COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
APPLICATION FOR APPEAL

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FAIRFAX COUNTY RECEIVED
JUL 20 2012
DIVISION OF ZONING ADMINISTRATION

APPLICATION NO. A 2012-HM-020
(Assigned by Staff)

NAME OF APPELLANT: RN Golf Management, LLC

NATURE OF THE APPEAL:
Appeal of certain determinations made by Cathy S. Belgin, Senior Assistant to the Zoning Administrator, by letter dated June 20, 2012, to Mark C. Looney (attached to Notice of Appeal/Appellant Statement as Exhibit B).

DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH IS SUBJECT TO THE APPEAL June 20, 2012

HOW IS THE APPELLANT AN AGGRIEVED PERSON?:
Appellant is the owner of the property that is the subject of the determination and the subject of this appeal.

IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:

POSTAL ADDRESS OF PROPERTY: 11875 Sunrise Valley Drive & 2018 Soapstone Drive, Reston, VA 20191 (No address assigned for Tax Map Parcel 26-2-((2))-8)

TAX MAP DESCRIPTION: 17-4-((11))-4A; 26-2-((2))-8; 26-2-((5))-4

The undersigned has or has not (circle one) the authority to allow and does or does not (circle one) authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

RN Golf Management, LLC
Type or Print Name of Appellant or Agent

BY: [signature]
Signature of Appellant or Agent Francis A. McDermott, Attorney and Agent for Appellant

Hunton & Williams LLP, 1751 Pinnacle Drive, Suite 1700, McLean, VA 22102 (fmcdermott@hunton.com)
Address

(703) 714-7422
Telephone No. Home Work

Please provide name and phone number of contact person if different from above.

DO NOT WRITE IN THIS SPACE

Subdivision Name: Reston Blk 4A Sec. 42; Blk 8, Sec. 44; Blk 4 Sec. 52
Total Area (Acres/Square Feet): 1 Lot. 11 acres
Present Zoning: PRC
Supervisor District: Hunter Mill
Date application received: 7/20/12
Application Fee Paid: $ 6000
Date application accepted: 7/27/12

1/96

RN Golf Management, LLC

NOTICE OF APPEAL/APPELLANT STATEMENT

I. SUBJECT OF THIS APPEAL

This is an appeal of certain determinations made by Cathy S. Belgin, Senior Assistant to the Zoning Administrator (the "Zoning Agent") in her letter dated June 20, 2012, to Mark C. Looney (the "Determination Letter"), the attorney for the Appellant, RN Golf Management, LLC ("RN"). The determinations relate to the property on which the Reston National Golf Course is located. That property consists of three parcels of land identified on the Fairfax County Tax Map as parcels 26-2-((5))-4, 17-4-((11))-4A and 26-2-((2))-8 (collectively, "Subject Property").

Subject Property was originally and now continues to be zoned for Residential Uses under the PRC, Planned Residential Community District (the "PRC District") (it should be noted, as confirmed by the County, that one of the permitted uses within the Residential Uses designation of the PRC District is a golf course). RN has the legal right to file (and the County must accept) a PRC Plan application pursuant to Section 16-203 of the Fairfax County Zoning Ordinance (the "Zoning Ordinance") and, upon the approval thereof by the Board of Supervisors (the "Board"), to convert the use of Subject Property from golf course to residential without the necessity for a Comprehensive Plan Amendment or a DPA approval.

Despite the fact that a golf course is an allowed use under the acknowledged zoning category, the Zoning Agent attempts to strip RN of its property rights on the following basis:

> . . . because the [Subject Property] was specifically approved for a golf course, any redevelopment of the [Subject Property] to a use other than a golf course would require . . . [a] an amendment to the [Reston Master Plan/] Fairfax County Comprehensive Plan, and . . . [b] approval of a development plan amendment (DPA). (Determination Letter at pages 2, 3).

RN vigorously disagrees with those determinations and hereby appeals therefrom.

II. DATE OF DETERMINATIONS

The determinations contested by this Appeal were issued in the June 20, 2012 Determination Letter. A copy of RN's request for zoning confirmation related to Subject Property is attached as **Exhibit A**. A copy of the Determination Letter is attached as **Exhibit B**.

III. JURISDICTION – RN IS AN AGGRIEVED PARTY

Section 18-301 of the Zoning Ordinance permits appeals to the Board of Zoning Appeals (the "BZA") by "[a]ny person aggrieved . . . by any decision of the Zoning Administrator or by any order, requirement, decision or determination made by any other administrative officer in the administration or enforcement of this [Zoning] Ordinance. . . ." The determinations made by the Zoning Agent in the Determination Letter seek to impose unlawful and unnecessary procedural

EXHIBIT 11

requirements on RN's redevelopment of Subject Property for residential uses, and thus, will deny RN significant property rights, i.e., by-right use of its property as permitted under the existing PRC District zoning pursuant to applicable procedures. Therefore, RN is aggrieved by the determinations of the Zoning Agent, and this appeal is properly before the BZA.

IV. GROUNDS OF APPEAL AND REASONS THEREFOR

A. Subject Property

Subject Property contains approximately 166 acres and is located east of Reston Parkway, south of Sunrise Valley Drive and north of South Lakes Drive. It is currently developed and operated as a commercial golf course with supporting amenities and facilities in conformance with the applicable zoning regulations. As the Zoning Agent confirms, "it appears that the referenced property was developed in accordance with all applicable County Zoning Ordinance regulations in effect at the time of construction." (Determination Letter at page 1.) An assemblage of tax maps with Subject Property outlined in red is attached as **Exhibit C**.

B. The Zoning Agent Confirmed the Existing Zoning To Be Planned Residential Community District Without Any Proffered Condition, Restriction, Limitation or Prohibition

As confirmed by the Zoning Agent, Subject Property was originally rezoned RPC, Residential Planned Community (the predecessor zoning category to the current PRC District initially adopted in August 1978 as part of a recodification of the Zoning Ordinance), pursuant to three rezoning applications – RZ C-135 and RZ C-203 approved by the Board on February 17, 1971, and RZ C-281 approved by the Board on September 29, 1971 (all, collectively, the "Rezonings") (Determination Letter at page 1). Copies of the ordinances approving the Rezonings (the "Ordinances") are attached as **Exhibit D**. Copies of the RPC District provisions in effect in 1971 when Subject Property was rezoned are attached as **Exhibit E**. Copies of the current PRC District provisions are attached as **Exhibit F**.[1]

The Ordinances state that Subject Property "is subject to the use regulations of said RPC District." No other conditions, restrictions, limitations, or prohibitions are set forth in the Ordinances and none have been found in the County records that would prohibit, restrict or proscribe the use of Subject Property for residential. By law, the Ordinances are the sole and final legislative act controlling use of Subject Property. While it is true that the Zoning Ordinance required submission and Board approval of a development plan at the time of the RPC Rezonings, it also required that any preliminary or final subdivision plats or site plans be consistent with such development plan, an important point the Determination Letter avoids.

[1] Although the Zoning Agent states that the referenced property is "subject to development plans approved in conjunction with three rezoning applications," the County, as custodian of the official records, can produce none of the development plans approved in conjunction with the three rezoning applications.

As confirmed by the Zoning Agent, "[t]here are no proffered conditions, special exception, special permit, or variance approvals" for Subject Property. (Determination Letter at page 1). RN agrees with and does not appeal that determination.[2]

The official County records for the Rezonings contain no proscription against Subject Property being developed for the residential uses permitted in the PRC District under Section 6-302(A) of the Zoning Ordinance. In the absence of any proffered or development condition restrictions, Subject Property may be redeveloped for any residential uses permitted under Section 6-302(A).

C. **Previous Zoning Determination and Recorded Subdivision Plats Confirm Residential Uses Designation on Subject Property**

Under Section 6-300 *et seq.* of the Zoning Ordinance, properties zoned Planned Residential Community must be designated within one of the following five subcategories – Residential, Neighborhood Convenience Center, Village Center, Town Center, or Convention/Conference Center. These subcategory designations determine, among other things, the uses permitted on properties so designated.[3]

In a determination letter dated March 30, 1993 (the "1993 Determination"), the Deputy Zoning Administrator for Permit, Plan Review confirmed that the existing commercial golf course was a permitted use on Subject Property and confirmed that the applicable subcategory designation with the PRC District was that of Residential Uses. A copy of the 1993 Determination and the March 17, 1993 Verner, Liipfert request letter are attached as **Exhibit H**. Specifically, the March 17, 1993 request letter asked the County to verify: (i) "the existing zoning classification" for the golf course; (ii) that the golf course use "is in compliance with that existing zoning classification;" and (iii) "that the subdivision of Subject Property complies with all applicable laws and zoning regulations."

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[2] By contrast and for purposes of comparison only, attached as **Exhibit G** is a Copy Teste of the ordinance adopted by the Board in 2010 for RZ 2009-HM-014, a recent addition to the Reston Planned Residential Community District. In that case, the ordinance approved by the Board specifically stated that the Reston Hospital Center's Planned Residential Community District zoning is "further restricted by the conditions proffered and accepted pursuant to Va. Code Ann., 15.2-2303(a), which conditions are in addition to the Zoning Ordinance regulations applicable to said parcel." Proffer 1 accepted by the Board requires that the Reston Hospital Center property develop in substantial conformance with an accompanying development plan. (See Exhibit G). Accordingly, development at Reston Hospital Center can only proceed if it conforms with the proffers accepted by the Board as part of the amendment to the official Zoning Map, including the development plan itself. This example is but one of many that could be cited as evidence of the procedure for securing binding restrictions on a property's development. No such restrictions exist with respect to Subject Property.

[3] It is important to note that at the time of the Rezonings, residential uses were allowed ***throughout the RPC***, including in each of the areas designated for Convenience Center, Village Center, Town Center, or Convention/Conference Center.

In response, the Deputy Zoning Administrator determined:

> As you can see by the PRC regulations ***a commercial golf course is a permitted use in the PRC district within an area designated as Residential Uses on an approved preliminary site plan.*** *(Emphasis added).*

The Deputy Zoning Administrator's confirmation that the golf course was a permitted use on Subject Property was based on her determination that Subject Property was designated for Residential Uses within the PRC District (See IV. E., below.) The recorded final subdivision plats for Subject Property, which were approved after the preliminary plan, confirm that premise and were verified by the Deputy Zoning Administrator to be "in compliance with all applicable laws and zoning regulations."

D. The Recorded Subdivision Plats Encompassing Subject Property Imposed No Permanent Covenants or Restrictions Committing Subject Property to Permanent Open Space or Even Permanent Golf Course

Subject Property was included, cumulatively, in four (4) separate recorded subdivision plats for this area of Reston. A 36.0139-acre portion was identified as Block 8 in Section 44 of Reston and was included with the approved final subdivision plat recorded (on April 6, 1972) in Deed Book 3597, at page 343 (the "Section 44 Plat"). Copies of the Section 44 Plat and the accompanying Deed are attached as **Exhibit I**. A 48.2170-acre portion was identified as Block 4-A in Section 42 of Reston and was included with the approved final subdivision plat recorded (on April 3, 1972) in Deed Book 3596, at page 37 (the "Section 42 Plat"). Copies of the Section 42 Plat and the accompanying Deed are attached as **Exhibit J**. An 81.8827-acre portion was identified as Block 4 in Section 52 of Reston and was included with the approved final subdivision plat recorded (on December 26, 1972) in Deed Book 3753, at page 192 (the "Section 52 Plat"). Copies of the Section 52 Plat and the accompanying Deed are attached as **Exhibit K**. Finally, a small 0.1614-acre portion was identified as Parcel 96 and Parcel 97 in Section 46 of Reston and was included with the approved final subdivision plat recorded (on March 14, 1972) in Deed Book 3587, at page 564 (the "Section 46 Plat"). Copies of the Section 46 Plat and the accompanying Deed are attached as **Exhibit L**.

These four subdivision plats have several key common elements and are helpful to understand the Zoning Agent's error.

First, none of the approved final plats has any notation or indication that the County had required the then owner to commit the golf course property to permanent open space. The RPC District regulations in 1971 required an applicant to provide with its "final plat" submission "*a plan of covenants or restrictions running with the land permanently, safeguarding the use of open space and preventing encroachment upon open land.*" *(Emphasis added).* (See **Exhibit E** at Section 30-2.2.2.B.3.). None of the plats includes such covenants or restrictions applicable to Subject Property.[4]

[4] Also, important to note is that at the time of the Rezonings, and today, "permanent open space" must be created by a restrictive covenant or dedication or other plat and deed designation as "permanent open space" in the final

Second, each of the respective Blocks (8, 4-A and 4) and Parcels (96, 97) identified as "golf course" use was specifically excluded, i.e., not included within the Blocks and open space parcels subjected to the "protective covenants and restrictions" by the express terms of the associated deeds. The Reston HOA was required to join in, and executed each of these "deeds of subdivision and dedication" specifically to accept the permanent open space and walkways subjected to the covenants and restrictions and to confirm its obligation to maintain them. The golf course parcels were NOT subjected to the protective covenants and restrictions. Hence, the Zoning Agent's determination that a "golf course was the intended use of the referenced property," and could only be converted to some other use, even a use by-right, through a legislative process, is an after-the-fact attempt to imbue the "golf course" reference with greater force and greater dignity than (i) it needed to have, and (ii) the 1993 Determination attributed to it.

Third, a change in use through the site plan process, inferentially within the controlling Residential Uses designation, was specifically contemplated by the following Note, which appeared in substantially the same form on all of the final plats with respect to Subject Property:

> This block constitutes recreational open space and may not be subdivided, built upon, altered or modified, ***except after an amended final plan has been approved as provided in Section 30-2.2.2 of the Zoning Ordinance of Fairfax County.*** *(Emphasis added).*

This note, and the approval of each final plan containing it, is compelling and irrebutable evidence that Subject Property was not restricted to permanent recreational open space, nor did the County ever require as a condition of approval that it be. By its approval of these final plans and this note, the County acknowledged and agreed that Subject Property could be redeveloped upon approval of "an amended final plan" pursuant to Section 30-2.2.2 of the Zoning Ordinance. An "amended final plan" under that Section of the Zoning Ordinance is solely referencing a site plan or subdivision plat pursuant to Section 16-204 of the Zoning Ordinance.

It is important to note that it is absolutely commonplace for areas, designated for a proposed use on Development Plans and Conceptual Development Plans ("CDP"), to appear as "open space" on Final Development Plans, subdivision plats and site plans on an interim and temporary basis until it becomes timely to develop such areas for the principal uses designated on the CDP. In this 1971 Zoning Ordinance structure, that next step was an amended final plan or subdivision plat. Today, it's a PRC Plan.

Fourth, the density subcategory contemplated by the parties is "medium [residential]" per the tabulation on the Section 44 Plat. (See **Exhibit I**). Such designation had to be consistent with the approved Development Plan, or the "final plan" could not and would not have been approved. That "amended final plan" process will be more than met by the current PRC Plan process.

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subdivision plat or site plan, whether or not such designation occurs in furtherance of a development condition or proffered commitment at the time of rezoning.

Fifth, the County approved these final, recorded subdivision plats and notes and therefore the County now must honor those approvals and notes and permit the current landowner, RN, to file and pursue approval by the Board of a PRC Plan to redevelop Subject Property for medium density residential uses. The landowners reserved the right with their notes to obtain approval of an amended final plan to redevelop Subject Property to the residential principal use already designated. Indeed, before acquiring Subject Property, RN researched and confirmed that there were no covenants or other conditions restricting use of Subject Property to golf course; the investment partner in RN does not acquire properties for golf course use, but rather acquires properties which have redevelopment potential as a prerequisite to acquisition.

E. **The Zoning Agent Dismisses the 1993 Determination Without Any Meaningful Explanation**

The Zoning Agent's dismissal of the 1993 Determination is puzzling. She attempts to blur the lines while ignoring the purpose of the operative inquiry. To say that the 1993 Determination "does not expressly grant nor imply the category of 'Residential Uses' within the PRC District to the referenced property" (See Exhibit B, Determination Letter, at page 3) begs the question as to under which of the PRC subcategories the golf course was a legal use (Residential, Neighborhood Convenience Center, Village Center, Town Center, or Convention/ Conference Center). The Zoning Agent says, without referencing which of the other subcategories of the PRC District allows a golf course, that "[t]his statement merely indicates that a golf course could be located within an area designated for residential uses." (Id.) The specific purpose of the 1993 Determination request was to confirm the "zoning" status of the existing golf course. After confirming that Subject Property was zoned PRC, the Deputy Zoning Administrator went on to inform the contract purchaser that "***a commercial golf course is a permitted use in the PRC district within an area designated as Residential Uses on an approved preliminary site plan.***" (See Exhibit H at page 1) (*Emphasis added*). The use of initial caps for "Residential Uses" is consistent with the provision in the PRC District that properties must fall under one of the five PRC subcategories. Can there be any doubt that the Deputy Zoning Administrator was informing the contract purchaser's attorney that Subject Property was zoned for Residential Uses within the PRC District? To believe otherwise is to believe that the Deputy Zoning Administrator, in confirming Subject Property's zoning status and that the golf course was a legal use, offered irrelevant information about one of the subcategories within the PRC District to the exclusion of another one that was actually applicable to Subject Property. That is incredulous, and the Zoning Agent's rather facile dismissal of this 1993 Determination finding as it relates to there being a Residential Uses designation on Subject Property simply cannot be allowed to stand.

F. **Absent Development Plans Designating a Different Subcategory Under the Planned Residential Community District, Subject Property Must Be Designated Residential Uses Based On the Approved Final Subdivision Plats**

The Zoning Agent has produced no evidence to rebut RN's position – as confirmed in the 1993 Determination – that Subject Property is designated for Residential Uses under the PRC

District. She confirms that the County has no copies of the development plans approved with the Rezonings.[5] (See **Exhibit B**, Determination Letter, at page 2).

The Zoning Agent acknowledges that the Rezonings and development plans included the golf course "as a proposed and ultimately approved use." However, the golf course was not "proposed" in 1971; it was an existing use at the time of the Rezonings. Furthermore, there is no evidence that the associated development plans, which typically were "blob" plans at that time, in any way restricted use of Subject Property to a golf course, as proffered development plans typically restrict uses today. Indeed, the Zoning Agent's reference to "the note to the file in 1995 from then Zoning Administrator, Jane Gwinn, stating that the Board approved development plans for rezoning applications RZ C-203 and RZ C-281 did include the golf course . . . ." (i) supports that there were development plans approved with the Rezonings, but (ii) does not even suggest that the development plans in any way restricted the use of Subject Property to golf course only. The Zoning Agent's hypothesis is without foundation.

RN grounds its position on the hard evidence that is available. That evidence came after the Rezonings and includes the 1993 Determination, which only makes sense if Subject Property is designated for Residential Uses, and the recorded subdivision plats, which do not by covenant or restriction limit use of the property to a golf course or open space, but expressly provide that redevelopment of Subject Property may occur with approval of an amended "final plan."

Subject Property is zoned PRC and designated "Residential Uses". Subject Property was specifically approved for Residential Uses, not just "golf course" (which is a use permitted within the Residential Uses subcategory. Subject Property was never approved exclusively for golf course use, nor ever restricted by covenants to either "open space" or "golf course".

The zoning Agent devotes the better part of a page to the Reston Master Plan/Fairfax County Comprehensive Plan. She relies on the Comprehensive Plan to support her view that Subject Property is "open space" and that any alternative development "that cannot be construed as open space, parks, golf course, or nature center" requires an amendment to the Comprehensive Plan. (See **Exhibit B**, Determination Letter at page 2). However, the Comprehensive Plan is not relevant to the quest raised in this appeal – what *process* is required to redevelop Subject Property to residential uses. The Comprehensive Plan is a guide for informing rezoning decisions. As explained above, the legislative approval of the Rezonings in 1971, and the subsequently confirmed Residential Uses designation, establish the zoning and the permitted uses of Subject Property. No further rezoning action is required.

G. The RPC and PRC District Process and Amendments

The RPC District regulations in 1971 provided that "[f]ollowing the establishment of an RPC District and the approval by the Board of Supervisors of the development plan, the applicant shall submit to the Director of County Development . . . a preliminary plat of any

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[5] Pursuant to Section 18-102 of the Zoning Ordinance, the Zoning Administrator has the specific duty and responsibility to maintain "current and permanent files and records for . . . A. Proposed and adopted amendments to the Zoning Ordinance, to include the Zoning Map . . . [and] F. Generalized development plans, conceptual development plans and final development plans and amendments thereto."

portion of the property zoned RPC to be developed." (See Exhibit E, Section 30-2.2.2 B.3.). The preliminary plat must conform to the previously approved development plan. Following approval of the preliminary plat, "the applicant shall submit . . . *a final plat.*" (Id.) (*Emphasis added*). Finally, "[w]hen the final plat and deed have been reviewed by the Director of County Development ***and found to be in accordance with this section, with Chapter 23 of the Code of Fairfax County, and with the development plan, they shall be approved and recorded.***" (Id.) (*Emphasis added*).

The recorded "final plats" for Subject Property control. Pursuant to Section 30-2.2.2 B.3, these "final plats" were found to be in accordance with the development plan or they could not have been approved. They do not restrict Subject Property to golf course use. They expressly provide that Subject Property can be subdivided and built upon after approval of "an amended final plan." The notes on these plats could have conditioned future subdivision and construction on approval of "an amended development plan." They did not. On a parcel designated for Residential Uses without any restrictive proffers or development conditions, there would be no basis for requiring an amendment to the development plan.

Under the current PRC District, the PRC Plan has replaced the provision for a "preliminary plat" under the former RPC District regulations. A copy of the current Zoning Ordinance Procedures for Review and Approval of a PRC District is attached as Exhibit M. After approval of a rezoning to the PRC District, "a PRC plan shall be required for those uses as set forth in Par. 2 below," which includes residential uses. (See Exhibit M, Section 16-203). Site plans and subdivision plats follow the approval of the PRC Plan. (Id. at Section 16-204).

The notes on the subdivision plats for Subject Property establish that the only requirement for future subdivision and construction is to obtain approval of an amended "final plan." i.e., a site plan or subdivision plat pursuant to Section 16-204. Since the PRC Plan is a current requirement of the PRC District regulations that was not an element of the former RPC District, RN is prepared to accept that approval of a PRC Plan is necessary to redevelop Subject Property under the current PRC District regulations. That process would be followed by the appropriate site plan and subdivision applications.

In light of the record evidence that Subject Property is designated for Residential Uses and the absence of any evidence that Subject Property was restricted to a golf course or open space, RN's property rights cannot be summarily stripped by an *ex post facto* requirement to obtain an amendment to the Reston Master Plan to rezone Subject Property . . . to what? It is already designated "Residential Uses" as its principal use.

In 2007, the Board amended the PRC District regulations to require that PRC Plans be reviewed by the Planning Commission and approved by the Board (the "PRC District Text Amendment"). Previously, PRC Plans were reviewed and approved by the Department of Public Works and Environmental Services ("DPWES"). A copy of the Staff Report which accompanied the PRC District Text Amendment is attached as Exhibit N.

The Board ultimately changed the process for PRC Plans to address properties similar in standing to Subject Property. In the Staff Report, Staff noted that one of the three key facets of the PRC District is "the flexibility afforded to the single 'master' developer to transfer any unused density from one development area to another within the PRC, provided there was adherence to

the various population and dwelling unit factors set forth in the PRC District." (See **Exhibit N**, Staff Report at page 3). Further, the built and available density in a PRC District "is tracked *through the site plan process*." (Id.) (*Emphasis added*). Staff confirmed that – in contrast to Burke Centre and Cardinal Forest, the other PRC Districts in Fairfax – "[e]arly development plans in Reston lacked specificity; rarely did these approved development plans depict specific layouts for how the sites would develop, although some of these development plans indicated the type of the dwelling unit proposed for residential development." (See **Exhibit N**, Staff Report at page 4).

Staff advised that there is available density in the Reston PRC District. Prior to the PRC District Text Amendment, Staff identified development potential of up to 4,106 units (Staff Report at page 6). The Amendment also changed the density factors, which Staff estimated would increase the available density to a total of 7,921 multiple family units. (Staff Report at page 10). The concern identified by Staff was that "no site or subdivision plan can be approved that exceeds that limitation [4,106/7,921 units]; however, ***there is the potential for development to occur up to that limit without being subject to a legislative review process.***" (*Emphasis added*).

Staff's explanation of the need for the PRC District Text Amendment is telling:

> Given that under certain approved zonings, redevelopment could occur in unanticipated locations, such as in stable residential neighborhoods and without a public forum, ***particularly in Reston where a significant number of older neighborhoods were developed according to blob or very general approved development plans***, staff is recommending a change to the way PRC plans are processed. Rather than an administrative approval by DPWES, staff is recommending that PRC plans be processed similar to the way other types of zoning applications are processed, which require public hearings before both the Planning Commission and the Board. The standards of review are proposed to remain the same as set forth above. However, the PRC plan would be submitted to DPZ for review and staff recommendation. The PRC plan would then be reviewed by the Planning Commission through the public hearing process and [sic] make its recommendations to the Board for the Board's consideration and action. Once the PRC plan is approved, a site or subdivision plan, as applicable, can be submitted to and acted upon administratively by DPWES, as is currently the practice. *(Emphasis added).*

Subject Property may be just such an "unanticipated location" for redevelopment. It is an area designated for PRC District–Residential Uses, it is not limited by proffers or development conditions proscribing redevelopment for residential uses and, as indicated in the Staff Report, there are up to 4,106 units [7,921 multiple family units as a result of the Amendment] that can be developed "without being subject to a legislative review process." The Board's revisions to the PRC District in 2007 were intended to address this very situation by requiring public hearings before and review by the Planning Commission and the Board for future PRC Plans. Redevelopment of Subject Property for residential uses can be subject to that revised PRC Plan review and approval process. But there is no basis in law or in fact offered in the Determination Letter to impose a Comprehensive Plan amendment and a rezoning amendment as prerequisites

to a PRC Plan review, a contrived alternative "final plan amendment" process for property already zoned PRC and designated for medium density residential.

V. CONCLUSION

The best available evidence regarding the potential for redevelopment of Subject Property to residential is: (i) confirmation from the Zoning Agent (and the earlier 1993 Determination) that the entirety of Subject Property is zoned PRC; (ii) the Deputy Zoning Administrator's 1993 Determination that Subject Property falls under the Residential Uses subcategory of the PRC District; (iii) the absence of any proffer or recorded covenant restricting use of Subject Property; (iv) the recorded subdivision plats, which do not by covenant or restriction limit use of Subject Property to a golf course or open space and which expressly provide that redevelopment of Subject Property may occur with approval of an amended "final plan"; and (v) the lack of any recorded covenants or deed restrictions, proffers, or development plans which restrict, proscribe or prohibit the filing of a PRC Plan to allow full development of Subject Property for residential uses.

By acknowledging that Subject Property is zoned PRC District, the Zoning Agent has acknowledged that Subject Property is one of the Residential, Neighborhood Convenience Center, Village Center, Town Center or Convention/Conference Center subcategories. The Zoning Agent offers no evidence contradicting the Deputy Zoning Administrator's confirmation in the 1993 Determination or the absence of restrictive covenants binding Subject Property in the final subdivision plats, and not even a suggestion as to which other subcategory besides Residential was designated in the development plans she has not seen.

For all the reasons stated above, Subject Property must be allowed to be redeveloped with any of the uses permitted in areas designated as Residential Uses in the PRC District under Section 6-302(A) of the Zoning Ordinance. The only requirement for redeveloping Subject Property for such uses is to file and obtain Board approval of a PRC Plan as provided in Section 16-203 of the Zoning Ordinance.

RN respectfully petitions the BZA to reverse the Zoning Agent's determinations and direct that the County be required to accept a properly filed and complete PRC Plan application as the next step in redevelopment of Subject Property for residential uses.

Dated: July 20, 2012

Francis A. McDermott
Attorney/Agent for the Appellant