

## **PROFFERS**

### **OX HILL REALTY, LLC**

#### **ZONING MAP AMENDMENT**

**Z-22-00054**

**July 5, 2023**

Pursuant to Section 15.2-2303(a) of the *Code of Virginia*, 1950, as amended, and Section 110-7 (b) of the Zoning Ordinance of the City of Fairfax, Virginia, Ox Hill Realty, LLC, for the itself, the owners, and successors and/or assigns (hereinafter referred to as the "Applicant") in Z-22-00054 filed on property identified on the City of Fairfax tax map 57-4-2-71, -72, and -76 (hereinafter referred to as the "Application Property") hereby proffers the following, provided that the Fairfax City Council approves a rezoning of the Application Property from the CR, CG and TOD Districts to the CU and TOD Districts with a concurrent special use permit request in conjunction with a General Development Plan and Special Use Permit Plat to allow the construction of an upper-story residential mixed use building that includes a drive-through financial institution. In the event the rezoning and/or the special use permit is denied by the Council, these proffers shall immediately be null and void.

#### **1. MASTER DEVELOPMENT PLAN/SPECIAL USE PERMIT PLAT**

Development of the Application Property shall be in substantial conformance with the General Development Plan/Special Use Permit Plat prepared by Urban, Ltd., dated January 2022, as amended through July 3, 2023 (the "GDP/SUP Plat"). Minor modifications to site design and the improvements identified on the GDP/SUP Plat may be made in response to final design and engineering, subject to the approval of the Zoning Administrator and/or the Director of Community Development and Planning, as applicable.

#### **2. USES**

The following uses shall be permitted in the upper story residential/mixed use building on the Application Property as identified on the GDP/SUP Plat:

- A. Multifamily residential up to a maximum of seventy-nine (79) for-sale condominium dwelling units.
- B. Approximately 7,731 square feet of ground floor retail and/or restaurant uses.
- C. Approximately 36,862 square feet of non-retail/restaurant commercial floor area, which may include, but is not limited to, a drive-through bank, general office, medical office, or other commercial uses permitted in the CU District. Notwithstanding the mix of commercial floor area currently identified on the GDP/SUP Plat, the Applicant reserves the right to modify the mix in the future in response to market demand.

- D. The existing uses on the Application Property shall remain until the commencement of construction.

3. TRANSPORTATION

- A. Main Street Connector Road and Future Traffic Signal. Prior to the issuance of a Zoning Permit for residential or commercial use and occupancy for the Application Property, the Applicant shall construct a vehicular and pedestrian connection between Main Street and the proposed East West Road identified on the GDP/SUP Plat (the “Main Street Connector Road”). The intersection of Main Street and the Main Street Connector Road shall consist of an unsignalized right-in/right-out design as identified on the GDP/SUP Plat, however, the intersection shall be designed to accommodate the installation of a traffic signal in the future by others. At such time as a traffic signal is installed by others, the Applicant shall provide at no cost the requisite easements, access, and/or permissions reasonably necessary to allow the installation of the traffic signal by others. Notwithstanding what is shown on the GDP/SUP Plat, the final design of the Main Street Connector Road and the proposed intersection shall be coordinated with the Department of Public Works at the time of site plan. In addition, the Applicant will coordinate as necessary with any abutting or surrounding property owners.
- B. East West Road. Prior to the issuance of a Zoning Permit for residential or commercial use and occupancy for the Application Property, the Applicant shall construct a vehicular and pedestrian connection between the proposed Main Street Connector Road and West Street as identified on the GDP/SUP Plat. The north side of the East West Road shall be constructed in its ultimate condition with streetscape, sidewalk, curb and gutter and the landscaping, and the south side of the East West Road shall be constructed in an interim condition as identified on the GDP/SUP Plat, subject to approval by Fairfax County. If a sidewalk is not constructed along the south side of the East West Road at the time of construction, the Applicant shall provide the easements, consents and/or permissions reasonably necessary to allow the installation of a future crosswalk across the eastern leg of the intersection of the East West Road and the Main Street Connector Road at such time as a sidewalk is constructed by others. Notwithstanding what is shown on the MDP/SUP Plat, the final design of the portion of the East West Road located on property owned by the Board of Supervisors of Fairfax County is subject to review and approval by Fairfax County. The Applicant shall coordinate the East West Road improvements with the City of Fairfax and Fairfax County at the time of site plan. At such time as the south side of the East West Road is constructed in its ultimate condition by Fairfax County, the Applicant shall provide any necessary easements to accommodate the construction at no cost to Fairfax County.
- C. Maintenance and Access of Private Streets. The proposed Main Street Connector Road and East West Road shall be constructed and maintained by the Applicant as private streets. The Applicant shall record among the land records public ingress/egress and emergency vehicle access easements, in forms approved by the

City Attorney, over all streets or portions thereof located on the Application Property.

- D. Sidewalks. The Applicant shall construct sidewalks along all street frontages as identified on the GDP/SUP Plat. The Applicant shall record among the land records a public ingress/egress easement, in a form approved by the City Attorney, over all sidewalks or portions thereof located on the Application Property. In addition to the sidewalks to be constructed by the Applicant as identified on the GDP/SUP Plat, the Applicant shall reserve an area along the west side of the Main Street Connector Road to allow for the construction by others of a future five (5) foot wide sidewalk between Main Street and the East West Road. Construction of the sidewalk will occur in conjunction with of the establishment of the inter-parcel access pursuant to Proffer 4, or with the redevelopment of the adjacent property identified as City of Fairfax Tax Map 57-4-2-070 ("Parcel 70"), whichever occurs first. At such time as the sidewalk is constructed, the Applicant shall provide at no cost the requisite easements, access, and/or permissions reasonably necessary to allow for construction.
- E. Main Street Right of Way Dedication. Prior to site plan approval, the Applicant shall dedicate up to 50 feet from centerline along the Application Property's Main Street frontage as identified on the GDP/SUP Plat to comply with the minimum right-of-way required by the Subdivision Ordinance. Said dedication shall be made at no cost to the City of Fairfax.
4. **FUTURE INTER-PARCEL ACCESS**. The Applicant shall reserve an area along the western property line to permit the connection of a future inter-parcel access to the Parcel 70. Notwithstanding the location shown on the GDP/SUP Plat, the final location of the inter-parcel access may be adjusted in the future at such time as Parcel 70 is redeveloped. At such time as Parcel 70 is redeveloped by others, the Applicant shall make commercially reasonable efforts to negotiate the requisite temporary construction easements and/or permissions reasonably necessary to permit the construction of the inter-parcel access by others. At such time as the inter-parcel access is constructed, the Applicant shall enter into an agreement with the owner of Parcel 70 to allow inter-parcel vehicular and pedestrian access between Parcel 70 and the Application Property.
5. **UTILITIES**. All new on-site utilities installed on the Application Property will be located underground. All existing overhead utilities along the Main Street frontage of the Application Property will be either removed or relocated underground. With its first and all subsequent site plan submissions, the Applicant shall include a detailed utility undergrounding plan demonstrating compliance with this proffer for review and approval by DPW. In conjunction with the utility undergrounding or relocation the Applicant will coordinate as necessary with any affected abutting or surrounding property owners.

6. STORMWATER MANAGEMENT

Design and construction of stormwater management facilities shall comply with all applicable Virginia Stormwater Management Program (VSMP) Permit Regulations, as may be amended, or other relevant standard in place at the time of site plan submission.

7. LANDSCAPING AND OPEN SPACE

A. General. Landscaping on the Application Property shall be in general conformance with the landscape design shown on the GDP/SUP Plat. Final selection of the type and location of vegetation and the design of landscaped areas and streetscape improvements/plantings shall be made as a component of the site plan approval process.

B. Public Plaza. The proposed public plaza at the intersection of Main Street and West Street is located on property owned by the Board of Supervisors of Fairfax County (the "County"). The Applicant shall, subject to approval by Fairfax County, construct and install the public plaza improvements generally identified on the GDP/SUP Plat. Notwithstanding what is shown on the GDP/SUP Plat, the final design and programming of the public plaza shall be determined in coordination with Fairfax County. The Applicant shall be responsible for maintenance of the Public Plaza, subject to an agreement between the Applicant and Fairfax County.

8. PARKING

A. The Applicant shall provide parking in conformance with the GDP/SUP Plat. Parking for the various uses shall be located in the proposed parking garage, with the exception of the parallel surface parking spaces identified on the GDP/SUP Plat. Notwithstanding the number of parking spaces indicated on the GDP/SUP Plat, the Applicant may adjust the final number of parking spaces provided at time of final site plan provided that the minimum number of parking space required by the Zoning Ordinance are provided.

B. The garage shall be available and accessible to future residents, commercial tenants, patrons, employees, visitors and guests of the proposed upper story residential mixed use building. The Applicant shall establish rules, regulations, and procedures for the parking garage. Parking management shall entail the efficient use of available constructed parking spaces, and may include, but is not limited to, the assignment of parking spaces to residents and/or commercial tenants within the parking garage, the designation of parking spaces for retail customer, residential visitor, or employee use, and other parking management methods selected by the Applicant. The Applicant shall designate an individual, which may be the Applicant's property manager, who shall be responsible for parking management.

C. At the time of site plan, the Applicant shall coordinate with Fairfax County to explore the possibility of designating the on-street parking spaces on the north side of the East West Road as an area for truck loading/deliveries, short term parking

for pick up/drop off activities, and/or a similar use, subject to approval by Fairfax County.

9. TRANSPORTATION DEMAND MANAGEMENT. In an effort to reduce the number of vehicle trips generated by the proposed development, the Applicant shall implement a Transportation Demand Management (“TDM”) program. The TDM Program will include, but shall not be limited to, the following measures:

A. Multifamily residential condominiums.

- (1) Appointment of a representative of the residential condominium association to serve as a property transportation coordinator (PTC).
- (2) Installation of a transit information display in the commercial lobby area. Said display shall include information regarding Metrorail, Metro bus, CUE bus, ridesharing, and other relevant transit options available to employees and residents in Old Town Fairfax the vicinity of the Application Property.
- (3) At the time of the initial settlement of each condominium unit, the distribution of an information package to initial purchasers that includes, but is not limited to, a description of bus routes and nearby bus stop locations, metro transit schedules, and ride share initiatives.
- (4) Distribution to condominium residents of any transit advertising information provided by the City and community information at set intervals agreed to by the City and the owners association, which will include links to websites for local transit opportunities.
- (5) At the time of the initial settlement of each unit, the distribution to initial purchasers of one of the following items of their choice:
  - a. SmarTrip card with \$50.00 fare loaded limited to two persons per townhouse, or
  - b. A one-year bike share membership, or
  - c. A one-year car share membership.
- (6) Resident transportation surveys conducted on an annual basis by the PTC to determine the success of the TDM program and submission of the surveys to the City. Said surveys to commence the year after the issuance of the final occupancy permit for the residential units. If the TDM program goals are deemed to have been met in three consecutive years, the Applicant will be relieved from its obligation to conduct surveys thereafter.

B. Commercial uses.

- (1) Designation of an employee as a Transportation Management Plan (TMP) coordinator.
- (2) Installation of a transit information display in the commercial lobby area. Said display shall include information regarding Metrorail, Metro bus, CUE bus, ridesharing, and other relevant transit options available to employees and residents in Old Town Fairfax and the vicinity of the Application Property.
- (3) Display of the TMP coordinator's name and contact information in designated common areas, employee break areas, and on-line.
- (4) Annual events established by the TMP coordinator to provide communication regarding transit, target transit marketing, and support bicycling efforts.
- (5) Use of regular web-based resident and employee communication tools by the TMP coordinator to provide commuting information with links to external transit websites.
- (6) Distribution of a SmarTrip card with \$20.00 pre-loaded fare value and information regarding enrollment in a Smart Benefits pre-tax benefits program to employees upon initial hire. In addition, ride sharing marketing materials provided by the City and/or Commuter Connections will be included in employee welcome packages and displayed in employee break rooms.
- (7) Annual surveys conducted by the TMP coordinator to determine the success of the transportation program. In addition to surveys, the TMD coordinator shall collect car counts and evaluate bicycle parking usage. The surveys and other information shall be submitted to the City. Said surveys to commence one year after the issuance of the final occupancy permit for Phase Three. If the TDM program goals are deemed to have been met in three consecutive years, the Applicant will be relieved from its obligation to conduct surveys thereafter.

C. A final TDM Program that is consistent with the requirements of this Proffer will be submitted to City staff for review and approval prior to site plan approval for the development. The TDM Program is intended to result in a robust plan with incentives to reduce the number of vehicle trips generated by the development, as periodically reported to the City.

10. OWNERS ASSOCIATION. The Applicant shall form an umbrella owners association (UOA) for the Application Property, and may also, at its discretion, establish a separate condominium association for the residential component of the proposed development. The

UOA shall be organized and governed in accordance with Virginia law. Maintenance obligations shall be assigned and or allocated between the UOA and the residential condominium association in accordance with applicable shared maintenance agreements. Maintenance obligations shall include, by are not limited to, private streets and sidewalks, the public plaza, the proposed parking garage, snow removal, and on-site stormwater management facilities. The Applicant shall notify all prospective purchasers of the residential units, in writing and prior to entry into a contract of sale, of the maintenance responsibilities and restrictions of the UOA and the residential condominium association.

11. **SUSTAINABLE DESIGN.** In order to promote energy conservation, sustainability, and green building techniques, the Applicant shall seek a green building certification level of LEED Silver (or equivalent) for the proposed building. A LEED accredited professional (AP) shall be included as a member of the design team. At the time of site plan submission, the Applicant shall include a list of specific credits with the registered version of the LEED (or equivalent) rating system that the Applicant anticipates attaining. The LEED-AP will provide a written certification statement confirming that the items on the list of credits will meet at least the minimum number of credits to attain LEED certification for the building. Prior to final bond release for the building, the Applicant will submit documentation to the Department of Community Development and Planning confirming the status of LEED certification for the building.
12. **BICYCLE STORAGE.** Bicycle racks and bicycle storage shall be installed as generally depicted on the GDP/SUP Plat. Notwithstanding the locations identified on the GDP/SUP Plat, the final locations of bicycle racks and storage areas may be adjusted at the time of site plan.
13. **SIGNS.** All signs on the Application Property shall comply with the regulations set forth in the Zoning Ordinance. The Applicant reserves the right for itself, its successors and assigns, to pursue a special exception or such other required approval for signs not otherwise permitted by the Zoning Ordinance.
14. **CONSTRUCTION MANAGEMENT**
  - A. Prior to site plan approval, the Applicant shall submit a Construction Management Plan for approval by the Director of the Department of Public Works (DPW) or his/her designee. The Construction Management Plan shall address items including, but not limited to, the following:
    - (i) Hours of construction;
    - (ii) Truck routes to and from construction entrances to the Application Property;
    - (iii) Maintenance of entrances.
    - (iv) Location of parking areas for construction employees;

- (v) Truck staging and cleaning areas;
  - (vi) Storage areas;
  - (vii) Temporary fencing as needed to screen on-site staging areas;
  - (viii) Trailer and sanitary facility locations;
  - (ix) Traffic control measures; and
  - (x) Fencing details, including specifications for an opaque construction fencing and/or wrap that identifies the project and provides contact information for the developer and/or general contractor.
- B. Prior to site plan approval, the Applicant shall provide a plan to DPW for temporary pedestrian and vehicular circulation during construction. This plan shall identify temporary sidewalks and any other features necessary to ensure safe pedestrian and vehicular travel during construction.
- C. Prior to commencement of construction, the Applicant shall provide the Department of Community Development and Planning with the name and telephone number of a community liaison who will be available throughout the duration of construction on the Application Property.
- D. Outdoor construction activity shall be limited to the hours of 7:00 a.m. to 6:00 p.m., weekdays, and 8:30 a.m. to 5:00 p.m., Saturdays. No construction activity shall take place on Sundays.

## 15. MISCELLANEOUS

- A. Lighting. All outdoor lighting provided on site will comply with the provisions of Section 4.8 of the Zoning Ordinance. At the time of site plan the Applicant will submit a photometric plan demonstrating compliance with the requirements of Section 4.8 for review and approval by DPW.
- B. Archaeology. The Applicant will conduct a Phase I archaeological study of the Application Property at the time of site plan. The Applicant will provide the results of said study to the City for review and approval prior to site plan approval. Should the Phase I study conclude that additional study is warranted, the Applicant will complete said study and provide the results to the City prior to the commencement of land disturbing activities. The study will be conducted by a qualified archaeological professional selected at the Applicant's discretion. Should adjustments be needed to the improvements identified on the GDP/SUP Plat as a result of the Phase I study, said adjustments may be made without the necessity of a GDP amendment.



- C. Counterparts. These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which when taken together shall constitute but one in the same document.
- D. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and its successors and assigns.

[SIGNATURES BEGIN ON NEXT PAGE]

APPLICANT/CONTRACT PURCHASER

OX HILL REALTY, LLC

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By: Christopher Smith  
Its: Principal, Managing Member

[SIGNATURES CONTINUE]

OWNER – TAX MAP 057-4-02-076

DANA ELLEN SMITH EXEMPT TRUST  
UNDER THE MINZER FAMILY  
REVOCABLE TRUST, DATED  
OCTOBER 15, 1985

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By: Dana Ellen Smith  
Its: Trustee

[SIGNATURES CONTINUE]

OWNER – TAX MAP 057-4-02-071

INFINITE EQUITY LLC

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By: Joseph Terpenning  
Its: Managing Owner

[SIGNATURES CONTINUE]

OWNER – TAX MAP 057-4-02-072

THE GEORGE AND GEORGIA VOLAKIS FAMILY TRUST

\_\_\_\_\_  
By: George Volakis, Trustee

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By: Georgia Volakis, Trustee

[SIGNATURES END]