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May 2, 2022

Via U.S. Mail and E-mail

Douglas Morgan
Zoning Administrator, Stafford County, Virginia
P.O. Box 339
Stafford, Virginia 22555
Email: dmorgan@staffordcountyva.gov

Re: Zoning Determination Request for Tax Map Parcel Nos. 54-79, 54-79A, 54-80, 54-80A and 54-81 (the “Property”), Owned by Naomi Road, LLC (the “Owner”)

Doug:

I hope this finds you well. As you know, this firm represents the Owner of the above-referenced Property in connection with Owner’s efforts to obtain approval for developing the Property into a residential age-restricted and assisted living development known as the Vistas at Farm Ferry (the “Project”). In October 2020, the Stafford County Board of Supervisors (the “Board”) approved a Rezoning of the Property, with proffers (the “Rezoning”), and simultaneously approved an associated Conditional Use Permit (the “CUP”) for the Property permitting development of the Project in accordance with a Generalized Development Plan (the “GDP”) made part of Owner’s Rezoning and CUP applications.

Since approval of the Rezoning and CUP, certain provisions of the Stafford County Code Zoning Ordinance (the “Zoning Ordinance”) related to the number of required parking spaces for the Project have been amended in a manner that would prohibit development of the Project in accordance with the GDP. Owner takes the position that it has a vested right under Virginia Code § 15.2-307 to develop the Project in accordance with the GDP, and that it is therefore exempt from the amended parking space requirements presently set forth in the Zoning Ordinance. Accordingly, pursuant to Virginia Code § 15.2-2299 and section 28-295 of the Stafford County Zoning Ordinance, I am writing to request an official zoning determination with respect to Owner’s right to develop the Project.

The Board’s approval of the Project in accordance with the GDP

On or about July 17, 2018, Owner submitted Application RC18152428 requesting a Rezoning of the Property from the A-1 Agricultural Zoning District to the R-5, Age-Restricted Housing Zoning District (the “Rezoning Application) in order to allow development of the Project by-right. In addition, Owner submitted Application CUP18152429 requesting a Conditional Use Permit to allow increased

residential density for the Project (the “CUP Application”). Attached to both the Rezoning Application and the CUP Application were initial versions of the GDP for the Project. After initial submittal of the Rezoning Application and the CUP Application, in consultation with County Planning Staff, Owner made certain revisions to the Applications generally, and also submitted revised versions of the GDP.

On October 2, 2020, the Owner submitted a Proffer Statement whereby Owner agreed to abide by additional conditions, pay certain cash proffers, and install certain amenities as part of the Project in the event the Applications were approved. The Proffer Statement makes clear that, if the proffers were accepted, the Property would be developed in accordance with the version of the GDP attached to the Proffer Statement as Exhibit A.¹ Four days later, on October 6, 2020, the Board approved the Rezoning Application, and thereby accepted the proffers set forth in the October 2, 2020 Proffer Statement.² On the same day (October 6, 2020), the Board approved the CUP Application, permitting development of “a total of 134 age-restricted, multi-family, assisted living or memory care units.”³ Notably, Resolution R20-51, approving the CUP Application, states that development of the Project “shall occur generally as shown on [the GDP] . . . as last revised and sealed May 11, 2020.” Both the version of the GDP attached to the Proffer Statement (revised October 2, 2020), and the version of the GDP approved in the CUP Application (revised May 11, 2020) clearly and definitely depict the location of parking for the project on the northeast, east and southeast sides of the proposed dwelling building.

Subsequent Amendment to Parking Requirements

At the time the Rezoning and CUP Applications were approved (October 2020), section 28-102 and table 7.1 of the Zoning Ordinance required one (1) parking space per unit for any “retirement housing” use. On January 19, 2021, the Board adopted Ordinance O21-04, which struck reference to “retirement housing” uses, and likewise struck the 1-space-per-unit requirement formerly applicable to “retirement housing” uses from Table 7.1 (titled “Required Parking and Loading Spaces”) of the Zoning Ordinance. The effect of Ordinance O21-04 is to subject any use consisting of retirement or age-restricted housing—such as the Project—to the 2.2-space-per-unit requirement governing all multifamily housing. In short, Ordinance O21-04 more than doubles the parking requirements for retirement or age-restricted housing uses.

Applicable Law and Analysis

Under Virginia Code § 15.2-2307(A),

¹ The version of the GDP attached to the Proffer Statement was last revised October 2, 2020. A copy of the Proffer Statement, including the GDP attached thereto as Exhibit A, is attached to this letter as Exhibit 1.

² A copy of Ordinance O20-12 approving Application RC18152428 is attached hereto as Exhibit 2.

³ A copy of Resolution R20-51 approving Application CUP18152429 is attached hereto as Exhibit 3. The version GDP

“ [A] landowner’s rights shall be deemed vested in a land use . . . when the landowner

- (i) Obtains or is the beneficiary of a **significant affirmative governmental act** which remains in effect allowing development of a specific project,
- (ii) Relies in good faith on the significant affirmative governmental act, and
- (iii) Incurs extensive obligations or substantial expenses . . . in reliance on the significant affirmative governmental act.

With respect to what constitutes a “significant affirmative governmental act,” Virginia Code § 15.2-2307(B) is explicit:

“For purposes of this section . . . the following are deemed significant affirmative governmental acts allowing development of a specific project”

- (i) The governing body has **accepted proffers** which specify use related to a zoning amendment;
- (ii) The application has **approved an application** for a **rezoning for a specific use** or density; [and/or]
- (iii) “The governing body or board of zoning appeals has granted a special exception or **use permit with conditions**”

The Virginia Supreme Court has clarified the effect of the foregoing statutory sections by stating “when vested rights accrue . . . the rights that vest are . . . those that the government affirmatively acts upon.” *Hale v. Bd. of Zoning Appeals*, 277 Va. 250, 274 (2009); see *In re Zoning Ordinance Amendments Enacted by the Loudon County Bd. of Supervisors*, 67 Va. Cir. 462, 466 (2003) (holding that, when a landowner has a “vested right in a specific project, [it] is entitled to develop that approved project in accordance with the governmental approval”).

In this case, Owner is the beneficiary of no less than three significant affirmative governmental acts giving it a vested right to construct the aspects of the Projects in accordance with the approved GDPs. First, the Board accepted Owner’s Proffers for the Project, as set forth in the Proffer Statement, when it approved the Rezoning Application. Attached to the Proffer Statement was the October 2, 2020 GDP clearly and definitely depicting the location and amount of parking spaces for the Project. Second, Owner’s Rezoning Application was for a specific use—development of the Vistas at Ferry Farm (*i.e.*, the Project)—in accordance with the May 11, 2020 GDP. When the Board approved the Rezoning Application pursuant to Ordinance O20-12, it affirmatively acted upon the parking plan depicted on the May 11, 2020 GDP. And, finally, the Board’s approval of the CUP Application pursuant to Resolution R20-51 was explicitly conditioned on development of the Property in accordance with May 11, 2020 GDP—including the parking aspects of the May 11, 2020 GDP.

The GDPs acted on by the Board depict a specific number of parking spaces in specific locations. Thus, any one of these significant affirmative governmental acts, standing alone, is

sufficient to vest Owner in its right to develop the parking aspects of the Project in accordance with the approved GDPs. Since the Board took these affirmative acts, Owner has relied in good faith and incurred obligations and expenses in pursuit of developing the Project by, among other things, engaging professionals to generate a final site plan for the Property. Only by virtue of these subsequent efforts has Owner learned that the previously-approved parking plan is not permissible under the current version of section 28-102 and table 7.1 of the Zoning Ordinance.

Based on the foregoing analysis, and in keeping with recent conversations between you and I regarding this issue, I hereby respectfully request, on behalf of the Owner, that you issue a Zoning Determination clarifying that Owner has a vested right to develop the Project, and in particular, the parking aspects of the Project, in accordance with the October 2, 2020 GDP.

In accordance with section 28-295 of the Zoning Ordinance, I am enclosing a check in the amount of \$454.80 to cover the requisite fee for this request, as well as the required Request form. Thank you for your consideration of this matter and please do not hesitate to contact me if I can be of further assistance.

Sincerely,



Charles W. Payne, Jr.

CWP
w/ attachments

cc: Doug Janney (via email)