



# FAIRFAX COUNTY

2EP  
OFFICE OF THE CLERK  
BOARD OF SUPERVISORS  
12000 Government Center Parkway, Suite 5  
Fairfax, Virginia 22035-00

V I R G I N I A

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December 11, 1997

Keith C. Martin, Esquire  
Walsh, Colucci, Stackhouse,  
Emrich and Lubeley, P.C.  
2200 Clarendon Boulevard  
Thirteenth Floor  
Arlington, Virginia 22201-3359

RE: Rezoning Application  
Number RZ 95-Y-003

Dear Mr. Martin:

Required funds having been paid by the applicant in accordance with the procedures established by the Board of Supervisors for rezoning of commercial or industrial land within the Route 28 Tax District to residential use, enclosed you will find a copy of an Ordinance adopted by the Board of Supervisors at a regular meeting held on November 24, 1997 granting as proffered, effective November 24, 1997, Rezoning Application Number RZ 95-Y-003, in the name of M/I Schottenstein Homes, Incorporated from the R-1 and I-3 Districts and Water Supply Protection Overlay District to the PDH-8 District and Water Supply Protection Overlay District, subject to proffers dated November 11, 1997, on subject parcels 44-2 ((1)) 6A consisting of approximately 22.28 acres of land located in Sully District.

The Conceptual Development Plan was approved as part of the Board of Supervisors' approval of RZ 95-Y-003; the Planning Commission approved Final Development Plan Application FDP 95-Y-003 on November 11, 1997, subject to development conditions dated October 15, 1997 and contingent upon the Board of Supervisors' approval of Rezoning Application RZ 95-Y-003 and the Conceptual Development Plan.

December 11, 1997  
RZ 95-Y-003

2.

The Board also:

- **Waived the 600-foot limitation on the length of private streets; and**
- **Modified the transitional screening requirement and waived the barrier requirement along the northeastern property boundary which abuts the single family attached units.**

Sincerely,

Nancy Velas  
Clerk to the Board of Supervisors

NV/ns

cc: John M. Yeatman, Director, Real Estate Div., Dept. of Tax Administration  
Melinda M. Artman, Deputy Zoning Administrator  
Barbara A. Byron, Director, Zoning Evaluation Div., OCP  
Fred R. Beales, Supervisor Base Property Mapping/Overlay  
Robert Moore, Transportation Planning Div., Office of Transportation  
Paul Eno, Project Planning Section, Office of Transportation  
Department of Environmental Management  
Y. Ho Chang, Resident Engineer, VDOT  
Land Acq. & Planning Div., Park Authority  
Barbara J. Lipka, Deputy Executive Director, Planning Commission

RECEIVED  
OFFICE OF COMPREHENSIVE PLANNING  
MAR 5 1998  
ZONING EVALUATION DIVISION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at Fairfax, Virginia, on the 24th day of November, 1997 the following ordinance was adopted effective November 24, 1997 (Funds required by State Law having been paid by the applicant in accordance with the procedures established by the Board of Supervisors for rezoning of commercial or industrial land within the Route 28 Tax District to residential use):

AN ORDINANCE AMENDING THE ZONING ORDINANCE  
PROPOSAL NUMBER RZ 95-Y-003

WHEREAS, M/I Schottenstein Homes, Incorporated filed in the proper form an application requesting the zoning of a certain parcel of land herein after described, from the R-1 and I-3 Districts and Water Supply Protection Overlay District to the PDH-8 District and Water Supply Protection Overlay District, and

WHEREAS, at a duly called public hearing the Planning Commission considered the application and the propriety of amending the Zoning Ordinance in accordance therewith, and thereafter did submit to this Board its recommendation, and

WHEREAS, this Board has today held a duly called public hearing and after due consideration of the reports, recommendation, testimony and facts pertinent to the proposed amendment, the Board is of the opinion that the Ordinance should be amended,

NOW, THEREFORE, BE IT ORDAINED, that that certain parcel of land situated in the Sully District, and more particularly described as follows (see attached legal description):

Be, and hereby is, zoned to the PDH-8 District and Water Supply Protection Overlay District, and said property is subject to the use regulations of said PDH-8 District and Water Supply Protection Overlay District, and further restricted by the conditions proffered and accepted pursuant to Va. Code Ann., §15.1-491(a), which conditions are in addition to the Zoning Ordinance regulations applicable to said parcel, and

BE IT FURTHER ENACTED, that the boundaries of the Zoning Map heretofore adopted as a part of the Zoning Ordinance be, and they hereby are, amended in accordance with this enactment, and that said zoning map shall annotate and incorporate by reference the additional conditions governing said parcel.

GIVEN under my hand this 24th day of November, 1997.



Nancy V. V.

Clerk to the Board of Supervisors

RZ 95-Y-003

The Conceptual Development Plan was approved as part of the Board of Supervisors' approval of RZ 95-Y-003; the Planning Commission approved Final Development Plan Application FDP 95-Y-003 on November 11, 1997, subject to development conditions dated October 15, 1997 and contingent upon the Board of Supervisors' approval of Rezoning Application RZ 95-Y-003 and the Conceptual Development Plan.

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## APPROVED DEVELOPMENT CONDITIONS

FDP 95-Y-003

October 15, 1997

If it is the intent of the Planning Commission to approve FDP 95-Y-003, staff recommends that the Planning Commission condition the approval by requiring conformance with the following development conditions:

1. All driveways for the garage townhouse units shall be a minimum of 18 feet in length and shall not encroach into any sidewalk area.

PROFFERS

RZ 95-Y-003

November 11, 1997

Pursuant to Section 15 1-491(a), Code of Virginia, 1950 as amended, and subject to the Fairfax County Board of Supervisors (BOS) approval of rezoning application RZ 95-Y-003, as proposed for rezoning from the R-1 and I-3 Zoning District to the PDH-8 Zoning District, M/I Schottenstein Homes, Inc., (the "Applicant") proffers the development of Fairfax County tax map 44-2 ((1)) 6A (the "Application Property") shall be in accordance with the following proffered conditions.

1. CONCEPTUAL / FINAL DEVELOPMENT PLAN -

Subject to the provisions of Section 16-403 of the Fairfax County Zoning Ordinance (hereinafter referred to as "Zoning Ordinance"), development of the Application Property shall be in substantial conformance with the Conceptual/Final Development Plans (CDP/FDP), prepared by Bowman Consulting Group, P.C., dated October 14, 1997, as further modified by these proffered conditions.

2. TRANSPORTATION -

Applicant will provide improvements as follows:

- a. Construction of a half section of a four lane divided facility (median curb excluded) along the road's currently existing vertical alignment along the Application Property's Walney Road frontage (or provision of escrowed equivalent funds as described below) coincident with the development of the Application Property. The Applicant shall dedicate and convey in fee simple to the Board of Supervisors 45 feet from the centerline plus an additional 12 feet for turn lanes at the site entrances and construct a thirty-five foot cross section plus the 12 feet for turn lane(s) from the centerline to the face of the curb. Dedication shall be made at time of subdivision/site plan approval or upon demand by VDOT or Fairfax County, whichever occurs first. The Applicant shall also provide all necessary ancillary easements along the Application Property's Walney Road frontage.
- b. In the event that condemnation is necessary for the road construction proffered in a. above, the Applicant shall fund right-of-way acquisition expenses. The Applicant shall make reasonable efforts to acquire off-site property for the construction of improvements as shown on the GDP. In the event the Applicant is not able to reasonably acquire the off-site right-of-way, Applicant shall submit a written request

to Fairfax County for the County to acquire the right-of-way by means of its condemnation powers. It shall be understood that the County shall be under no legal obligation to do so. It is further understood that the Applicant's request shall not be considered until it is forwarded, in writing, to the Director of Land Acquisition accompanied by: (1) plats, plans and profiles showing the necessary right-of-way and/or easements to be acquired; (2) an appraisal, prepared by an independent appraiser approved by the County, of the value of the Property to be acquired and of all damages, if any, to the residue of the Property; (3) a sixty (60) year title search certificate of the Property to be acquired; and (4) a check in an amount equal to the appraised value of the Property and of all damages to the residue plus estimated administrative costs, as determined by the Director of Land Acquisition. In the event the owner of the right-of-way is awarded more than the appraised value of the right-of-way and of the damages to the residue in a condemnation suit, the amount of the award in excess of the amount shall be paid to the County by the Applicant within thirty (30) calendar days of said award. It is understood that all other costs incurred by the County in acquiring the Property shall be paid to the County by the Applicants upon demand. In the event that the County does not formally initiate, by Board of County Supervisors' resolution authorizing such action, acquisition of the aforesaid Property by means of its condemnation powers within three hundred sixty-five (365) days following the date of Applicants' submission of its condemnation request to the County, and thereafter diligently pursue such condemnation to completion, the funds shall be returned to the Applicant, the Applicant shall have no further obligations to obtain the right-of-way under this paragraph.

- c. If requested by DEM & VDOT, in lieu of construction, the Applicant shall escrow funds equivalent to the estimated cost of the aforementioned improvements as determined by DEM for the portion(s) of the frontage not constructed. In the event that the Applicant is unable to obtain off-site easements and/or right-of-way as may be necessary to construct improvements along all or a portion of the entire frontage of the Application Property through the use of condemnations as provided in b. above, the Applicant shall escrow funds equivalent to the estimated cost of such improvements as determined by DEM that cannot be constructed without off-site easements and/or right-of-way.
- d. Entrances along Walney Road will be limited to the two locations shown on the CDP/FDP.
- e. Construction of a public street system acceptable to VDOT shall be provided within the single-family detached residential area of the Application Property as shown on

the CDP/FDP The single-family attached units shall be served with a private street system and parking area constructed in accordance with PFM private street standards.

- f. Prior the entering into a contract of sale, prospective purchasers of townhouses shall be notified in writing of the maintenance responsibility of the private streets by the Homeowners' Association and shall acknowledge receipt of this information in writing. The Applicant shall record a covenant setting forth the maintenance responsibility of the private streets by the Homeowner's Association among the land records of Fairfax County. Each deed of conveyance shall expressly contain this disclosure.
- g. At time of first site plan or subdivision plan approval, the Applicant shall contribute as a pro-rata share for the cost of a traffic signal at the intersection of Walney Road and Westfields Boulevard, as determined by DEM.

3. **STORMWATER MANAGEMENT (SWM) -**

The Applicant shall provide stormwater detention facilities in accordance with the Public Facility Manual (PFM) for Best Management Practices (BMP) within WSPD.

4. **NOISE ATTENUATION -**

Applicant shall utilize building materials with characteristics to achieve a maximum interior noise level of 45 dBA Ldn for all units (if any) located with the projected 65-70 dBA Ldn highway noise impact area for Walney Road.

- a. All units located between the 65-70 dBA Ldn highway noise impact contours (140 feet from centerline) may achieve the average interior noise levels using the following acoustical attributes:
  - (i) Exterior walls shall have a laboratory STC rating of at least 39.
  - (ii) Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than twenty percent (20%) of any facade, they shall have the same laboratory STC as the walls.

- (iii) Measures to seal and caulk between exterior wall surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.
  
- b. In order to reduce exterior noise levels in affected rear/side yards of proposed residential lots to 65 dBA Ldn or less, one or more noise barriers shall be provided. The barriers shall be of a height sufficient to break all lines of sight between a line eight (8) feet above the centerline of the highway and a plane six (6) feet above the ground in the affected outdoor recreational areas. The barriers shall be architecturally solid from the ground up and shall contain no gaps or openings. An architecturally solid wall or enclosed privacy yards shall be used to provide the suggested level of noise mitigation. If a noise fence is used (not associated with an enclosed privacy yard) the top of the fence shall incorporate design features that vary the height and/or appearance of the fence along its length.
  
- c. As an alternative to 4(a) above, the Applicant may submit to DEM, an acoustical engineering study which will specify those building materials to be used to ensure that building interior sound levels will not be in excess of 45 dBA Ldn for all of those residential units delineated on the CDP/FDP within the above referenced areas. The study methodology shall be acceptable to DEM.
  
- d. As an alternative to 4(b) above, the Applicant may submit to DEM, an acoustical engineering study showing that the topographic relationship between the street elevations and the affected rear/side yards eliminates the need for the acoustical barrier. The study methodology shall also be reviewed by OCP and be acceptable to DEM. If selecting this option, the Applicant shall implement methods as the study recommends.

5. **LIMITS OF CLEARING AND GRADING -**

The Applicant shall conform to the limits of clearing and grading shown on the CDP/FDP, subject to the modification for the installation of utility lines, if necessary, as determined by DEM. Clearing limits within and adjacent to the on-site stormwater management (SWM) shall be in substantial conformance to that depicted on the CDP/FDP.

6. ENVIRONMENTAL QUALITY CORRIDOR (EQC) -

- a. The limits of the EQC on the Application Property shall be as shown on the CDP/FDP. EQC areas shall be preserved as shown on the CDP/FDP except that the Applicant shall have the right to construct and provide storm drainage outfalls, sanitary sewer, water mains and trails with minimum disturbance as approved by the Urban Forester. The Applicant will be responsible for replanting and/or reseeding, as appropriate, those areas which are disturbed, as determined by DEM.
- b. Prior to the approval of any plans for clearing and grading on the site, a vegetative restoration plan for the EQC shall be submitted for the review and approval of the Urban Forestry Branch. This plan will provide for the restoration of EQC areas that were cleared of trees prior to the rezoning, exclusive of areas that have been or will be cleared for utilities or trails and that, as a result, cannot be revegetated, as determined by the Urban Forestry Branch. No less than 600 seedlings per acre of native vegetation will be provided within those areas of the EQC for which the Urban Forestry Branch determines that planting efforts would be desirable; however, the cost of plant material and labor shall not exceed \$8,000.00 as determined by DEM. All plantings will be provided prior to the issuance of the first residential use permit (RUP) for the development or within an alternative time frame approved by the Urban Forestry Branch. Once established, the EQC restoration areas shall remain as permanent undisturbed open space.
- c. Upon completion of the EQC restoration, Applicant shall record a conservation easement on the EQC area which runs to the benefit of the Homeowners Association and Fairfax County in a form approved by the County Attorney.

7. TRAILS -

The Applicant shall construct trails, as shown on the CDP/FDP. The trails shall consist of a combination of wood chip, blue stone and asphalt, as depicted on the CDP/FDP. The final location of the trails shall be determined based on field location at time of subdivision/site plan approval in coordination with DEM. To the extent feasible, trails within the EQC shall be colocated with existing sanitary sewer easements to minimize disturbance within the EQC, as determined by DEM.

8 RECREATIONAL FACILITIES -

- a. Applicant shall comply with Section 6-110 of the Zoning Ordinance, regarding developed recreational facilities. In compliance with this requirement, trails, a child play area to consist of swings, modular play structures appropriate for preschool aged children as well as children aged 6-12, benches, picnic area and a multi-purpose court shall be provided. Should these facilities not expend the required per dwelling unit expenditure of \$500.00, the Applicant shall contribute the balance of the \$500.00/unit expenditure to the Fairfax County Park Authority for developed recreational improvements to E.C. Lawrence Park, payable in equal amounts on a "per market-rate dwelling unit" basis (i.e. remaining sum divided by the number of market-rate dwelling units equals per market-rate dwelling unit payment) at the issuance of the building permit for each unit.

9 AFFORDABLE DWELLING UNITS -

The Applicant shall comply with the provisions of Article 2-800 of the Zoning Ordinance by constructing and offering for sale single-family attached units. The number of units shall be determined in conformance with Zoning Ordinance provisions in effect at time of site plan/subdivision plan approval. The ADUs shall be designed and constructed with exterior materials which are architecturally compatible with the market rate units.

10. LANDSCAPE / BUFFERS -

- a. The Applicant shall provide a landscape buffer along the Application Property's Walney Road frontage as follows:
  - (i) A streetscape of hardwoods (minimum 2 1/2 inch caliper) at a maximum of 40 feet on center and large evergreen plantings shall be provided generally as shown on sheet 2 of 3. For those single-family detached lots adjacent to Walney Road, the streetscape shall be provided within a 20 foot landscape easement along Walney Road. The plant materials will be selected in consultation with the Urban Forester.
  - (ii) Entry features similar in character to that shown on Sheet 2 of 3 of the CDP/FDP.

- b. Landscaping within open space areas shall be consistent in terms of quality and quantity with that shown on Sheet 2 of 3 of the CDP/FDP
- c. Typical townhouse lot landscaping shall be similar in character to that shown on Sheet 3 of the CDP/FDP
- d. The Applicant shall record in the Fairfax County land records in a form approved by the County Attorney a 20-foot wide landscape easement for those single-family detached lots with frontage on Walney Road, as shown on the CDP/FDP. The easement shall run to the benefit of the Homeowners Association for the proposed development and shall be solely for the purpose of maintaining a landscaped buffer along Walney Road. No structures, other than fencing and entrance signage, shall be permitted within this easement. Prior to purchase, all purchasers of lots subject to the 20 foot landscape easement shall be notified in writing of the existence of the easement and its restrictions on tree removal.

11. **ROUTE 28 TAX DISTRICT PAYMENT -**

Within 60 days of decision by the Board of Supervisors on the rezoning of the Application Property to the PDH-8 District, the Applicant shall pay the assessment per Board policy to the Route 28 Tax District or its designee for that portion of the site that is within the Tax District.

12. **DISCLOSURE OF AIRPORT NOISE -**

Prior to entering into a contract of sale, prospective purchasers shall be notified in writing of:

- 1) The proximity of the site to the airport; and
- 2) That the site will experience direct aircraft overflights and that noise from aircraft operations will be audible on the site.

13. **GARAGES -**

Any conversion of garages that will preclude the parking of vehicles within the garage is prohibited. A covenant setting forth this restriction shall be recorded among the land records of Fairfax County in a form approved by the County Attorney prior to the sale of any lots and

shall run to the benefit of the homeowner's association, which shall be established, and the Board. Prospective purchaser's shall be advised of the use restriction prior to entering into a contract of sale.

14. LIGHTING, STREET FURNITURE -

- a. Street lighting generally in conformance with that depicted on Sheet 1 and 3 of the CDP/FDP shall be provided adjacent to the private street system.
- b. Benches as shown on Sheets 1 and 3 of the CDP/FDP shall be provided adjacent to the internal trail system within open space areas.

15. ARCHEOLOGY-

Prior to any construction or grading activity, the Applicant shall perform a Phase I Site Location Reconnaissance Survey. If a Phase II and/or Phase III Archaeological Study is determined by the County Archaeologist to be necessary, the Applicant shall perform additional studies as limited below and shall grant permission to the County Archaeologist or his agents, at their own risk, to enter the Property to perform any necessary test and to remove artifacts for examination, provided that testing and removal do not unreasonably interfere with or delay the Applicant's construction schedule. If determined necessary by the County Archaeologist, the Applicant shall contribute up to \$5,000.00, as adjusted by any increase or decrease in the Engineering News Record Construction Cost Index from the date of rezoning to the date of the contribution is made, toward the cost of any Phase II or Phase III recovery efforts on the Property as contracted for by the Applicant.

[SIGNATURES BEGIN ON NEXT PAGE]

OWNERS.

MI SCHOTTENSTEIN HOMES, INC.

By:

RCM

Name:

R.C. MOESLE

Title:

President.

CONTRACT PURCHASER:

U.S. HOMES CORPORATION

By:

Phil F. Barber

Name:

Phil F. Barber

Title:

Division President