



COMMONWEALTH OF VIRGINIA
COUNTY OF HENRICO

Virgil R. Hazelett, P.E.
County Manager

CORRECTED LETTER

June 23, 2010

Gray Land and Development Company-Tree Hill, LLC
C/O Charles W. Ewing, II
5004 Monument Avenue, Suite 200
Richmond, VA 23230

Re: Conditional Rezoning Case C-52C-07

Dear Mr. Ewing:

This letter supersedes the letter dated December 18, 2007.

The Board of Supervisors at its meeting on December 11, 2007, approved your request to conditionally rezone from A-1 Agricultural District and M-2 General Industrial District to UMUC Urban Mixed Use District (Conditional), part of Parcel 797-706-5048, described as follows:

PARCEL 1-West of Osborne Turnpike

Beginning at a point situated on the western line of Osborne Turnpike, State Route 5, a variable width right-of-way, said point being $\pm 1700'$ south of the western line of Old Osborne Turnpike, State Route 5, a variable width right-of-way, go along said western line of Osborne Turnpike S $10^{\circ}18'49''$ E, 815.95' to a point; thence S $12^{\circ}13'21''$ E 150.07' to a point; thence S $10^{\circ}18'49''$ E 630.38' to a point; thence leave said western line S $87^{\circ}52'44''$ W, 909.58' to a point; thence S $88^{\circ}06'12''$ W, 1490.00' to a point and the beginning point of a survey tie line; thence S $88^{\circ}06'12''$ W, $\pm 4'$ to the centerline of Mill Creek; thence continue along said centerline as it meanders $\pm 4242'$ to a point and the end point of said survey tie line having a direction S $53^{\circ}52'07''$ W, 2382.48'; thence N $42^{\circ}11'16''$ W, 183.07' to a point; thence N $84^{\circ}11'33''$ W, 68.06' to a point; thence N $68^{\circ}36'33''$ W, 64.00' to a point; thence S $68^{\circ}23'27''$ W, 100.00' to a point; thence S $39^{\circ}23'27''$ W, 100.00' to a point; thence S $53^{\circ}53'27''$ W, 352.00' to a point situated at the mean low water line of the James River and the beginning point of a survey tie line; thence continue along said mean low water line as it meanders $\pm 7795'$ to a point; thence S $81^{\circ}33'49''$ E, $\pm 6'$ to a point and the end point of said survey tie line having a direction N $06^{\circ}43'24''$ E, 6641.15'; thence S $81^{\circ}33'49''$ E, 380.00' to point; thence N $67^{\circ}30'34''$ E, 618.89' to a point; thence N $41^{\circ}48'56''$ E, 1060.81' to a point; thence S $24^{\circ}47'52''$ E, 125.43' to a point; thence N $65^{\circ}12'08''$ E, 195.50' to a point situated

on the western line of Old Osborne Turnpike, State Route 5, a variable width right-of-way; thence continue along said western line S 24°48'36" E, 1422.87' to a point; thence leave said western line S 01°33'37" W, 1781.83' to a point; thence S 88°37'05" W, 343.00' to a point; thence S 06°22'55" E, 1109.00' to a point; thence S 74°22'55" E, 792.00' to a point; thence N 85°37'05" E, 971.31' to the point of beginning. Said parcel containing ±525.3 acres or ±22,884,768 sq. ft.

The Board of Supervisors accepted the following proffered conditions, dated December 10, 2007, which further regulate the above described property in addition to all applicable provisions of Chapter 24, Code of Henrico (Zoning Ordinance):

A. Plan Conformance and Submission.

1. Overall Development. The Property shall be developed in general conformance with the following:
 - a. "Tree Hill Master Plan" dated July 19, 2007 or as amended, prepared by Duany, Plater-Zyberk & Company (the "Master Plan") (see case file);
 - b. "Tree Hill Design Code" dated July 19, 2007 or as amended, prepared by Duany Plater-Zyberk & Company (the "Design Code") (see case file);
 - c. "Tree Hill Thoroughfare Standards" dated July 19, 2007 or as amended, prepared by Kimley-Horn and Associates, Inc. (the "Thoroughfare Standards") (see case file); and
 - d. "Landscape and Open Space Plan" dated July 19, 2007 or as amended, prepared by Higgins and Gerstenmaier (the "Landscape Plan") (see case file).

Variations from the Master Plan, Design Code, Thoroughfare Standards and Landscape Plan may be permitted for the development on the Property in any subsequent Plan of Development or subdivision approval as approved by the Planning Commission upon finding the variations are generally in keeping with the spirit and intent of the Master Plan, Design Code, Thoroughfare Standards and Landscape Plan.

Any structure constructed on the Property shall be in general conformance with the Design Code, provided, however, there may be modifications in such structures due to differences in size, scale and uses of such structures.

An architectural review process shall be established by the developer to review and approve development of all structures on the Property in general conformance with the Design Code prior to the plans being submitted to the County.

2. Neighborhood Plan. Prior to or at the time of submission of each tentative subdivision plan or Plan of Development, the developer shall provide a "Neighborhood Plan" for the neighborhood of which the requested tentative subdivision or Plan of Development is a part. The "Neighborhood Plan" shall show:
 - a. The specific types and locations of all uses proposed for such neighborhood or portion of the neighborhood to the extent known;
 - b. A phasing schedule showing that adequate utilities, pedestrian accessways and roadways exist or will be constructed as part of the proposed development to serve the proposed uses or level of development within the neighborhood or portion of the neighborhood;
 - c. Other information for tentative subdivision or Plan of Development submissions as may be required by the Henrico County Subdivision and/or Zoning Ordinance; and
 - d. The developer shall submit the Neighborhood Plan and other information related to access and lighting to CPTED for its review related to security at the time of Plan of Development.

The uses shown on each subdivision plan or Plan of Development within each neighborhood or portion of the neighborhood will be consistent with the uses contained in these proffered conditions.

B. Densities.

1. Commercial Minimum.
 - a. A minimum of the lesser of (i) twenty percent (20%) of the total building square footage (which shall for commercial and civic uses be defined as the gross square footage of the building footprint and for residential space be defined as the finished and conditioned floor area) on the Property or (ii) 1.16 million building square feet shall be developed for commercial space. The design of the development and the construction of the infrastructure on the Property shall permit a minimum of 300,000 building square feet for a corporate office site which area shall be reserved until the earlier of (a) all or a substantial portion of the reserved area is used for a corporate office site or (b) 860,000 building square feet of other commercial uses have been constructed on the Property.
 - b. The developer shall have constructed or caused construction of not less than 250,000 building square feet of commercial space by the time fifty percent (50%) of the residential dwelling units have been issued final certificates of occupancy and shall have reserved area(s) illustrated on the Master Plan (see case file) sufficient to meet the B.1(a) requirement in its entirety. At ninety percent (90%) completion of construction of the total building square

footage, the developer shall have constructed or caused the construction of commercial space equal to the lesser of (i) twenty percent (20%) of the total building square footage or (ii) 774,000 building square feet.

2. Civic Uses. The developer shall provide infrastructure adequate to support a minimum of 150,000 building square feet for civic uses. Civic use shall be defined as any area or building, developed for public use (whether publicly or privately owned) including but not limited to recreation buildings, libraries, assembly halls, fire stations, police stations, schools, YMCA, churches and other community activities.
3. Residential Density. Residential dwelling units on the Property shall not exceed 2,770 units.
4. Rental Restriction. Of the multifamily residential dwelling units, no more than 600 dwelling units shall receive a Certificate of Occupancy as rental apartment units. To the extent that rental apartment units subsequently are converted to condominium units, the Director of Planning may approve new rental apartment units up to the foregoing maximum.
5. Mix of Uses Within Neighborhoods. Each neighborhood shall have a mix of uses within the range provided in the Master Plan (see case file) provided, however, that the entire project shall remain within the total densities set forth in this Section B.

C. Roads, Sidewalks, Drives, Access and Utilities.

1. Interior Road Standards.
 - a. All roads within the development shall be constructed in accordance with the Thoroughfare Standards (see case file) and, except where explicitly provided otherwise in the Thoroughfare Standards, in accordance with Henrico County public road standards.
 - b. Prior to the issuance of a final Certificate of Occupancy for any structure, the developer shall provide the Planning Department certification from a licensed engineering firm that any private roadways within the development leading to such structure were constructed according to the approved Plan of Development, subdivision plan, the Thoroughfare Standards (see case file) and/or in compliance with Henrico County road construction standards to include proper compaction of the sub-base soils, utility trenches, base stone and asphalt surface or a bond shall be provided to Henrico County for items not yet completed.
2. Route 5 Road Improvements.
 - a. All right-of-way necessary, but not to exceed forty feet as measured from the existing centerline, to allow the portion of Route 5 adjacent to the Property to be an eighty (80) foot wide right-of-way shall be dedicated to the County or to

the State by the then Owner of the Property prior to the final approval of the Plan of Development and/or subdivision for the first building on the Property, unless otherwise determined by the Director of Public Works. If such property *is not used by the County or by the State for the widening of Route 5 by January 1, 2026*, the dedicated portions of the Property shall be returned to the developer.

- b. Pursuant to the recommendations set forth in the Tree Hill Development - Traffic Impact Analysis prepared by Timmons Group, dated April 27, 2007, revised October 25, 2007, and Addendum dated November 5, 2007 (see case file) and based upon the assumptions provided by the County Department of Public Works and VDOT with respect to the Route 5 configuration in 2016 as a four lane highway, the developer, subject to VDOT approval, shall undertake to construct and dedicate to the County or to the State at no cost, at the time of the applicable subdivision or Plan of Development approval, the following Route 5 road improvements:
- (i) A single right turn lane at the north project entrance on Old Osborne Turnpike and a single right turn lane at the east project entrance on Osborne Turnpike. Single right turn lanes shall also be constructed at the three proposed right in/right out intersections on southbound Rt. 5. Project entrance locations are shown on the Thoroughfare Standards (see case file). Southbound Rt. 5 Improvements are shown on Figure 5-10A and Figure 47A in the Traffic Impact Analysis (see case file);
 - (ii) A traffic signal at the east project entrance and at the north project entrance as shown on Figure 5-10A and Figure 47A in the Traffic Impact Analysis (see case file) when warranted;
 - (iii) A single left turn lane at the north project entrance on Old Osborne Turnpike and a single left turn lane at the east project entrance on Old Osborne Turnpike. Project entrance locations are shown on the Thoroughfare Standards (see case file). Northbound Rt. 5 Improvements are shown on Figure 5-10A and Figure 47A in the Traffic Impact Analysis (see case file); and
 - (iv) Subject to VDOT providing all required approvals and right-of-way for the following improvements at no cost to the developer by May 1, 2009, unless an extension date is mutually agreed upon by VDOT, the County and the developer, the developer shall widen Route 5 to a four lane section with the required transitions from the east side of the north project entrance to the southern property line of Rocketts Landing property, GPIN# 797-711-6071. If VDOT does not approve the foregoing scenario by May 1, 2008, then developer shall widen Route 5 to a four lane section with the required transitions along the Property frontage at the east project entrance and the north project

entrance, provided that VDOT approves the widening of Route 5 at the east project entrance and north project entrance as satisfying the developers obligations for improvements to Route 5.

3. Vision 2026 Concept Road. Developer shall provide an easement at the time of the first Plan of Development or subdivision of the Property without cost to the County, for the proposed Vision 2026 Concept Road right-of-way extending from the southern Property line to the northeastern Property line as shown on the Thoroughfare Standards (see case file). Provided that the developer's obligations to make improvements to Route 5 are limited to the Route 5 Road Improvements contained in proffer C2 and provided that the Vision 2026 Concept Road connects to Route 895, developer shall construct and dedicate portions of the Vision 2026 Concept Road as shown on the Thoroughfare Standards at the time of the first to occur:
- (i) when requested by the County and as warranted by a traffic study; or
 - (ii) as land within the Property adjacent to the Vision 2026 Concept Road is developed and to the extent warranted by a traffic study.

If VDOT approves the widening of Route 5 from the east side of the north entrance to the southern property line of Rocketts Landing property, GPIN# 797-711-6071, as set forth in Proffer C.2.b.iv, developer shall build the Vision 2026 Concept Road extending south from the Town Center to its terminus as shown on the Thoroughfare Standards (see case file) as a two lane section and shall pay the costs of building the third and fourth lanes to the costs of improving Route 5 to a four lane section from the east side of the north entrance to the four lane section developed by Rocketts Landing.

If VDOT does not approve the widening of Route 5 from the east side of the north entrance to the southern property line of Rocketts Landing property, GPIN# 797-711-6071, as set forth in Proffer C.2.b.iv, developer shall complete construction of the Vision 2026 Concept Road from its southern terminus as shown on the Thoroughfare Standards (see case file) to the southern property line or provide to Henrico County a cash escrow, letter of credit or other funding guarantee satisfactory to the County Attorney's office in an amount not to exceed \$250,000.00 toward the completion of the construction of the said portion of the Vision 2026 Concept Road as four lanes.

If the County does not request construction or accept the dedication of the Vision 2026 Concept Road by January 1, 2026, the developer shall be relieved of this obligation to construct and dedicate the Vision 2026 Concept Road, the easement shall be terminated and any financial guarantee shall be cancelled and returned to the developer.

4. Pedestrian Access.

- a. Sidewalks a minimum of five (5) feet in width shall be provided along the roads within the development as shown on the Neighborhood Plan (see case file) and consistent with the Thoroughfare Standards (see case file).
- b. A pedestrian network shall be created which includes, in addition to the sidewalks, hiking and bike trails extending into the flood plain areas of the Property to connect the developed areas shown on the Master Plan (see case file) with the Nature Area adjacent to the James River.

5. Paved Drives. Each driveway serving a single family dwelling unit shall be hard surface and may be of asphalt, concrete, pavers, brick, stone or aggregate materials; provided however, that hard surface "cart tracks" shall be deemed to comply with this requirement.

6. Underground Utilities. Except for junction boxes, meters and existing overhead utility lines or for technical, regulatory or environmental reasons, all utility lines on the Property shall be underground.

7. Best Management Practice. Best Management Practice facilities shall be located *outside of any landscaped buffer along Route 5, except if such facilities are underground or serve as a landscaping amenity or water-related feature and if requested and specifically permitted at the time of subdivision or Plan of Development review.*

Any above-ground wet Best Management Practice facilities shall be aerated and designed and utilized as a water feature amenity and/or designed and landscaped to make it an integral part of the development.

8. Public Access to James River. Developer shall provide to the public, non-vehicular access to the Nature Area adjacent to the James River similar to that provided to residents and property owners subject to the rules and regulations of the homeowners association.

9. Emergency Access to James River. Developer shall dedicate at no cost to Henrico County an access easement to the James River for the benefit of the Division of Fire and the Division of Police. Such access shall be located in a mutually agreed upon location near the southern Property line for an emergency boat launch to be constructed by the County.

D. Cultural Resource Elements.

1. Cultural Resources Response Plan. Developer shall manage the cultural resources on the Property in accordance with the Tree Hill Cultural Resources Response Plan prepared by McGuireWoods LLP dated May 10, 2007, revised July 19, 2007 (see case file) and shall undertake the actions described therein.

E. Dedications.

1. School. Developer shall dedicate an area for use as an elementary school a minimum of 10 acres and identified as "Elementary School" on the Master Plan (see case file) as and when requested by the County, without cost to the County. The 10 acres shall be located outside of the floodplain and shall not contain any wetlands. The 10 acre "Elementary School" site shall be conveyed together with non-exclusive rights for the periodic use of the adjacent two (2) acre park also shown on the Master Plan. The Elementary School shall have non-exclusive rights for the use of the park for adjunct school activities, such as school picnics and field days, for so long as the school exists. The developer shall provide and maintain stormwater management facilities which meet County standards off the school site, construct all streets around the school site perimeter, provide landscaping and sidewalks around the perimeter of the school site equal to those described in the Neighborhood Street section of the Tree Hill Design Code (see case file), and shall extend water and sanitary sewer lines to the school site when requested by the County, without cost to the County.
2. Fire Station. Developer shall pay a cash proffer in the amount of two hundred fifty thousand dollars (\$250,000.00) no later than 120 days following the rezoning to the County to mitigate the development's impact on fire, police and emergency services. Such cash proffer shall be used by the County to provide for equipment, an additional facility or improvements to an existing facility for County fire, police or emergency services that will serve the Property. Such cash proffers not used for the purposes specified in this proffer within fifteen (15) years of such payment shall be returned to the payor.
3. Library/Museum. Developer shall dedicate an area not to exceed 3 acres and identified as "Library/Museum" on the Master Plan (see case file), for use as a library, museum, or other civic use approved by the developer as and when requested by the County, without cost to the County. If the County has not constructed the library, museum or other civic use approved by developer by 2016 or by the time that 50% of the dwelling units have received final Certificates of Occupancy, whichever date is later, then the dedicated area shall be returned to the developer and may be used for other civic uses or other permitted uses.
4. Dedication Timeframes. If the area dedicated for the school is not accepted by the County and the County does not construct the improvements for the designated use by January 1, 2026, the dedicated area shall be returned to the developer and may be used for other civic uses or other permitted uses. Until such time as the County accepts and constructs the improvements for the designated use, the developer may use the proposed dedication site temporarily for any permitted use.
5. Plan of Development and External Elevation Approval. Plans of Development and external elevations, including materials, for the improvements to be constructed on the above dedicated areas shall be mutually agreed upon by the developer and the County.

F. Design and Use.

1. Residential Construction Materials. The exterior wall surfaces of any structure on the Property in which the majority of square footage usage is for residential purposes shall be constructed of the materials as provided in the Design Code (see case file), unless otherwise allowed at the time of Plan of Development or subdivision review.
2. Commercial Construction Materials. The commercial buildings on the Property shall have exposed exterior front, rear and side walls (above finished grade) constructed of the materials as provided in the Design Code (see case file), unless different architectural treatment and/or materials are specifically approved with respect to the exposed portion of any such wall, at the time of Plan of Development or subdivision review.
3. Architectural Treatment. The exposed portions of the exterior wall surfaces (front, rear and sides) of any building constructed within the Property shall be similar in quality of construction and shall have architectural designs (incorporating compatible design elements, color and architectural styles), generally or substantially consistent with the Design Code (see case file) or as approved by the Director of Planning.
4. Mechanical Equipment. Mechanical equipment adjacent to any commercial building shall be screened from view from a public right-of-way at ground level in a manner approved at the time of Plan of Development, with landscaping or such screening material being of the same material as the exterior of the adjacent building or of material of comparable architectural treatment as the exterior of such adjacent building and substantially consistent with the Landscape Plan.
5. Refuse Container Enclosures. Enclosures for refuse containers serving any commercial space shall be constructed of finished masonry materials with the exception of gates and doors. Gates and doors shall be opaque, substantial, and oriented to minimize views of the enclosures from public rights-of-way to the extent practicable. Concrete pavement shall be used for the refuse container pad and apron.
6. Parked or Stored Vehicles. No recreational vehicles, campers, trailers or boats shall be permitted to be parked or stored on the Property other than in garages or screened designated areas.
7. Sound Suppression Measures. Sound suppression measures shall be provided in the common wall and floor/ceiling between attached residential units and between residential and commercial units with at least a 54 sound coefficient rating. A cross-sectional detail, reviewed and approved by a certified architect or engineer as to the methodology accomplishing the sound coefficient rating, shall be included in the building permit application.
8. Protective Covenants. Prior to or concurrent with the recordation of each subdivision or Plan of Development approved by the County for residential and/or commercial development on the Property and before the conveyance of any portion of the

Property covered by said subdivision plat or Plan of Development (other than for the dedication of easements, roads or utilities), a document[s] shall be recorded in the Clerk's Office of the Circuit Court of Henrico County, Virginia setting forth controls on the development and maintenance of such portions of the Property.

9. Certificates of Compliance. Prior to issuing a building permit for any structure within the Property, the Building Permit Department shall receive a form from the developer or its agent indicating that the plans have been reviewed and approved for the proposed design of the structure.
10. Prohibited Uses. The following commercial uses shall be prohibited:
 - a. automotive filling and service stations including towing service;
 - b. outdoor flea markets or outdoor antique auctions; except for farmers markets;
 - c. billboards;
 - d. recycling facilities;
 - e. truck stops;
 - f. gun shop, sales and repair;
 - g. non-stealth communication towers;
 - h. adult businesses as defined by Section 24.3 of the Henrico County Zoning Ordinance;
 - i. establishments whose primary business is check cashing and/or the making of payday loans as defined and regulated by Sections 6.1-432 et seq. and 6.1 et seq of the Code of Virginia (the foregoing shall not preclude banks, savings and loans or similar financial institutions that are not regulated by the foregoing Virginia Code sections); and
 - j. commercial uses with drive-through service windows, except for a maximum of 2 banks on the Property located in the North Entrance, East Entrance and/or Town Center areas.
11. Minimum Square Footage. The minimum square footage for dwelling units shall be as provided in the Design Code (see case file).
12. Height Limitation. All buildings on the Property shall not exceed the height restrictions defined in the Design Code (see case file).

13. Amenities. The developer shall provide for the general use of all residents of the Property the minimum of the following:
- a. three (3) swimming pools;
 - b. four (4) tennis courts;
 - c. three (3) acres of playing fields;
 - d. three (3) playgrounds;
 - e. two (2) miles of pedestrian and bike trails in addition to trails in the Nature Area;
 - f. Lafayette Park of approximately 2.5 acres;
 - g. Dairy Barn Park of approximately 5 acres improved with a landscaped plaza and outdoor amphitheatre; and
 - h. Nature Area of approximately 150 acres with trails, ponds, observation decks and a landing for canoes and kayaks, if permitted.

Additionally, the developer shall provide private amenities for multifamily development such as, but not limited to exercise rooms, game rooms and theater rooms.

14. No Incorporation. The Property shall not be incorporated as a town as permitted by Code of Virginia Section 15.2-3600.
15. Sprinklers. Townhouses developed on the Property shall be constructed with a sprinkler system.
16. Hours of Commercial Operation. The only uses permitted to be open to the public for 24 hours shall be drug stores, grocery stores, health and fitness facilities and offices. Restaurants, pubs and bars located in the Town Center may be open to the public from 6:00 a.m. to 1:00 a.m. Sunday through Wednesday and to 2:00 a.m. Thursday through Saturday. All other commercial uses may be open to the public from 6:00 a.m. to 12:00 a.m.
17. Alley Lighting. Alleys serving residential development and adjacent areas shall be lighted pursuant to the standards provided in the Design Code.
18. Buffers.
- a. A landscaped berm shall be provided along the northern Property line adjacent to GPIN# 799-705-4484. The berm shall be constructed to be a maximum of six (6) feet in height with a maximum of a two to one slope ratio

within a buffer a minimum of 20 feet in width. The berm shall be landscaped with evergreen trees such as Leyland Cypress, Nellie Stevens Hollies or White Pine trees a minimum of four (4) feet in height and planted at ten (10) feet on center on the top of the berm. The berm shall be constructed so as not to block the current flow of stormwater from the adjacent parcel or the Route 5 right-of-way.

- b. A landscaped buffer a minimum of ten (10) feet in width shall be provided along the eastern boundary line of the Property adjacent to parcel GPIN# 799-705-4484. This buffer shall be planted with one row of evergreen trees such as cedars and hollies a minimum of four (4) feet in height and planted at ten (10) feet on center.

- 19. Sewer Connection. The developer shall extend the public sanitary sewer line to the property line of parcel GPIN# 799-705-4484 at a mutually agreeable location at the time a sanitary sewer line is installed to serve the first residential lot adjacent to GPIN# 799-705-4484. The sewer line shall be of sufficient size to serve the existing residences located on GPIN# 800-705-2197 and GPIN# 800-705-2570.

G. Miscellaneous.

- 1. Severance. The unenforceability, elimination, revision or amendment of any proffer set forth herein, in whole or in part, shall not affect the validity or enforceability of the other proffers or the unaffected part of any such proffer.

The Planning Department has been advised of the action of the Board of Supervisors and will revise its records and place a copy of the accepted proffered conditions in the Conditional Zoning Index.

Sincerely,


For Virgil R. Hazelett, P.E.
County Manager

pc: Daniel K. Slone, Esq.
Gloria L. Freye, Esq.
Director, Real Estate Assessment
Conditional Zoning Index