housing which were provided in Proffer #9 in the original rezoning for this particular case. This agreement substitutes a cash payment in lieu of the 33 lots. It is my understanding that Barbara Byron and you have determined that a cash payment in lieu of the 33 lots is not permitted based upon the existing proffer and that a proffered condition amendment is necessary in order to permit us to provide cash in lieu of the subject lots. An agreement has been reached to pay Fairfax County \$1.8 million in lieu of the said lots and the purpose of this application is to request that a cash payment in lieu of the 33 lots be added to the proffer language in order to accommodate this agreement.

Upon resolution of this matter, we are willing to provide the following dedications:

Ms. Jane Gwinn  
June 5, 1989  
Page 2

widenings which have reduced the amount of land area owned by us but have never been dedicated.

2. Dedicate a portion of the roadway leading across I-66 to the Vienna Metro Station parking which is on the subject property but has also never been dedicated.
3. Dedicate land on the east side of the connector road to Fairfax County for its permanent parking for the Vienna Metro Station.

All of these dedications would be subject to advanced dedication and reservation of density or a letter from the Zoning Administrator which states that the subject property would be entitled to 91 units. It may also be necessary to provide stormwater management facilities on the property east of the connector road and the reservation of an easement for that purpose would be a condition precedent to the dedication.

This application is to amend the text of Proffer #9 only to read as follows:

"9. In the event the rezoning action now pending results in grant of a density of 8.5 units per acre on the site which is the subject of this application, the applicant will convey a total of 33 lots suitable for construction of dwelling units to the Fairfax County Housing Authority (Authority), or its successor, at such location as applicant or successor and Authority may mutually select, providing pro rata costs of infrastructure including road, storm drainage and utility extensions shall be paid by the Authority, or its successor, at the time said facilities are constructed. Applicant shall advise the Authority at the time of the site plan filing for each phase of the availability of the lots which may be in such section and Authority shall commit reimbursement for infrastructure 60 days after site plan filing.

In the event the Authority declines to commit infrastructure reimbursement as aforesaid within 60 days of notice of site plan filing, this provision shall terminate as to those lots tendered.

The provisions of this paragraph shall apply to land only and nothing herein shall be deemed a commitment by applicant to construct dwelling

Ms. Jane Gwinn  
June 5, 1989  
Page 3

lots. However, a cash payment by the applicant may be provided in lieu of the said 33 lots and in that event the applicant will be entitled to develop the 33 lots as market units.

This application does not affect the approved Generalized Development Plan. Consequently, may this letter serve as a request for a waiver of the Generalized Development Plan in accordance with Paragraph 6 of Section 18-204 of the Zoning Ordinance.

As always, I appreciate your cooperation and assistance and if any further information is required, please contact me.

Very truly yours,

WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY, P.C.



Martin D. Walsh

MDW/ms

GWINN 6/2:W02

GLOSSARY

This Glossary is presented to assist citizens in a better understanding of Staff Reports; it should not be construed as representing legal definitions.

**BUFFER** - A strip established as a transition between distinct land uses. May contain natural or planted shrubs, walls or fencing, singly or in combination.

**CLUSTER** - The "alternate density" provisions of the Zoning Ordinance, which permit small lots and pipestem lots, if specified open space is provided. Primary purpose is to preserve environmental features such as stream valleys, steep slopes, prime woodlands, etc.

**CONVENANT** - A private legal restriction on the use of land, recorded in the land records of the County.

**DEVELOPMENT PLAN** - Conceptual, Final, Generalized. A Development Plan consists of graphic, textual or pictorial information, usually in combination, which shows the nature of development proposed for a parcel of land. The Zoning Ordinance contains specific instructions on the content of development plans, based upon the purpose which they are to serve. In general, development plans contain such information as: topography, location of streets and trails, means by which utilities and storm drainage are to be provided, general location and types of structures, open space, recreation facilities, etc. A Conceptual Development Plan is required to be submitted with an application for the PDH or PDC District; a Final Development Plan is a more detailed plan which is required to be submitted to the Planning Commission after approval of a PDH or PDC District and the related Conceptual Development Plan; a Generalized Development Plan is required to be submitted with all residential, commercial and industrial applications other than PDH or PDC.

**DEDICATE** - Transfer of property from private to public ownership.

**DENSITY** - Number of dwelling units divided by the gross acreage being developed (DU/AC). Density Bonus is an increase in the density otherwise allowed, and granted under specific provisions of the Zoning Ordinance when developer provides excess open space, recreation facilities, moderately priced housing, etc.

**DESIGN REVIEW** - The Division of the Department of Environmental Management which reviews all subdivision plats and site plans for conformance with County policies and requirements contained in the Subdivision Control Ordinance, the Public Facilities Manual, the Building Code, etc, and for conformance with any proffered plans and/or conditions.

**EASEMENT** - A right given by the owner of land to another party for specific limited use of that land. For example, an owner may give or sell easements to allow passage of public utilities, access to another property etc.

**OPEN SPACE** - The total area of land and/or water not improved with a building, structure, street, road or parking area, or containing only such improvements as are complementary, necessary or appropriate to use and enjoyment of the open area.

**COMMON** - All open space designed and set aside for use by all or designated portions of residents of a development, and not dedicated as public lands (dedicated to a homeowners association which then owns and maintains the property).

**DEDICATED** - Open space which is conveyed to a public body for public use.

**DEVELOPED RECREATION** - That portion of open space, whether common or dedicated, which is improved for recreation purposes.

**PROFFER** - A Development plan and/or written condition, which, when offered by an owner and accepted by the Board of Supervisors, becomes a legally binding part of the regulations of the zoning district pertaining to

**PUBLIC FACILITIES MANUAL** - The manual, adopted by the Board of Supervisors, which defines guidelines which govern the design of those facilities which must be constructed to serve new development. The guidelines include streets, drainage, sanitary sewers, erosion and sediment control and tree preservation and planting.

**SERVICE LEVEL** - An estimate of the effectiveness with which a roadway carries traffic, usually determined under peak anticipated load conditions.

**SETBACK, REQUIRED** - The distance from a lot line or other reference point, within which no structure may be located.

**SITE PLAN** - A detailed plan, to scale, depicting development of a parcel of land and containing all information required by the Zoning Ordinance. Site plans are required, in general, for all townhouse and multi-family residential development and for all commercial and industrial development.

**SUBDIVISION ORDINANCE** - An ordinance regulating the division of land into smaller parcels and which, together with the Zoning Ordinance, defines required conditions laid down by the Board of Supervisors for the design, dedication and improvement of land.

**SUBDIVISION PLAN** - A detailed drawing, to scale, depicting division of a parcel of land into two or more lots and containing engineering considerations and other information required by the Subdivision Ordinance.

**USE** - The specific purpose for which a parcel of land or a building, is designed, arranged, intended, occupied or maintained.

**Permitted** - Uses specifically permitted by the Zoning Ordinance Regulations of the Zoning District within which the parcel is located. Also described as a Conforming Use.

**Non-Conforming** - A use which is not permitted in the Zoning District in which the use is located but is allowed to continue due to its existence prior to the effective date of the Zoning Regulations(s) now governing.

**Special Permit** - A use specified in the Zoning Ordinance which may be authorized by the Board of Zoning Appeals or the Board of Supervisors in specified zoning districts, upon a finding that the use will not be detrimental to the character and development of the adjacent land and will be in harmony with the policies contained in the latest comprehensive plan for the area in which the proposed use is to be located. A Special Permit is called a Special Exception when granted by the Board of Supervisors.

**Transitional** - A use which provides a moderation of intensity of use between uses of higher and lower intensity.

**VARIANCE** - A permit which grants a property owner relief from certain provisions of the Zoning Ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship or practical difficulty which would deprive the owner of the reasonable use of the land or building involved. Variances may be granted by the Board of Zoning Appeals after notification, advertising, posting and conduct of a public hearing on the matter in question.

**VPD** - Vehicle trips per day (for example, the round trip to and from work equals two VPD). Also ADT - Average Daily Traffic.

#### ENVIRONMENTAL TERMS

**ACOUSTICAL BERM** - Usually a triangular-shaped earthen structure paralleling a highway noise source and extending up from the elevation of the roadway a distance sufficient to break the line of sight with vehicles on the roadway.

**CHANNEL ENLARGEMENT** - A development-related phenomenon whereby the stream bank's full capacity is exceeded with a greater frequency than under natural undeveloped conditions, resulting in bank and stream bottom erosion. Hydrology literature suggests that flows produced by a storm event which occurs once in 1.5 years are the channel defining flows for that stream.

**COASTAL PLAIN GEOLOGIC PROVINCE** - In Fairfax County, it is the relatively flat southeastern 1/4 of the County, distinguished by low relief and a preponderance of sedimentary rocks and materials (sands, gravels, silts) and a tendency towards poorly drained soils.

**dB(A)** - Abbreviation for a decibel or measure of the noise level perceived by the ear in the A scale or range of best human response to a noise source.

**DRAINAGE DIVIDE** - The highest ground between two different watersheds or subsheds.

**ENVIRONMENTAL LAND SUITABILITY** - A reference to a land use intensity or density which should occur on a site or area because of its environmental characteristics.

**ERODIBLE SOILS** - Soils susceptible to diminishing by exposure to elements such as wind or water.

**FLOODPLAIN** - Land area, adjacent to a stream or other surface waters, which may be submerged by flooding; usually the comparatively flat plain within which a stream or riverbed wanders.

**IMPERVIOUS SURFACE** - A natural or man-made surface (road, parking lot, roof top, patio) which forces rainfall to runoff rather than infiltrate.

**MONTCORILLONITIC CLAY** - A fine grained earth material whose properties cause the clay to swell when wet and shrink when dry. In addition, in Fairfax County these clays tend to slip or slump when they are excavated from slope situations.

**NEF - Noise Exposure Forecast** - A noise description for airport noise sources.

**PERCENT SLOPE** - The inclination of a landform surface from absolute horizontal; formula is vertical rise (feet) over horizontal distance (feet) or V/H.

**PIEDMONT GEOGRAPHIC PROVINCE** - The central portion of the County, characterized by gently rolling topography, substantial stream dissection, V-shaped stream valleys, an underlying metamorphic rock matrix (schist, gneiss, greenstone) and generally good bearing soils.

**PIES/ENVIRONMENT** - Project Impact Evaluation - A systematic comprehensive environmental review process used to identify and evaluate likely environmental impacts associated with individual projects or area plan proposals.

**SHRINK-SWELL RATE** - The susceptibility of a soil's volume to change due to loss or gain in moisture content. High shrink-swell soils can buckle roads and crack foundations.

**SOIL BEARING CAPACITY** - The ability of the soil to support a vertical load (mass) from foundations, roads, etc.

**STREAM VALLEY** - Any stream and the land extending from either side of it to a line established by the high point of the concave/convex topography, as delineated on a map adopted by the Stream Valley Board. For purposes of stream valley acquisition, the five-criteria definition of stream valleys contained in 'A Restudy of the Pohick Watershed' (1963) will apply. The two primary criteria include all the land within the 100-year floodplain and the area along the floodplain in slopes of 15 percent or more.