



James Snyder
Director of Planning and Zoning City of Falls Church
City Hall
300 Park Avenue
Falls Church, VA 22046

Re: Amendment to Resolution 2016-04,
Special Exceptions to allow Mixed Use and Building Height Bonus
Founder's Row (formerly "Mason Row")
919 Park Avenue, 921 Park Avenue, 925 Park Avenue, 212 N. West Street, 110
N. West Street, 934 W. Broad Street, 932 W. Broad Street 922 W. Broad Street,
920 W. Broad Street and 916 W. Broad Street ("Founder's Row")

Dear Jim:

On January 11, 2016 the City Council for the City of Falls Church, Virginia ("City Council") in conjunction with a comprehensive plan amendment and a rezoning action approved Resolution 2016-04, which granted a Special Exception for residential use and height bonus within the mixed-use Founder's Row Project. The Applicant is filing an application ("Application") herewith requesting City Council to approve an amendment to the Special Exception granted by Resolution 2016-04.

The grant of the Special Exception was subject to the Applicant's fulfillment of the "Voluntary Concessions, Community Benefits, Terms and Conditions, Spectrum Development, LLC/Mason Row Dated January 11, 2016". The Applicant hereby petitions the City Council to approve the following amended Special Exception documents:

1. Voluntary Concessions, Community Benefits, Terms and Conditions, Spectrum Development, LLC/Mason Row Amended April 5, 2017 ("Amended Voluntary Concessions").
2. Conceptual Development Plan ("Amended CDP") dated April 5, 2017 as prepared by Walter L. Phillips, Inc.
3. Architectural Elevation Drawings ("Amended Elevations") dated April 5, 2017 as prepared by WDG Architecture.

The Special Exception conditions included the requirement that the Owner execute an agreement with a Hotel Operator that provides for construction of a hotel as shown on the CDP approved January 11, 2016, and that such executed agreement contain terms that require the Hotel Operator to provide evidence of a guaranty of the Hotel Operator's obligation to complete construction with acceptable financial covenants.

Background

In September, 2011 the Applicant was informed by City staff that including a hotel in the contemplated mixed use development would be advantageous. Thereupon, the Applicant initiated efforts to include a hotel in the planned development. A thought out and exhaustive effort to secure an agreement with a hotel company followed over the next 5 years. The majority of the hotel company prospects, numbering a total of 28 hotel companies, declined the opportunity during the first contact by the Applicant. Their perception of the weakness of the Falls Church market to absorb another hotel was the dominant reason given for their disinterest. These hotel prospects classified Falls Church as a secondary hotel market lacking sufficient, immediate market lodging demand drivers (corporate office buildings, education institutions, government office buildings, tourist attractions, entertainment venues). These hotel prospects also said that the revenues that could be expected from a limited service or extended stay hotel would not be sufficient to afford the cost per key to build a hotel with the required underground structured parking. Three hotel prospects completed comprehensive due diligence, and commenced negotiations which ended when the project could not meet the financial demands proposed by these 3 hotel companies.

Two additional hotel companies completed all of their due diligence, developed cost models and income forecasts for a hotel at Founders Row, received a preliminary commitment for a hotel franchise, executed a detailed Letter of Intent (“LOI”) for the purchase of the hotel podium and engaged in comprehensive negotiations of a Purchase Agreement.

The Applicant and one of the 2 hotel companies described in the preceding paragraph executed a LOI dated December 23, 2013, which proposed construction of a 150 room Home 2 Suites by Hilton hotel. Thereafter, the parties commenced negotiating a purchase agreement. On April 1, 2015 this hotel developer withdrew their LOI offer. Intermittent negotiations continued until June, 2016. The parties ultimately were not able to agree on the guaranty, the amount of the deposit and when the deposit goes firm.

The Applicant initiated discussions with the second of the 2 hotel companies described in the above paragraph in August, 2015. When it became apparent that the agreement with the Hilton developer was not going to materialize, the Applicant accelerated negotiations with the second hotel company. On August 29, 2016, the Applicant and this hotel company executed a LOI which proposed construction of a 127 room Courtyard by Marriott hotel. Shortly thereafter, the parties commenced drafting and negotiating a hotel podium purchase agreement. Several drafts were exchanged between the parties and their attorneys. Negotiations came to a halt in December, 2016 when the hotel company informed the Applicant that it would be unable to honor the LOI terms for the required completion guaranty.

The hotel podium and structured parking is to be built by the Founders Row project developer and provided to the hotel podium purchaser approximately 18 months after start of project construction. Both of the foregoing two hotel companies proposed that the purchase agreement give them an option to not consummate the purchase of the podium when it is completed and delivered, and to be able to forfeit a deposit as the remedy for breach. Both of these two hotel

companies said they would be unable to satisfactorily predict the condition of the historically volatile hotel market, 18 months out from the start of project construction, and an additional 12 months while the hotel company would be constructing the hotel building. Forecasting this 30 month period is the reason cited by the hotel companies that they required a hedge against an unpredictable hotel market, and would require an option to not close on the podium purchase and be able to forfeit a stipulated deposit as the only remedy. The LOI purchase price agreed to with both hotel companies is materially less than the Applicant's allocated cost of land development, infrastructure, traffic improvements, podium and parking while assuming no value for the land/air rights. When you add this subsidy to the absence of a meaningful guaranty of completion of the hotel by the hotel companies, it presents an unacceptable condition for the institutional senior lender and the equity investor who will be financing a majority of the project costs. Currently, there are no prospective candidates, nor dose the Applicant foresee any candidates showing up who are interested in providing a hotel in the Founder's Row project with assurances of performance required to meet financing conditions and to fulfill the terms of the hotel purchase agreement as required by the Voluntary Concessions. To further emphasize, as late as March, 2017, the Applicant made contact with a hotel developer recommended by staff. The hotel developer had reached out to staff in the past. They reported back that the hotel company said "there is no interest in developing a hotel in the Falls Church market. They feel the market is weak for additional product".

Requested Amendment

Accordingly, the Applicant is filing this Application to amend the Voluntary Concessions and strike the requirement that the Owner execute an agreement with a Hotel Operator that provides for construction of a hotel as shown on the CDP approved January 11, 2016. The attached Amended Voluntary Concessions, Amended CDP and Amended Elevations describe and illustrate the Applicant's request to construct a 72 unit age-restricted apartment building as shown on the Amended CDP that will be managed and operated to provide housing for active adults 55 years of age or older ("Active Adult 55+ Community") in lieu of constructing a hotel. The Amended Voluntary Concessions provide that the Active Adult 55+ Community will comply with all of the requirements of the Federal and Virginia Fair Housing laws governing Housing for Older Persons. In addition to the Fair Housing law requirement that at least 80 percent of the occupied Active Adult 55+ Community apartments will include at least one resident who is verified to be over the age of 55, the Applicant is going to require as allowed by the Fair Housing laws that all the remaining residents of the Active Adult 55+ Community must be verified to be over the age of 18. The Amended Voluntary Concessions provide for an additional four (4) affordable dwelling units ("ADUs") in the project, and provide that the Active Adult 55+ apartment building will be designed such that it will achieve a green building certification level of NGBS Silver.

Effect of the Change in Use on the Physical Characteristics of the Site

In October, 2016, prior to the cessation of negotiations with respect to the podium purchase agreement with the second of the 2 hotel companies as described above, the Applicant filed its site plan for review by the Panning Division and for approval by the Planning Commission. The

site plan included the 127 room hotel that had been designed by the hotel company and was expected to be constructed pursuant to the most recent executed LOI with this hotel company. The hotel was planned to occupy 5 floors above one floor of street level retail space at the intersection of W. Broad and N. West Streets. The area of each floor was to be 17,095 square feet (85,475) total building gross square feet excluding a street level lobby. The Active Adult 55+ apartment building that would replace the hotel building is also 5 floors above one floor of street level retail space and would occupy the identical space and be the identical size that was planned for the hotel. Except for the modification of the exterior of the building that is required to accommodate the revised building interior programming of 72 Active Adult apartments in place of 127 hotel rooms (see attached Amended Elevations), no other revisions will be required to the site plan currently under review by the Planning Division. Market Square, streetscape, transportation improvements, other building elevations, the retail spaces and all other aspects of the site plan other than the Active Adult 55+ apartment building exterior elevations will not be altered by the requested change in use of the previously planned hotel building.

Justification

Zoning. The parcels comprising the site are the subject of a pending lot consolidation application, and all the parcels are zoned B-1. The Special Exception provision applies to any land that is zoned B-1. Accordingly, a change in zoning is not required for approval of the requested amendment to the Special Exception.

Comprehensive Plan. In the Comprehensive Plan, the entire site is designated for “Mixed Use” on the Future Land Use Map. The mixed use land use category calls for utilization of the Special Exception provision to achieve an integrated mixture of residential, retail, and office commercial uses. Accordingly, an amendment to the Comprehensive Plan Future Land Use Map is not required for approval of the requested amendment to the Special Exception.

Special Exception. On January 11, 2016 the City Council of the City of Falls Church, Virginia adopted Resolution 2016-04, which pursuant to Sections 48-90 and 48-455 of the Falls Church City Code granted a Special Exception for residential use and height bonus within the Founder’s Row mixed use project. Subsection 48-90(d)(1) sets forth the primary criteria that must first be met to approve a Special Exception.

Primary Criteria:

Subsection 48-90(d)(1)(a). The January 11, 2016 resolution approved by City Council found that “the resulting development conforms with the City’s adopted Comprehensive Plan and Design Guidelines”. The development will continue to integrate a mixture of residential, retail, and office commercial uses as called for this site in the Future Land Use Map. The site is located in Planning Opportunity Area 6. The development will meet the redevelopment objectives and strategies outlined in the small area plan for “West Broad Street Planning Opportunity Area 6” adopted April 11, 2016. Accordingly, the change in use from hotel to an age-restricted apartment building for persons 55 years of age or older for a portion of the Founder’s Row development, does

not change the Council's finding that the development conforms with the City's adopted Comprehensive Plan and Design Guidelines.

Subsection 48-90(d)(1)(b). The January 11, 2016 resolution approved by City Council found that “the resulting development provides for significant net new commercial square footage and allows a mix of commercial and residential uses”. The Founder’s Row development that will result from approval of the Special Exception amendment will provide 99,151 square feet of new commercial square footage and will continue the mix of commercial and residential uses. The existing commercial square footage on the site is 39,778 square feet of commercial space. The net new commercial square footage to be provided on the site is 59,373 square feet. The new redeveloped commercial space to be provided of 99,151 square feet is 2.5 times the existing commercial space to be replaced. The existing 39,778 square feet of commercial space on the site is made up of Office-5,194 square feet; Food and Beverage Retail-5,328 square feet; Other Retail-6,986 square feet; Services-17,940 square feet; and Vacant Space-4,340 square feet. The new commercial space will have a Dine-In Movie Theater at 31,850 square feet; Office at 4,823 square feet; and Service Businesses at not more than 8,500 square feet. A majority of the remaining 53,978 square feet of space will be Food and Beverage Retailers. Other Retail will capture the space not taken by Food & Beverage Retailers. Although the proposed change of use from a limited service hotel to an Active Adult 55+ Community requested by this amendment is “technically” a change from a commercial use to a residential use for a portion of the development, its impact in reality is the replacement in the project on any given day of 140 (+-) mostly temporary residents for 140 (+-) permanent adult residents. It is important to note that at the outset of the Applicant’s hotel search, the Applicant solicited and received opinions from two well recognized and highly regarded hospitality advisory firms on the subject of the feasibility of a hotel in Falls Church. The opinions received were that Falls Church is a secondary hotel market and that we should not expect to attract any interest from a full service hotel flag, but to expect possible limited interest from an extended stay hotel brand. Full-service hotels play a major role in fulfilling the meeting and special event needs in their market area. Therefore, on-site restaurant, lounges and group meeting spaces with banquet facilities are the cornerstones of the full-service hotel offering. Extended stay, limited and select service hotels cater and market to a specific demographic of travelers, such as the single business traveler. They do not have multiple or full service food and beverage offerings, and meeting space is most often limited to a couple of meeting rooms. The prototypical Courtyard by Marriott (last hotel concept that was included in an executed LOI) has two meeting rooms providing a total of approximately 1,300 square feet of meeting space, and a limited menu bistro that predominately serves breakfast to hotel guests. The net new commercial space at Founder’s Row is made up of retail and office. The removal of the hotel space does not change the new commercial space that will be used by, and that will benefit members of the Falls Church community and its day time visitors. Accordingly, given the habitat nature of the limited service hotel use being changed to an Active Adult 55+ Community, the Founder’s Row development continues to provide the same significant (59,373 square feet) net new commercial square footage over the current square footage on the site.

Subsection 48-90(d)(1)(c). The January 11, 2016 resolution approved by City Council found that “the resulting development provides substantial positive net new commercial and residential revenue to the City”. The net fiscal impact of existing land uses is currently \$189,914 per year. The foregoing approval was predicated on a determination by the City’s Economic Development Office (“EDO”) that the proposed Founder’s Row development would produce net new annual revenue in a range from \$1,108,980 to \$1,881,174. The City model is flawed because it used a range of 114 o 144 hotel rooms. The model should have used 127 hotel rooms in both the lower yield and the higher yield scenarios. Making this adjustment would produce net new annual revenue in a range from **\$1,168,163** to **\$1,798,805**. The revenue in the City’s fiscal impact projections included hotel transient tax of \$256,645 in the lower yield scenario and \$332,263 in the higher yield scenario. The lower yield scenario also estimated that the hotel would produce 4 new school pupils at a net cost to the City of \$51,800. Removal of the hotel will remove the projected 4 pupils producing a net positive increase in the lower scenario yield in the net amount of \$51,800. The other projected annual operating expenses for the City resulting from the Founder’s Row development will be unchanged by the change in use from hotel to an Active Adult 55+ Community. Revenue from real estate property taxes on the Active Adult 55+ apartment building should not be materially different from the real estate property taxes that were projected for a 127 hotel building. Based on the current status of retail leasing at Founder’s Row, the EDO projections for local sales taxes and meals taxes require revision. The City’s yield model projects revenue from these two taxes in a range from \$735,454 (lower yield model) to \$750,578 (higher yield model). The EDO projections for total food and beverage sales are predicated on 20,000 square feet of restaurant space producing food and beverage sales of \$480 per square foot, or a total of \$9,600,000 in sales attributable to restaurants. In addition, the City’s model projects \$2,000,000 in food and beverage sales generated by the dine-in theater. These projections are far short of the Applicant’s food and beverage sales projections for Founder’s Row supported by data provided by the dine in theater and by restaurants currently negotiating leases for restaurant space in Founder’s Row. The Applicant has executed an LOI for a dine-in theater and is in the final stage of completing and executing a lease with the theater company. The theater will have 800 seats in 7 auditoriums on the second level. In addition the theater will have a 51 seat bar/lounge in a 3,822 square foot space on the ground level. The theater has a 3,000 square foot kitchen that serves a full menu to all 800 auditorium seats and in the bar/lounge. The theater company operates 24 locations. The historical average first year food and beverage sales in the most recent new locations is \$6,075,500 per theater. The EDO revenue projection from local sales and meals taxes of \$100,000 from the theater, therefore should be \$303,775. In addition, the current merchandising/leasing plan for Founder’s Row is targeting over 30,000 square feet for fast casual and full service restaurant tenants. The City EDO fiscal impact model shows a maximum of 20,000 square feet of restaurant space and defaults to an estimate of \$480 per square foot for food and beverage sales for these restaurants. The \$480 per square foot sales is based on City data from a representative sampling of restaurants operating in the City. However, the Applicant does not agree that the City’s default estimate is a fair representation of the expected food and beverage sales per square foot from the restaurants that will operate in Founder’s Row. For example, the Applicant has executed a letter of intent and has started

lease drafting with a restaurant company that currently operates 12 restaurants whose average sales are \$650 per square feet. They will occupy 9,640 square feet in Founder's Row. The meals and local sales tax revenue from this restaurant along will be \$81,940 greater than the model provides. Without taking into account the significantly low model average for Food and Beverage sales and the realistic expectation that Founder's Row will have more than 20,000 square feet of Food and Beverage Tenants, if the City's fiscal impact projections are revised (1) to remove the hotel transient tax, (2) to adjust the school costs and (3) to correctly take into account the appropriate estimate for local sales tax and meals tax, the lower yield model annual net new revenue to the City will be \$1,219,766, and the higher yield model annual net new revenue to the City will be \$1,793,204. Accordingly, notwithstanding the loss of hotel transient tax with the change in use, the Founder's Row development will provide equivalent positive net new commercial and residential revenue to the City than was anticipated when the Council approved the Special Exception on January 11, 2016.

Other Criteria:

After determining that the primary criteria mandated by Section 48-90(d)(1) had been met, the January 11, 2016 resolution approved by City Council found that the proposed Founder's Row project provides significant community benefits, including, but not limited to the following direct quotes:

- important, large assemblage and consolidation of numerous individually-owned properties;
- structured garage parking, below-grade, at-grade and above grade preferred hotel and theater uses and ground level storefront commercial space including Mason Row - Market Square and Mason Lane festival space;
- various community benefits including affordable housing, school capital cost contributions and vicinity street and transportation facility improvements;
- planned streetscape improvements on West Broad and North West Streets;
- financial contributions and in-kind improvements to benefit vicinity off-site recreational park and W&OD Trail improvements;
- undergrounding of overhead utilities off-site on N. West Street;
- transportation related public street and pedestrian facility crossing improvements; and
- financial sustainable LEED Silver or equivalent buildings for the residential portions of the project and LEED or equivalent for hotel.

All of the foregoing community benefits will continue to be provided by the proposed Founder's Row project notwithstanding the change in use from hotel to housing for Active Adult 55+. In fact the change in use enhances the community benefits to be provided by the Founder's Row development in that 4 additional Affordable Dwelling Units will be provided and the Active Adult +55 apartment building will be designed to achieve LEED Silver or the equivalent, whereas the hotel design was to be LEED certified, but not Silver. Also, it should be noted that the Active Adult 55+ Community

will restrict all residents to be verified to be over the age of 18 resulting in no impact to school operating expenses, whereas the City's lower yield scenario estimated 4 pupils would come from the hotel costing \$51,800.

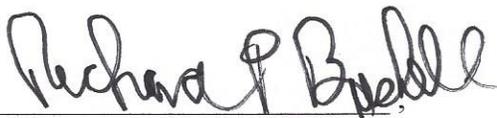
In addition to the foregoing substantial community benefits, the Founder's Row development will have uses preferred by the City including a dine-in theater and restaurants with outdoor dining facilities located on the primary street frontage portion of structures, which will meet a City planning objective set out in Section 48-455. Another planning objective set out in Section 48-455 is to identify certain uses that will not be encouraged in the primary street frontage portion of the first floor of the required commercial component. In the Voluntary Concessions dated January 11, 2016, the Applicant identified 21 uses that would be prohibited, and 24 uses that in the aggregate would not occupy more than 9,393 square feet.

Conclusion

The Founder's Row redevelopment project continues to meet or exceed the primary and secondary criteria used to evaluate the merits of the Special Exceptions. Therefore, the requested amendment to the Special Exception for residential use and height bonus should be granted.

Thank you and the City Staff for its guidance and attentiveness to this project.

SPECTRUM DEVELOPMENT, LLC

By: 
its authorized representative
Name: Richard P. Buskell
Title: Manager/Member