

Patrons – All Members of Council

Approved as to form and legality by the City Attorney

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF PETERSBURG, AS AMENDED, BY AMENDING THE DISTRICT MAP CONSTITUTING A PART OF SAID ORDINANCE, AS AMENDED, SO AS TO CHANGE CERTAIN PROPERTY HAVING A CURRENT ADDRESS OF 2470 COUNTY DRIVE, FURTHER IDENTIFIED AS TAX PARCEL 040-03-0801, FROM M-1(C), LIGHT INDUSTRIAL DISTRICT (WITH CONDITIONS), TO PUD, PLANNED UNIT DEVELOPMENT DISTRICT, WITH CONDITIONS.

WHEREAS, PBFL, LLC, owner of certain property having a current address of 2470 County Drive, further identified as tax parcel 040-03-0801, through its attorney-in-fact, John G. “Chip” Dicks of Future Law, LLC, petitioned the City Council through its Planning Commission to amend the City’s zoning ordinance; and

WHEREAS, the subject property, having a current address of 2470 County Drive, further identified as tax parcel 040-03-0801, contains approximately 36 acres of land and is located along the south line of U. S. 460/County Drive; and

WHEREAS, the amendment sought by the owner of the subject property would modify the zoning designation of the subject property from “M-1”(c), Light Industrial District, with conditions, to PUD, Planned Unit Development District, with proffered conditions; and

WHEREAS, such proposed amendment is sought to facilitate the development of a planned development to be known as Harrison Creek and to contain commercial, office/retail, and multi-family units; and

WHEREAS, the Planning Commission held a public hearing on the proposed amendment on November 7, 2007, pursuant to notice thereof as required by law; and

WHEREAS, at that public hearing, adjoining property owners and other interested parties raised concerns regarding (i) the impact of traffic expected to be generated by the

proposed development along County Drive because it is a four-lane highway without a median or designated turning lanes, (ii) the proposed density of the multi-family residential development portion of the proposed development, and (iii) the perceived negative impact of railway traffic at the southern boundary of the site; and

WHEREAS, by letter dated February 19, 2008, the owner PBFL, LLC, and BECO Construction Company, Inc., agreed to accept the conditions proposed by Planning Department staff in the staff report dated October 31, 2007, and proffered additional conditions to mitigate the impact of the proposed amendment upon surrounding properties and land uses; and

WHEREAS, the Planning Commission finds that the proposed amendment, to the extent it would authorize multi-family residential development, is not fully consistent with the Comprehensive Plan 2000 General Land Use Plan (Map), which Plan identifies light industrial/flexible uses as appropriate for a substantial portion of the subject property; and

WHEREAS, the Planning Commission finds that the proposed amendment, to the extent it would authorize commercial and retail uses, is consistent with the Comprehensive Plan; and

WHEREAS, the Planning Commission observes that the land use circumstances and development patterns for the affected area of the City are in flux; and

WHEREAS, the Planning Commission has made a recommendation to City Council, via the Comprehensive Plan 2000-Amendment (2007-02), relative to a proposed amendment to the Comprehensive Plan 2000 General Land Use Plan (Map), which recommendation is based on the Planning Commission's finding that an incremental approach to amending the General Land Use Plan for the corridor within which the subject property is located is not in the best interest of the community and is inconsistent with general planning practices; and

WHEREAS, the Planning Commission finds that the conditions proffered by the owner PBFL, LLC, and BECO Construction Company, Inc., which proffered conditions include the conditions proposed by the Planning Department staff, appear to be capable of mitigating the potential for the proposed development to have adverse impacts on traffic, adjacent property owners, and the surrounding uses and values of the existing neighborhood; and

WHEREAS, the Planning Commission recommends that City Council approve the proposed amendment, with the conditions proffered by the petitioner, attached hereto and made a part hereof; and

WHEREAS, the City Council has held a public hearing on February 19, 2008, pursuant to notice thereof as required by law, on the proposed amendment to the zoning ordinance; and

WHEREAS, the City Council of the City of Petersburg has determined that the proposed amendment to the zoning ordinance should be granted, with the conditions proffered by the petitioner, attached hereto and made a part hereof.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Petersburg:

1. That the zoning ordinance, as amended, be amended further by amending the District Map constituting a part of said ordinance, as amended, so as to change the designation of the following described property from "M-1(c)", Light Industrial District (with conditions), to PUD, Planned Unit Development District, with the proffered conditions attached hereto and made a part hereof.

that certain 36.216 +/- acre parcel of land situate and being in the City of Petersburg, Virginia along the south line of U.S. Route 460/County Drive, with approximately four hundred (400') feet of frontage thereon, addressed as 2470 County Drive and further identified as Tax Parcel 040-03-0801.

2. That this rezoning is conditioned upon the compliance by the owner or owners with all of the proffered conditions contained in the attachment to this ordinance, designated "Conditions for REZ-PUD 2007-04", which is attached to, incorporated into, and made a part of this ordinance. These conditions, having been proffered by the owners or owners accepted by the City, shall continue in full force and effect until a subsequent amendment to the City's Zoning Ordinance changes the zoning of the parcel rezoned by this ordinance and specifically repeals such conditions.

3. That if the current or future owner or owners of the subject property fail to fulfill the proffered conditions incorporated into this ordinance by March 1, 2013, the Petersburg City Council may, by duly adopted ordinance, deem such conditions void, repeal this ordinance, and rezone the property.

4. That this ordinance shall take effect immediately upon adoption.

Ordinance 08-Ord-20
adopted by the City of Petersburg Council
of the City of Petersburg on:
2/19/08

City Manager

Harrison Creek, LLC
609 Independence Parkway
Chesapeake, VA 23320
Phone: 757-547-1515
Fax: 757-547-5579
becohomes.com

February 19, 2008

Leonard A. Muse
Director Planning and Community Development
City of Petersburg
City Hall, Room 204
135 N. Union Street
Petersburg, Virginia 23803

RE: Proffers Relative to Harrison Creek
PBFL, LLC and BECO Construction Company, Inc., Applicants
Property Address: 2470 County Drive
REZ-PUD 2007-04

Dear Mr. Muse:

The Applicant is pleased to submit the following proffers for the above-referenced Rezoning Request to rezone Tax Parcel 040-03-0801 at 2470 County Drive, in the City of Petersburg, Virginia, consisting of 36.216 acres, more or less, from Light Industrial ("M-1") to Planned Unit Development ("PUD"). The purpose of the Rezoning Request is to permit the development of the Harrison Creek Planned Unit Development including the following land uses: Commercial/Office/Retail (4.0 acres, more or less), Office Site (1.5 acres, more or less); and Multifamily Residential containing 336 units (29.0 acres, more or less).

The proffers are as follows:

1. The Property shall be developed in general conformance with the Plan (prepared by Porterfield Design Center; dated January 10, 2008) and the Application for Planned Unit Development submitted with this case. The exact boundaries and acreage of each land use designation may be shifted to a reasonable degree at the time of site plan for each development area/use in order to accommodate engineering or reasonable design considerations. These conditions apply to the Applicant or its successors or assigns.
2. The "OutParcel Site" and "Office/Retail Site" on the Plan (prepared by Porterfield Design Center; dated January 10, 2008) shall be developed in a manner consistent with the "B-2", General Commercial District Regulations of the Zoning ordinance of the City of Petersburg with all permitted uses allowed by the Ordinance, except the following and similar such uses shall not be permitted: used vehicles sales, vehicle rebuilding or vehicle body shops or vehicle repairing facilities, used tire sales, towing lots, salvage dealers, or vehicle service operations which employ any form of outside storage of inoperative motor vehicles shall not be permitted as uses within this area, new automobile sales; adult entertainment uses of any kind, nightclubs, tattoo parlor. This land use area shall not exceed 4.0 acres.

3. The life style (multi-family) land use designation on the Plan (prepared by Porterfield Design Center; dated January 10, 2008), shall be developed in accordance with the conceptual plan submitted for Harrison Creek Apartments, and shall consist of not more than 336 multi-family units, with the unit mix set out in the Application, on a parcel of land within the PUD (Multi-family Land Use Designation) not to exceed an area of 29.0± acres. Accessory uses such as garage parking, clubhouse/community center /pool and other recreational amenities are uses allowed within this land area. The net density of multi-family uses in this land area shall not exceed a gross density of 12.85 dwelling units per acre. There shall be no other residential uses on any land use designations within the PUD.
5. The land area designated as "Office Site", as shown on the Plan (prepared by Porterfield Design Center; dated January 10, 2008) shall not exceed 1.60± acres nor shall the structures developed for office use exceed 12,000 square in area. Parking spaces shall be provided at a ratio of one space for every 200 square feet of floor area.
6. The Applicant shall execute a "Declaration of Covenants and Restrictions" (Declaration), approved in advance by the City Attorney as consistent with the Ordinance adopted approving this zoning case, and so by create the Harrison Creek Association (HCA). The HCA shall enforce the standards for development, consistent with the zoning conditions, and assure the quality of development, architectural compatibility, environmental protection and other elements of development control. The Declaration shall be recorded among the land records of the City of Petersburg prior to the conveyance of any properties by the Applicant to third parties and as soon as practicable upon approval of the zoning case.

The HCA shall be funded by all owners of property within the Harrison Creek development by payment of dues to the HCA based upon the owner's pro-rata share of the total land area, excluding the wetlands areas. The HCA shall appoint a Board of Architectural Review (BAR) which shall, prior to site plan approval by the City, review and approve all site plans, architectural designs, building heights, signage, landscaping, parking fields, lighting, pedestrian circulation plans, stormwater management facilities and such other submissions as are necessary to ensure that development within Harrison Creek achieves the high standards established by the Conceptual Site Plan, the Declarations and the zoning conditions.

7. The Applicant shall provide when applicable, its proportionate costs, dedications of rights or way, and/or construction of roadway segments as set forth in the Conceptual Site Plan and as determined by updated TIA (Traffic Impact Analysis) submitted at the time of site plan review and subject to approval by the City. Prior to approval by the City of any site plan for development within Harrison Creek, an updated TIA shall be performed and the report submitted to the City as part of the site plan submission. The Applicant shall install suitable traffic management and control measures, as determined by the City, at the intersection of the "80' Right-of-Way and County Drive", and at the intersection of the "Secondary Access to Apartments" as a condition precedent of approval of a site plan for any development within the subject PUD.

8. Landscaping shall be in general conformance with the Plan prepared by Porterfield Design Center, dated January 10, 2008, and subject to approval and/or modification by the Department of Planning and Department of Public Works at the time of any site plan submission.
9. Parking fields shall be in general conformance with the "Article 19 of the Zoning Ordinance of the City of Petersburg" subject to approval and/or modification by the Zoning Administrator.
10. Signage shall be in general conformance with the purposes of Article 21 (Sign Regulations) of the Zoning Ordinance of the City Of Petersburg and consistent with the unified system of signage set forth in the PBFL, LLC Zoning Request dated 08/06/07 prepared by Future Law, L.L.C. All signs shall require a sign permit issued under the provisions of Article 21 of the Zoning Ordinance of the City of Petersburg.
11. The pedestrian circulation system shall be in general conformance with the provisions for Recreation Amenities and Natural Areas set forth in the PBFL, LLC Zoning Request dated 08/06/07 prepared by Future Law, L.L.C. and as illustrated in the Plan prepared by Porterfield Design Center, dated January 10, 2008.
12. All uses shall be connected to public water and sewer as part of the development of the Property. The Applicant shall be responsible for the design and construction of all on-site and off-site water and sewer lines necessary to provide service to the particular land use being developed, in accordance with the applicable requirements of the City and the Commonwealth of Virginia. All lines shall be sized to serve the drainage shed in which they are located in accordance with the applicable requirements of City of Petersburg. The Applicants shall be responsible for provision of a pro-rata share of the costs of off-site improvements to the sanitary sewer capacity and conveyance system for the Poor Creek Sanitary Sewer Basin. The actual costs to be determined in consultation with the Department of Public Works at or before the time of Site Plan submission for the development as a whole or any individual or separate developments within the PUD.

13. Stormwater management facilities shall be owned and maintained by the Developer. The stormwater management ponds shall be constructed by the Developer as determined to be necessary and appropriate by the City, based on a Stormwater Management Plan consistent with the laws of the Commonwealth of Virginia and the requirements of the City of Petersburg. Such plans shall be required at the time of site plan submission. Stormwater management ponds shall primarily be wet ponds and shall be designed so as to enhance the areas in which the ponds are located. The design and location of the various ponds shall be approved by the City of Petersburg at the time of Site Plan submission.
14. The Applicant shall grant utility easements or such other easements as are necessary and appropriate for the development of Harrison Creek. The party requesting an easement shall provide a copy of the proposed easement document for review and approval in advance, such easement shall be of a minimum width necessary and shall be located in such a way that it does not reasonably interfere with the productive use of the grantor's property, and the grantee of the easement shall indemnify the grantor for any and all damages that may result of the installation and/or maintenance of such easement.
15. The developer shall, prior to the issuance of any building permit to commence construction of any building on the Property, record a restrictive covenant running with the land that provides that the subject property will not be used or operated in whole or in part as affordable rental housing described in the provisions of (i) 26 U.S.C. § 42, 26 U.S.C. § 142(d), 24 CFR § 983, 24 CFR § 236, 24 CFR § 241(f), 24 CFR § 221(d)(3), or any successors thereto; (ii) applicable state law; or (iii) similar local ordinances adopted by the locality wherein such real property is located."
16. There shall be an appropriate buffering plan, which shall include keeping as many of the existing larger trees along the boundary lines as possible, determined as part of site plan review, to provide a natural vegetative buffer between that portion of the Property developed as multifamily and the existing single family residences along the western boundary line (N 0009'11"), 2073.27 feet in length (the "Western Boundary Line"). Further, there shall be no building constructed within 30 feet of the Western Property Line.
17. There shall be a decorative fence surrounding the Property, the final location and design of which will be determined as part of site plan review, however, the fence shall be at least 6 feet in height, surround the entire portion of the Property developed as Multifamily, and shall be designed to create a "gated residential community". The location of the fence shall be designed to keep as many of the existing larger trees along the boundary lines as possible.
18. All utilities shall be underground.
19. Except for timbering approved by the Virginia Department of Forestry for the

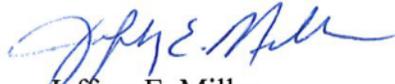
pose of removing dead or diseased trees, there shall be no timbering on the property until a land disturbance permit has been obtained from the City and the approved devices installed.

We are pleased to make these proffers in the spirit of a commitment to excellence in the development of the Harrison Creek project, as the Applicant makes a significant investment in this area of the City and in the City of Petersburg as a whole.

The Applicant reserves the right to amend, alter or supplement these proffers until this application comes before the City Council for consideration.

With warm regards, I respectfully submit this and remain,

Very truly yours,



Jeffrey E. Miller
Director of Development

Commonwealth of Virginia:

Subscribed and sworn to before me this 19th day of February, 2008, by Jeffrey E. Miller.

My Commission Expires: 11/30/2010


NOTARY PUBLIC

Virginia Notary Registration #: 7022214

