



January 8, 2023

**CERTIFIED AND REGULAR MAIL**

Landon C. Davis, III  
c/o Parrish Snead Franklin Simpson, PLC  
P.O. Box 7166  
Fredericksburg, VA 22404  
Certified Mail Number: 7021 0950 0000 1224 7873

**FILE COPY**

Dr. Pamela Yeung, Chairman  
Thomas Coen, Vice Chairman  
Tinesha Allen  
Meg Bohmke  
Darrell English  
Monica Gary  
Crystal L. Vanuch

Randal E. Vosburg  
County Administrator

Copy via certified and regular mail to:<sup>1</sup>  
JPI-Fountain Park, LLC  
Attn: James Jarrell  
1005 Sophia Street  
Fredericksburg, VA 22401  
Certified Mail Number: 7021 0950 0000 1224 7491

Copy via certified and regular mail to:<sup>2</sup>  
JPI-Fountain Park-Q5, LLC  
Attn: James E. Jarrell, III  
1005 Sophia Street  
Fredericksburg, VA 22401  
Certified Mail Number: 7021 0950 0000 1224 7507

**SUBJECT: *Application 22154745; TMP# 30-43, 30-43A, 30-44, 30-45, and 30-46; Zoning Administrator Vesting Determination ("Determination")***

Dear Mr. Davis:

This letter is in response to your request for a zoning and vesting determination ("Request") related to Tax Map Parcel Nos. 30-43, 30-43A, 30-44, 30-45, and 30-46 (collectively, the "Property") submitted with your letter dated October 25, 2022, which Request was officially submitted on November 15, 2022. The Property is currently zoned UD-5, Urban Development-5 Zoning Subdistrict.

In the Request, you state that JPI-Fountain Park, LLC and JPI-Fountain Park-Q5, LLC (collectively, "JPI") entered into a Memorandum of Understanding with the County dated August 24, 2020 ("MOU").<sup>3</sup> Additionally, you state that the Board of Supervisors approved a reclassification of

<sup>1</sup> Property owner of Tax Map Parcel Nos. 30-43, -43A, -44, and -46.

<sup>2</sup> Property owner of Tax Map Parcel No. 30-45.

<sup>3</sup> The MOU will not be addressed by this Determination, as it is a contractual agreement between its parties and does not qualify as a significant affirmative governmental act pursuant to Virginia Code § 15.2-2307(B). Therefore, it is not appropriate to consider as part of a vesting determination.

the Property from the B-2, Urban Commercial Zoning District to the UD-5, Urban Development-5 Zoning Subdistrict on July 6, 2021 ("Reclassification") and that the County approved a major grading plan on May 11, 2022. The Reclassification was approved by Ordinance O21-33 on July 6, 2021, without proffers.

The Request seeks a determination on the following:

- Whether JPI has a vested right to develop the Property in accordance with the terms and conditions set forth in the MOU, and the guidelines for the UD-5 zoning district in place on July 6, 2021, including but not limited to the right to construct 309 multifamily residential units.
- Whether JPI has a vested right to develop the Property in accordance with the terms and conditions set forth in the MOU and the guidelines for the UD-5 zoning district, including but not limited to all parking, utility, stormwater management, and design standards in place and applicable as of July 6, 2021.

According to Virginia Code § 15.2-2307, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a *subsequent amendment to a zoning ordinance* when all the three of the elements/prongs listed immediately below ("Vested Rights Elements") are satisfied. It is noted that the Request is premature and not ripe for decision regarding vested rights as there is no subsequent amendment to the zoning ordinance mentioned or alleged to have occurred in the Request. Notwithstanding the foregoing and even though not required, this Determination nevertheless addresses whether the Vested Rights Elements have been satisfied assuming, but not admitting, that any relevant *subsequent amendment to a zoning ordinance* has occurred in this case.

1. *The landowner obtains or is the beneficiary of a significant affirmative governmental act (SAGA) which remains in effect allowing development of a specific project;*

Virginia Code § 15.2-2307(B) provides, without limitation, a list of acts deemed to be SAGAs:

- (i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment;
- (ii) the governing body has approved an application for a rezoning for a specific use or density;
- (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions;
- (iv) the board of zoning appeals has approved a variance;
- (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances;
- (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property; or
- (vii) the zoning administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the

permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of § 15.2-2311.

In this case, there is no SAGA. The Reclassification involved neither the acceptance of proffers nor the acceptance of proffered conditions specifying use relating to a zoning amendment. Accordingly, there is no SAGA under Virginia Code § 15.2-2307(B)(i).

Additionally, the governing body has *not* approved an application for a rezoning *for a specific use or density* as the Reclassification was not accompanied by any proffers or any proffered generalized development or other illustrative plan. The Reclassification generally rezoned the Property to the UD-5, Urban Development-5 Zoning Subdistrict, but it did not specify any specific use or density.<sup>4</sup> Therefore, no specific use or density was approved by the Board of Supervisors as part of the Reclassification and there is no SAGA under Virginia Code § 15.2-2307(B)(ii).

The remainder of SAGAs listed in Virginia Code § 15.2-2307(B) neither apply nor are alleged to apply to the scenario outlined in the Request. Consequently, there is no SAGA and the Vested Rights Elements are not satisfied.

2. *Relies in good faith on the SAGA; and*

Because there is no SAGA in this case, there can be no reliance in good faith on the SAGA as required by Virginia Code § 15.2-2307(A)(ii).

3. *Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the SAGA.*

Because there is no SAGA in this case, it is impossible for any extensive obligations or substantial expenses in diligent pursuit of the specific project *in reliance on the SAGA* to have taken place, as required by Virginia Code § 15.2-2307(A)(ii).

It is my determination that the Property is *not* vested pursuant to Virginia Code § 15.2-2307.

However, this Determination verifies that the Property is currently zoned UD-5, Urban Development-5 Zoning Subdistrict. Such verification is valid as of the date of this letter and is subject to change.

This determination may be appealed to the Board of Zoning Appeals within thirty (30) days from receipt of this letter, in accordance with Virginia Code § 15.2-2311, or this decision shall be final and unappealable. You may obtain the BZA appeal application at

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<sup>4</sup> The 309 multifamily residential units mentioned in the Request is only found in the MOU and is not provided for within the Reclassification.

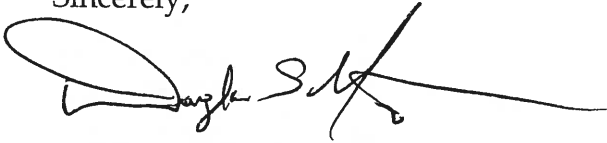
Letter to: Mr. Landon C. Davis, III

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<https://staffordcountyva.gov/AppealofZoningDecisions>. You may submit the Appeal Application along with the fee of \$1,952.25 to the Planning and Zoning Department. This fee includes a 2.75% technology fee.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas S. Morgan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Douglas S. Morgan, CZA, CTM  
Zoning Administrator

DSM:jas