



FAIRFAX COUNTY

OFFICE OF COMPREHENSIVE PLANNING
ZONING EVALUATION DIVISION
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5505

V I R G I N I A

(703) 324-1290

Fax 324-3924

November 19, 1993

Paul A. Holst
Sumner Homes
3201 New Mexico Avenue NW, Suite 205
Washington, DC 20016

Re: Interpretation for RZ 91-V-003 (Pohick Landing), Road Improvements and Affordable Housing

Dear Mr. Holst:

This is in response to your attached letter of October 21, 1993 requesting an interpretation of Proffers Number 3 and 4 under B. Transportation and Proffer F, Affordable Housing, accepted by the Board of Supervisors in conjunction with the approval of RZ 91-V-003 on June 22, 1992. A copy of your letter is attached for reference.

The first question, as I understand it, is whether the funds for frontage improvements to be escrowed pursuant to Proffer Number 3 can be escrowed at the time of issuance of the first building permit after it has been determined whether the developer will be required to construct right and left turn lanes on Telegraph Road. As I understand it, your concern is that a developer could be required to construct the right and left turn lanes while funds are being held in escrow for the frontage improvements. Therefore, you would like to delay the escrow of funds for frontage improvements until the first building permit is issued when the need for constructing right and left turn lanes into the site has been determined.

The funds for frontage improvements required by Proffer Number 3 and the construction of right and left turn lanes into the site referenced by Proffer Number 4 are two separate issues. Construction of frontage improvements is typically required at site plan approval; however, this case was handled differently because the plans for Telegraph Road were not final at the time of the rezoning and were subject to change. Therefore, the Office of Transportation requested funding equal to the cost of frontage improvements along Telegraph Road to be escrowed with DEM, as provided in Proffer Number 3. Proffer Number 4, which requires the developer to construct right and left turn lanes into the site, was done to ensure safe access into the site in the event construction of units commences prior to completion of the Telegraph Road project. The right and left turn lanes referenced in Proffer Number 4 are temporary and are not part of the final Telegraph Road project. It is, therefore, my determination that to delay the escrow of funds for frontage improvements until issuance of the first building permit is not in substantial conformance with the Proffers adopted in conjunction with approval of RZ 91-V-003. This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator.

Proffer F states "The Applicant, in consultation with the Department of Housing and Community Development, shall contribute one percent (1%) of the estimated sales price of each of the 49 dwelling units approved by this application. This contribution shall be made to the Housing Trust Fund at the time of site plan approval for each unit as per Board of Supervisors policy adopted May 20, 1991." The second question, as I understand it, is whether the affordable housing contribution referenced in Proffer F can be made upon the issuance of each residential use permit and if it can be based on 1% of the actual sales price, instead of as specified in the proffer. The policy adopted by the Board of Supervisors on May 20, 1991, relates to contributions for low and moderate income housing, as provided for in Criterion #8 of the Residential Density Criteria contained in the adopted Policy Plan. According to the amendment to the Policy Plan adopted by the Board of Supervisors on April 8, 1991, in those applications where Criterion #8 is applicable, the high end in any residential Plan category is not recommended unless Criterion #8 is fully satisfied. It was applicable to this application because the requested density of 7.94 dwelling units per acre is at the high end of the recommended density range of 5-8 dwelling units per acre. Proffer F, as written, is consistent with the Board policy on both the timing of the contribution and the formula used to calculate the amount (see the attached copy of the May 20, 1991 Memo to the Board). The timing of the proffer is specific and cannot be delayed. Therefore, it is my determination that tying the affordable housing contribution to the issuance of each residential use permit and adjusting it to the actual sales price is not in substantial conformance with Proffer F. This determination 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 me or Mary Ann Godfrey at (703) 324-1290.

Sincerely,



Barbara A. Byron, Director
Zoning Evaluation Division, OCP

BAB/MAG/hh:77/30

Attachments: A/S

cc: Gerald W. Hyland, Supervisor, Mt. Vernon District
John R. Byers, Planning Commissioner, Mt. Vernon District
Edward J. Jankewicz, Director, Design Review Division, DEM
Angela Rodeheaver, Branch Chief, Office of Transportation
Bonds and Agreements Branch, DRD, DEM
Walter D. Webdale, Director, HCD
Harriet L. Crampton
Pohick Station Limited Partnership
File: RZ 91-V-003

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Barbara Byron, Director
Zoning Evaluation Division
Office of Comprehensive Planning
12055 Government Center Parkway, Suite 801
Fairfax, VA 22035-5505

RECEIVED
OFFICE OF COMPREHENSIVE PLANNING
October 26 1993
ZONING EVALUATION DIVISION

RE: Rezoning Application RZ 91-V-003 (Pohick Landing)

Dear Ms. Byron:

I am writing you with regard to certain proffers associated with the above referenced rezoning application. We are in the process of evaluating the feasibility of developing the property and would like an interpretation concerning Proffer B. Transportation sections 3 and 4, and Proffer F. Affordable Housing.

Proffer B. Transportation section 3 reads "Upon site plan approval, Applicant shall escrow with the Department of Environmental Management (DEM) funds equivalent to an amount necessary to construct frontage improvements of curb and gutter along the property's Telegraph Road frontage." Section 4 states "If Telegraph Road is not constructed as a divided facility prior to the issuance of a residential building permit for the property, Applicant shall construct right and left turn lanes on Telegraph Road within the dedicated right-of-way, as approved by VDOT, up to a maximum of 200 feet in length with 100 foot tapers."

Clearly, the eventual developer of the property is obligated to provide for road improvements along the property's Telegraph Road frontage. Conceivably, however, the developer could be required to escrow funds for the frontage improvements and actually construct the improvements while the escrow is in place, an onerous scenario. Can the proffer be interpreted to allow escrowing of the funds after it is determined whether the developer will be required to construct turn lanes, i.e., upon the issuance of the first residential use permit?

Proffer F. Affordable Housing reads "The Applicant, in consultation with the Department of Housing and Community Development, shall contribute one percent (1%) of the estimated sales price of each of the 49 dwelling units approved by this application. This contribution shall be made to the Housing Trust Fund at the time of site plan approval for each unit as per Board of Supervisors policy adopted May 20, 1991."

We request this proffer be interpreted to allow the affordable housing payment to be made upon the issuance of each residential use permit. Our basis for making this request is as follows:

- The payment of a fee computed at 1% of estimated selling price (\$140,000) multiplied by the total units we propose (45) amounts to \$63,000. The payment of this fee in its entirety at site plan approval is unusual and onerous to a degree that it jeopardizes the viability of the project. Obviously, if the project is not viable it will not be developed and the affordable housing contribution may never be made.
- By tying the affordable housing payment to the issuance of each residential use permit the County is assured the payment will be made.
- The residential use permit is the mechanism for payment of the fee per unit to the Park Authority under Proffer G. Recreation of the same rezoning application.

Additionally, we would like to know what provision, if any, would be made for an adjustment of the payment from one percent of the estimated sales price to one percent of the actual sales price.

Please advise me of your interpretation as early as possible. In the event more information is required please feel free to contact me at (703) 338-9111. Thank you for your consideration.

Sincerely yours,



Paul A. Holst

CC: B. Hayes McCarty

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April 1, 1994

Ms. Mary Ann Godfrey
Fairfax County Office of Comprehensive Planning
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, VA 22035--5505

RECEIVED
OFFICE OF

APR 04 1994

ZONING EVALUATION DIVISION

RE: Pohick Landing (RZ 91-V-003)

Dear Ms. Godfrey:

I am writing you regarding Proffer C. 3 which regards acoustical criteria for the above referenced project. In order to determine the specific location of the relevant noise contours we retained Polysonics Inc., an acoustical consultant, to perform a traffic noise analysis. We had included within our final site plan submission a summary letter from Polysonics, Inc. The substance of the analysis as set forth in the summary letter is that none of our proposed town homes lie within the relevant noise contours and that no noise attenuation measures would be required. Our position, therefore, is that no sound attenuation measures are required to meet the proffer.

During final site plan review and at our post submission conference the issue of this Proffer was raised by Mirza Baig (D. E. M., Site Review branch). While Mr. Baig understands our position and I don't believe he disagrees, he would like OCP's concurrence. I have enclosed a copy of Mr. Baig's comment, post submission conference minutes, Polysonics' summary letter as well as the traffic noise analysis for your reference. We are still planning to construct the town homes according to the standards in Proffer C. 3. a., b. and c. which we see as a disparate requirement.

Assuming you concur with our position I request that you notify Mirza Baig of this. Mr. Baig indicated that a phone call would be sufficient for his purposes. I would, however, appreciate a written response. I can be reached at (301) 961-4902 should the need arise.

Sincerely,



Paul A. Holst
Project Manager

CC: Gary Bowman, Urban Engineering & Associates, Inc.

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