



County of Fairfax, Virginia

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

May 2, 2012

Lynne J. Strobel
Walsh, Colucci, Lubeley, Emrich & Walsh, PC
2200 Clarendon Boulevard, Thirteenth Floor
Arlington, VA 22201-3359

Re: Interpretation for SE 84-V-035, TDC-Harwood Venture, Tax Map: 83-4 ((1)) 8, 10, and 11: Medical Office Use

Dear Ms. Strobel:

This is in response to your letter of February 24, 2012, requesting an interpretation of the Special Exception development conditions approved by the Board of Supervisors in conjunction with the approval of Special Exception SE 84-V-034 and Special Exception SE 84-V-035. As I understand it, your question is whether the establishment of medical office use(s) on the site would be in substantial conformance with the development conditions. This determination is based on your letter and attached copies of the development conditions. Copies of your letter and the development conditions are attached for your reference.

On January 28, 1985, the Board of Supervisors approved Special Exception SE 84-V-034, subject to development conditions, to permit fill within a floodplain, and Special Exception SE 84-V-035, subject to development conditions, to permit an increase in building height. The application property, consisting of 4.814 acres, is located in the southeast quadrant of the intersection of Richmond Highway and Fort Hunt Road. The property is developed with an 8 story office building that was constructed pursuant to the approval of the above-referenced special exception applications. Your question concerns a development condition that was approved with both SE 84-V-034 and SE 84-V-035, which states that "*No medical offices or similar medical facilities shall be located within the building.*" You suggest that the development condition may have been imposed because, at the time of the approvals, the Zoning Ordinance made a distinction between a medical office and a general office use. Primarily, you note that a medical office required a greater number of parking spaces than a general office. You state that because the office building is operated in accordance with a shared parking agreement with the adjacent hotel, it was determined that medical offices should not be permitted because they would generate an increased parking requirement.

On March 8, 1993, the Board of Supervisors adopted an amendment to Article 20 of the Zoning Ordinance to delete the definition of medical office and revise the definition of office to include medical offices, among other changes, and revised Article 11 to eliminate the higher parking requirement for medical offices.

Department of Planning and Zoning
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Based on the above amendments, you state that the development condition no longer has a basis in the Zoning Ordinance and you are requesting a determination that medical office use on the subject property would be in substantial conformance with SE 84-V-034 and SE 84-V-035. You also note that a staff report for an amendment to SE 84-V-035 that was prepared in 2007 did not include a restriction on medical office use on the site. The amendment was subsequently withdrawn.

The development condition prohibits medical offices *and other similar uses*, which are not defined. Based on the staff report and the Planning Commission Verbatim, the primary concern with the approval of the proposed office building in this location was traffic congestion and impacts on nearby streets in an area where traffic issues were already critical. Several of the approved development conditions reflect attempts to mitigate traffic impacts to the extent feasible. As noted, the applicant obtained approval of a shared parking agreement to permit sharing of parking spaces with an adjacent hotel/motel use and the use of some compact parking spaces; approval of such an agreement suggests that the office use as approved would not generate a high number of in-and-out trips generating a need for the full amount of required parking. According to the Fairfax County Department of Transportation (FCDOT), in addition to reducing the parking requirement, the development condition prohibiting medical offices would have the effect of reducing traffic to and from the site because the daily total, AM peak, and PM peak hour trip generation rates of medical offices are significantly higher than those of general offices.

Based on the above, it is not possible to conclude that the development condition was imposed to address only parking issues. Traffic was a major issue as noted in the staff report, the PC verbatim, and the approved development conditions. Even though the Zoning Ordinance was later amended to remove the distinction between medical and general office uses in the definitions and in the parking requirements, given the background information on these applications and the trip generation rate of a medical office compared to a general office, there is no evidence that the development condition was imposed only to reduce parking needs. In addition, the development condition also prohibits "similar medical facilities," which are not defined.

As such, it is my determination that the establishment of medical offices and similar medical facilities in the building would not be in substantial conformance with the development conditions. The establishment of such uses would require the filing of and approval of a Special Exception Amendment application by the Board of Supervisors.

This determination has been coordinated with Zoning Administration (ZAD) and 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 Mary Ann Godfrey at (703) 324-1290.



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

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Attachments

cc: Gerald Hyland, Supervisor, Mount Vernon District
Earl Flanagan, Planning Commissioner, Mount Vernon District
Diane Johnson Quinn, Deputy Zoning Administrator, DPZ
Kenneth Williams, Plan Control, Land Development Services, DPWES
Angela Rodeheaver, Chief, Site Analysis Section, FCDOT
Kevin Guinaw, Chief, Special Projects/Applications Acceptance Branch, DPZ
File: SE 84-V-034, SE 84-V-035, SEI 1202 007; Imaging, Reading File



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& WALSH PC

RECEIVED
Department of Planning & Zoning

FEB 28 2012

Zoning Evaluation Division

February 24, 2012

Via Scheduled Express

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

Re: Request for Determination
SE 84-V-035
Fairfax County Tax Map Reference: 83-4 ((1)) 8, 10 and 11 (the "Subject Property")

Dear Ms. Berlin:

Please accept this letter as a request for a determination in accordance with the provisions of Paragraph 4.A. of Section 9-004 of the Fairfax County Zoning Ordinance (the "Zoning Ordinance").

The Subject Property is located in the southeast quadrant of the intersection of Richmond Highway and Fort Hunt Road. Zoned to the C-8 District, the Subject Property is developed with an existing eight (8) story office building. The office building was constructed pursuant to the approval of SE 84-V-034 to allow fill in a floodplain and the approval of SE 84-V-035 to allow an increase in building height. The Board of Supervisors approved these special exceptions at its hearing held on January 28, 1985.

The special exception referenced as SE 84-V-035 was approved subject to 16 development conditions. A copy of the Clerk's letter confirming the approval with the development conditions is enclosed for your convenient reference. Development condition 15 states the following: "No medical offices or similar medical facilities shall be located within the building." This condition was imposed because, at the time of the approval, the Zoning Ordinance made a distinction between medical office use and general office use. The primary distinction between the two (2) uses was that medical office required a greater number of parking spaces. As the office building on the Subject Property is operated in accordance with a shared parking agreement with the adjacent hotel, it was deemed appropriate to preclude medical office use because it would generate an increased parking requirement.

The current Zoning Ordinance does not make a distinction between medical office use and general office use. As a result, medical office falls within the classification of office and is parked at the office rate. An increased parking requirement for medical office is no longer part of the Zoning Ordinance. As development condition 15 no longer has a basis in the Zoning Ordinance, because medical office is not defined nor distinguished from office, I request your determination that this condition is no longer applicable. The office building on the Subject Property should not be restricted in its leasing as long as the tenant complies with the definition of office and the other limitations of the development conditions.

I would note that an amendment to SE 84-V-035 was submitted in 2007. While the application was ultimately withdrawn, the staff did prepare a report with its analysis of the Subject Property and an adjacent parcel. While staff did not recommend favorably, development conditions were prepared and made a part of the staff report. The staff's proposed development conditions did not include a restriction on medical office within the existing office building presumably for the reasons identified above. I have attached a copy of staff's proposed development conditions dated January 10, 2008 for your information.

In accordance with the provisions of Paragraph 4.A. of Section 9-004 of the Zoning Ordinance, this request does not propose the following:

- *A change of land area or permit a more intensive use from that approved pursuant to the special exception.*

The proposal modifies previously approved development conditions to be compliant with the terms of the current Zoning Ordinance and does not change the amount of land area or propose a more intensive use on the Subject Property.

- *An increased parking requirement.*

As there is no longer a distinction between medical office use and general office use which results in an increased parking requirement, there is no modification to parking requirements as defined by the Zoning Ordinance and the prior approval.

- *Uses other than those approved pursuant to a special exception.*

Medical office is not a separately defined term by the Zoning Ordinance and is understood to be within the definition of office. Office use is permitted under the prior approval.

- *A reduction in the effectiveness of approved transitional screening, buffering, landscaping or open space.*

As there are no changes to the existing building, parking or any features on the Subject Property, there are no reductions in the effectiveness of approved transitional screening, buffering, landscaping or open space.

- *An increase in the amount of clearing and/or grading for a stormwater management facility.*

As there are no physical changes to the Subject Property, there are no increases in the amount of clearing and/or grading for a stormwater management facility.

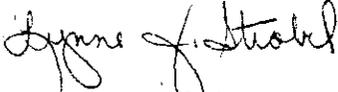
- *The addition of any building or additions to buildings.*

The existing office building will remain on the Subject Property without any modifications.

In accordance with the requirements of the Zoning Ordinance, I have enclosed a check in the amount of \$520.00 payable to Fairfax County that represents the filing fee for interpretation requests. I have also enclosed two (2) copies of this request with the enclosures pursuant to your policy. Should you have any questions regarding this letter, or require additional information, please do not hesitate to contact me. I would appreciate your confirmation that development condition 15 approved in conjunction with SE 84-V-035 is no longer applicable as the Zoning Ordinance no longer makes a distinction between medical office use and general office use. As always, I appreciate your assistance.

Very truly yours,

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



Lynne J. Strobel

LJS/kae

Enclosures

cc: Derek Hendon (w/enclosures)
Martin D. Walsh