



COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX



691-4274

Office of Comprehensive Planning  
Zoning Administration Division  
10555 Main Street  
Fairfax, Virginia 22030

December 17, 1981

William F. Ostrander, Jr., AICP  
Patton, Harris, Rust and Associates  
10523 Main Street  
P.O. Box 901  
Fairfax, Virginia 22030

Re: Oakton Village - Section 3  
PHR&A F-1383-7-0

Bill  
Dear Mr. Ostrander:

This is in response to your letter of December 3, 1981. In your letter you request two interpretations concerning your client's proposed revised preliminary plat for Section 3 of Oakton Village.

The first question you posed is whether your client can enjoy the grandfathered status for the nineteen (19) units presented on the original approved plat that were located within 200 feet of the right-of-way of Interstate 66. My response to this query must be no - your client cannot enjoy that grandfathered status.

The basis for this determination is two-fold:

- Your client desires to change the type of unit from single-family attached to multiple family, and
- Your client proposes to increase the number of units in Section 3 from the previously approved 126 units to 240 units - and the number of units within the entire development will be increased from 392 units to 506 units for a net increase of 114 units.

The grandfather provisions as set forth in Section 1-1 of the Public Facilities Manual are quite clear. One's plan is grandfathered "for the features shown thereon under prior ordinance and manual provisions so long as the due diligence standards set forth below are met: ..." Your desired revision to the plat will not result in a similar number or type of unit as "the features" shown on the original plat.

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In your letter, you note that I gave Mr. Russell Rosenberger a differing determination in a letter dated September 5, 1980. That determination was based on the assumption that his desired revised preliminary plat would contain a like number and type of dwelling unit as that represented on the approved plat. My position to Mr. Rosenberger should have been so qualified.

In response to your second question concerning an interpretation of the dwelling type that is proposed, I would note that your assessment is correct that the proposed dwelling type cannot be easily categorized as either a single-family attached dwelling or a multiple family dwelling as such terms are defined in the Zoning Ordinance. Based on your representations, however, and namely the sketch that you furnished Ms. Kelsey, it is my judgment that the proposed units have characteristics that are more similar to multiple family dwellings as defined. I will deem them such if you provide a common covered entranceway over the group of entrances to the individual units.

In closing, and in reference to the first issue concerning the units within 200 feet of the right-of-way of Interstate 66, I would remind you that your client has two options regarding the requirement as set forth in Sect. 2-414:

- Filing of an application for a proffered condition amendment as provided for in Par. 3 of that Section, or
- Filing for a variance of the provisions as set forth in Part 4 of Article 18. In reference to this option, I would direct your attention to the standards for variances as set forth in Sect. 18-404.

Of a final note, I remind you that there are proffered conditions associated with the subject property that must be satisfied. Your attention is directed to those conditions, and any questions you may have in reference to them should be directed to either Phil Garman or Sid Steele.

I trust this response satisfies your immediate need, but should you have additional questions or the need for elaboration, please do not hesitate to give me or Ms. Kelsey a call.

Sincerely yours,



Philip G. Yates  
Zoning Administrator

PGY/wmt

Attachment: A/S

cc: Oscar S. Hendrickson, Chief  
Site Review Branch, DEM  
Sidney R. Steele, Chief  
Zoning Evaluation Branch, OCP

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W.M. Kelly, L.S.  
P.H. Powers, P.E.

December 3, 1981

Reply to Fairfax

Mr. Philip G. Yates  
Zoning Administrator  
Fairfax County  
4100 Chain Bridge Rd.  
Fairfax, VA 22030

RE: OAKTON VILLAGE - SECTION 3  
PHR&A F-1383-7-0

Dear Mr. Yates:

*Phil*

RECEIVED  
Office of Comprehensive Planning  
Zoning Administrator

DEC 3 1981

The Fairfax Building, Third Floor  
10555 Main Street  
Fairfax, Virginia 22030

My firm is representing the Calibre Construction Company, Inc., who intend to purchase an approximately 12-acre portion of the property known as Oakton Village, Section 3, in Oakton, Virginia. This property is presently in the name of Milton Companies, Inc., and is zoned R-20 Residential. I would like to request two interpretations of zoning-related issues which would affect the potential purchase of this property by my client. One interpretation relates to Section 2-414 of the Ordinance requiring a 200-ft. setback from interstate highways. The other is regarding the definition of a multi-family dwelling unit.

As you recall, PHR&A represented a past owner of Section 3, Realty Growth Investors, who held the trust on the land when Jeffrey Schnider's company went bankrupt. On November 21, 1977, under rezoning application 76-P-104, Section 3 was rezoned from the Planned Apartment District (PAD) to the RM-2 Multi-Family Residential District. This zoning application was proffered to permit a total of 752 dwelling units along with a number of other conditions. The development plan for the rezoning case was not proffered, so that flexibility could be retained in the provision of different unit types on the property. In June of 1978, PHR&A submitted a preliminary subdivision plat under the RM-2 Zoning District which was approved on October 19, 1978. Subsequently, the entire Oakton Village, Section 3, was sold to the Milton Companies, Inc., and a revised preliminary plat was submitted to Fairfax County to develop the property with townhouses.

Patton Harris  
Rust and  
Associates

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In September of 1980, you directed correspondence to Russell Rosenberger, attorney for the Milton Companies, regarding the grandfathered status of the original and revised preliminary plats. Since under the current Fairfax County Zoning Ordinance, adopted in 1978, all residential structures must be set back at least 200 feet from an interstate right-of-way, the question was whether the original preliminary plat submitted by PHR&A had grandfathered status, in that it shows dwelling units within 200 feet of Interstate Route 66. In your September 5, 1980, letter to Mr. Rosenberger, you indicated that the project would be grandfathered to allow the same number of dwelling units within the 200-ft. strip as were shown on the original preliminary plat submitted by PHR&A. In your letter you indicated that approximately 19 units were located within 200 feet of the right-of-way of I-66 and, therefore, the revised preliminary plat could also show 19 units in that area.

Calibre intends to develop a 12-acre portion of Section 3 which lies between Bushman Drive and Cyrandall Valley Road, and is adjacent to Interstate Route 66. They would intend to develop approximately 240 apartment units on this portion of Section 3. We would like to have your confirmation that, if Calibre submits a revised plan for this apartment complex, that Calibre would also be allowed, under grandfathered status, to locate up to 19 dwelling units within 200 feet of the I-66 right-of-way. I understand from Phil Garman of DEM that two sections of Milton Companies' townhouse project have been approved and a third section is under review, so I presume that the preliminary subdivision plat prepared for the Milton Companies is still in effect. Therefore, Calibre would intend to submit another revision to that preliminary plat for its apartment complex.

The other issue requiring your interpretation is whether the dwelling type proposed by Calibre will qualify under the zoning ordinance definition as a multiple-family dwelling unit. Calibre's project will have a basic building containing 10 dwelling units in a 2-1/2 story building. The lowest level will have two dwelling units with daylight exposure on the rear of the building and individual entrances into each of these units. On the middle and upper levels, there will be four units each, again with separate entrances into each unit as explained to Jane Kelsey of your office (December 1, 1981). As I read the definition, there are several conditions; first, that the building contain three or more separate dwelling units on a single parcel of ground -- this criteria we can comply with. The second is that the "apartment house," generally would have common outside entrances for all of the units. This is a grey area subject to your interpretation. Third, the units are to be generally designed to occupy a single-floor, one above another -- this criteria we can comply with.

Patton Harris  
Rust and  
Associates

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We feel that the building concept proposed by Calibre would normally be considered a multi-family unit type, even though separate outside entrances are provided. However, if your interpretation is that we must provide a common outside entrance, we would propose to provide a common exterior entranceway covered in some fashion, but exposed to the outside.

If you have any further questions regarding our proposed development, I would be happy to meet with you at your convenience. Since we are in a relatively short feasibility study period, after which the client must invest substantial sums of money, we are hopeful that an early reply to our questions can be made. Thank you for your consideration of this matter.

Very truly yours,

PATTON, HARRIS, RUST and ASSOCIATES  
A Professional Corporation

*Bill*

William F. Ostrander, Jr., AICP  
Senior Vice President

WFO/meu

cc: Ms. Jane Kelsey, Zoning Administrator's Office  
Mr. Chip Kelly, Executive VP, Calibre Construction, Inc.  
Mr. Victor L. Barr, Executive VP/Richard E. Martin, AIA,  
& Assoc.