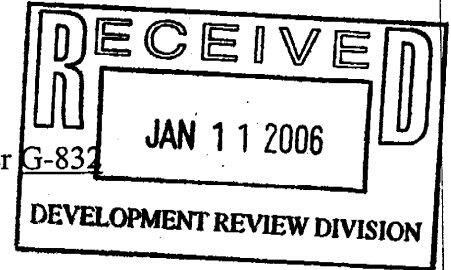


**BEFORE THE
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR
MONTGOMERY COUNTY, MARYLAND**

In the Matter of the Application *
of Ralph J. Duffie, Inc. for Local Map *
Amendment to the Zoning Ordinance *
requesting reclassification from *
the R-200 Zone to the PD-11 Zone *
* * * * *

Case Number G-832



PRE HEARING STATEMENT

Ralph J. Duffie, Inc. (hereafter either "Duffie" or "Applicant") by and through its undersigned attorneys, hereby submits this Pre Hearing Statement in support of its request to reclassify the property known as Lots 27 and 28, Garnkirk Farms Subdivision, containing 37.176 acres of land (the "Subject Property"), from the R-200 Zone (Residential, one-family) Zone to the PD-11 (Planned Development) Zone. This Pre Hearing Statement is submitted in accordance with the provisions of Section 59-H-4.3 of the Montgomery County Zoning Ordinance¹ and Section 3.1 of the Procedures for Processing and Hearing of Applications for Local Map Amendments.²

I. Statement Of The Grounds Upon Which The Case Is Based

The presently undeveloped 37.176-acre Subject Property is currently classified in the R-200 (Residential, one-family) Zone and was originally classified in the "RR, Rural Residential Zone" in 1958, when the first comprehensive zoning for Montgomery County was adopted. Located on the East side of Clarksburg, East of Interstate I-270 and North of Shawnee Lane, the Subject Property abuts the future extension of Observation Drive (A-19) and the future Capital

¹ Being also Chapter 59 of the Montgomery County Code 1995, as amended.

² Being also Appendix E to the Montgomery County Code 1995, as amended

Cities Transitway, proposed by the Clarksburg Master Plan³. The centerline of that future highway will straddle the Subject Property's eastern boundary.

As more specifically detailed in the Supplemental Planning Report prepared by Perrine Planning & Zoning, Inc., the boundaries of the "surrounding area" in which the Subject Property is located coincide with the "Transit Corridor District" area established by Clarksburg Master Plan. The Transit Corridor District consists of a 990-acre area which is master planned for 2,790 residential dwelling units.

South of the Subject Property, across Shawnee Lane, is a 23.82-acre planned unit development known as "Eastside." The Eastside property was reclassified to the PD-11 Zone on February 1, 2005 by Local Map Amendment Application G-824⁴ and is being developed by Miller and Smith as a 290 unit development of attached single-family homes and two over two condominium townhomes. Eastside is presently pending approval of a Preliminary Plan of Subdivision by the Montgomery County Planning Board.

A Montgomery County Public Schools System bus depot; Rocky Hill Middle School, along with a future high school site and Moyer and Sons, a moving and storage company are all located south and east of the Subject Property, across Shawnee Lane. The approved Gateway Commons development, another master planned mixed residential development of 292 units on 45.25 acres of land is currently under construction in the R-200/TDR Zone just north of the Subject Property.⁵

The R-200 Zoned area east of the Subject Property, between it and MD 355, is mostly wooded and sparsely developed with scattered single-family homes and a church.

³ The technical title of the 1994 Clarksburg Master Plan is "The Approved and Adopted Clarksburg Master Plan & Hyattstown Special Study Area." All references herein are to the "Clarksburg Master Plan."

⁴ District Council Resolution No. 15-881.

⁵ Preliminary Plan 1-02048 and Site Plan No. 8-03023

The western boundary of the Transit Corridor Neighborhood is Interstate I-270. The area between the I-270 neighborhood boundary and the Subject Property is zoned and developed with employment uses in the I-3 Zone. The Comsat property to the south and west is master planned for up to 4 million square feet of employment uses, if developed in a transit-oriented pattern.

A previous application for the rezoning of the Subject Property to the I-3 Zone, Local Map Amendment G- filed in 1988 was withdrawn. The Clarksburg Sectional Map Amendment ("SMA") in 1994 was the last comprehensive rezoning action to affect the Subject Property and its surroundings.

The Subject Property is within the Clarksburg Planning Area. The vision of the 1994 Clarksburg Master Plan is that Clarksburg develop "as a transit-and-pedestrian oriented community surrounded by open space." (Clarksburg Master Plan p.1) The Clarksburg Master Plan "envisions Clarksburg as a town, at a larger scale than proposed in the 1968 Clarksburg Master Plan but smaller than a corridor city such as Germantown." (Clarksburg Master Plan p.16)

The Subject Property is located in the "Transit Area" portion of the 990-acre Transit Corridor District. The Transit Area includes properties, such as the Subject Property that are "traversed" by the proposed transitway. The Subject Property is designated a "residential center" that is intended for higher density development to "provide housing at designated areas along the transitway near significant employment uses." (Clarksburg Master Plan pp. 54, 56)

The reclassification of the Subject Property to the PD-11 Zone will implement the objectives and site-specific recommendations of the Clarksburg Master Plan and, at the higher end of the master-planned density range, will facilitate the residential density necessary to contribute to the future success of the transitway.

The Revised Development Plan implements the housing unit mix recommended by the Clarksburg Master Plan. It includes detached single-family and two types of attached single-family homes as well as multi-family units in a four story structure.

The composition of the currently proposed units and the Master Plan recommendations for the Transit Area are shown in the following chart copied from the Supplemental Planning Report:

	Master Plan Recommendation ⁶	Revised Development Plan Proposal
Multi Family	30% to 50% multi-family	41%
Single-Family Attached	40% to 60%	54.3%
Single-Family Detached	5% to 10%	4.8%

The varied unit types and proposed density, as illustrated above, are consistent with the Master Plan recommendations for the Subject Property and the greater Clarksburg Planning Area. Rezoning of the Subject Property to the PD-11 Zone will implement the vision of Clarksburg that is set forth in the Master Plan and is required to support the proposed transitway.

The Road network that will serve the Subject Property includes Shawnee Lane, currently a two-lane road within a 70-foot right of way. Shawnee Lane will provide one of the two primary access points for the future residents of Garnkirk Farms. The Clarksburg Master Plan classifies that road as a 120-foot right of way arterial street with a four-lane divided roadway. (Clarksburg Master Plan p. 115) Both the Eastside and Garnkirk developments will dedicate the additional right of way required for the full 120-foot master planned right of way.

⁶ See Clarksburg Master Plan p. 39

Observation Drive, a master plan proposed 4-lane divided arterial highway will also serve the Garnkirk Farms project. The proposed Capital Cities transitway is to be located within the Observation Drive right of way, which is proposed to be 150 feet, inclusive of the 50-foot right of way for the transitway. (Clarksburg Master Plan p. 114)⁷ The centerline of Observation Drive coincides with the east property line of the Subject Property as it proceeds northward from Shawnee Lane to connect to the right of way alignment approved for the segment of Observation Drive within Gateway Commons.⁸

The PD-11 Zone is a floating zone and therefore compliance with the "Purpose Clause" of that Zone is required for approval of a Local Map Amendment. Section 59- C-7.11 of the Zoning Ordinance enumerates the purposes of the PD Zones. The details of the Purpose Clause are set out and explained fully in the Supplemental Planning Report. In summary, the proposed development of the Subject Property, in accordance with the Revised Development Plan, is in conformance with the Clarksburg Master Plan. The variety of housing types planned and the recreational amenities proposed could not be achieved if conventional zoning categories were utilized. The application, thus, conforms to the Purpose Clause.

The proposed development includes several recreational spaces, placed throughout the community and linked by pedestrian walkways and sidewalks that provide access to the proposed transitway and various neighborhood amenities facilitating and encouraging a maximum of social and community interaction and activity.

All of the residential unit types permitted by the Planned Unit Development Zone are included in the multi-family, single-family attached and single-family detached areas proposed

⁷ At the request of the Department of Public Works and Transportation the Revised Development Plan expands the width of the right of way near Shawnee Lane to 166 feet, adding a voluntary additional 16 feet to the Master Plan recommended right of way.

⁸ See Master Plan Figure 40, the Clarksburg Master Plan Highway and Transportation Plan.

by the Revised Development Plan. The requested zoning, PD-11, is a Medium Density Category (200-800 units) which requires a certain percentage composition of the type of units planned. The Revised Development Plan substantially complies with the Zoning Ordinance specified percentages in each unit type category and conforms to the Master Plan guidelines.

The proposed development also retains an extensive amount of existing forested area in locations that buffer the Subject Property from adjacent I-3 land uses. Pedestrian friendly access points are provided to Observation Drive and the proposed transitway facilitating a pedestrian friendly environment. As stated in the Supplemental Planning Report, a compact, efficient community has been designed to reduce both the amount of trees to be cleared and the degree of grading required to implement the Master Plan specified density.

The small area within the required Stream Valley Buffer is left undisturbed and additional open space is provided adjacent to the stream. Internal open space is distributed at various scales throughout the community to provide active and passive recreational facilities within easy walking distance of residences. Along Observation Drive, open space areas create a visual openness into the community that also serves to provide additional setback for residences.

The internal road pattern features private streets, designed to slow traffic, and cul-de-sac connections between public and private streets. These features safely and efficiently direct traffic through the community and create a high level of connectivity between the different blocks of homes. An entire pedestrian network is created parallel to, but separate from, the street system to ensure pedestrian safety. Nearly all proposed residences are within a one-quarter mile of the proposed transit stop location. More than sufficient parking spaces are provided, and are distributed to individual residences, as well as on street, to adequately serve both residences and visitors conveniently.

The compatibility of the proposed development with adjacent uses is attained through the retention of forested area in strategic locations and the alignment of Observation Drive and Shawnee Lane as previously described. The development will also provide a place of residence close to employment, and will support and integrate well with the planned retail/commercial and employment uses specified in the Clarksburg Master Plan.

The Applicant will also present evidence and testimony during the public hearing that the application complies with the PD Zone Development Standards contained in Section 59-C-7.1 of the Zoning Ordinance. Details of such compliance may be found in the Supplemental Planning Report.

Conclusion

This application seeks to reclassify two recorded parcels of land from the R-200 to the PD-11 Zone. The proposed reclassification satisfies the purpose clause of the PD Zone, is consistent with the Approved and Adopted Clarksburg Master Plan and meets the development standards of the PD Zone. The proposed development will be compatible with the existing and planned development, as well as the uses in the surrounding area, and will be served by adequate public facilities, including roads, schools, water, sewer and public utilities. The approval of the reclassification of the Subject Property from the R-200 zone to the PD-11 Zone is in the public interest and should be approved.

II. Reports Intended to Be Introduced at the Hearing

The following reports have either been submitted as part of the original filing of this Application or have been subsequently submitted:

1. Planning and Engineering Report prepared by Leslie Powell and David O'Bryan of Charles P. Johnson and Associates. (Original submission.)

2. Supplemental Planning Report prepared by Phillip E. Perrine, of Perrine Planning and Zoning, Inc. (Subsequent submission.)
3. Supplemental Engineering Report prepared by David O'Bryan of Charles P. Johnson and Associates. (Subsequent submission.)
4. Local Area Transportation Review Traffic Study prepared by Stephen G. Petersen, P.E. of Street Traffic Studies, Ltd. (Original submission.)
5. Revised Local Area Transportation Review Traffic Study and Addendum prepared by Stephen G. Petersen, P.E. of Street Traffic Studies, Ltd. (Subsequent submission.)

III. Summary Of Expert Witnesses and Testimony to be Proffered at the Hearing

The following witnesses whose resumes are filed along with this Pre Hearing Statement will present expert testimony:

1. Phillip E. Perrine, of Perrine Planning and Zoning who has previously qualified before the Hearing Examiner as an expert in land planning, will testify generally about planning and zoning matters including the physical characteristics of the Subject Property and the proposal's compliance with applicable provisions of the Zoning Ordinance including, among others, density, green space, amenities, height and building setbacks. Mr. Perrine will also testify as to the boundaries and character of the surrounding area, existing and planned land uses and the impact of the proposed reclassification on the existing and planned land uses in the Transit Corridor District. In addition, Mr. Perrine will testify as to conformance of the proposal with the purpose clause of the P-D Zone and its consistency with the Approved and Adopted Clarksburg Master Plan. In general, Mr. Perrine will express his professional opinion as to compliance with applicable land use regulations and requirements and compliance with county

laws, including forest conservation requirements. In addition, Mr. Perrine will testify about the adequacy of the off-street parking that will be provided.

2. David O'Bryan, P.E. of Charles P. Johnson Associates is a licensed professional engineer, who has previously qualified before the Hearing Examiner as an engineer. Mr. O'Bryan will testify generally about engineering related topics, including the physical characteristics of the Subject Property, the adequacy of water supply and sewerage services to serve the proposed development and the water quality and stormwater management plans governing the proposed development. Mr. O'Bryan will also testify about the adequacy of fire, rescue and police services and the absence of any impact on other public facilities (except traffic and transportation issue which will be covered by Mr. Petersen.)

3. Stephen G. Petersen, P.E. of Street Traffic Studies, Ltd., is a licensed professional engineer, who has previously qualified before the Hearing Examiner as a traffic engineer. Mr. Petersen will testify as to the traffic impact of the proposed use that will result from the approval of the proposed P-D rezoning. He will describe both the physical and operational characteristics of the surrounding road network and explain the traffic study that has been submitted to establish that the site generated traffic can be accommodated by the road network in accordance with the Local Area Transportation Review Guidelines established by the Planning Board, consistent with the Adopted Growth Policy.

4. John T. Stovall, A.I.A., NSArchitects, is a licensed professional architect, who has previously qualified before the Hearing Examiner as an expert in architecture. Mr. Stovall designed the residential development proposed for the Subject Property, and will testify as to the exterior design of the proposed new dwelling units, the structured parking and landscaping that is proposed. In addition, he will testify that the proposed development is in compliance with the

applicable development standards, as set forth in the Zoning Ordinance. Mr. Stovall will opine that the size, height and stature of the proposed development is compatible with the surrounding area and the existing and planned development of that area.

IV. Identification of All Witnesses Who Will Testify

In addition to the Expert witnesses identified above it is anticipated that the following individuals will also present relevant testimony:

1. Jon C. Duffie, President of Ralph J. Duffie, Inc.
2. Jeremy Duffie of Ralph J. Duffie, Inc.
3. Shane Pollin of Ralph J. Duffie, Inc.

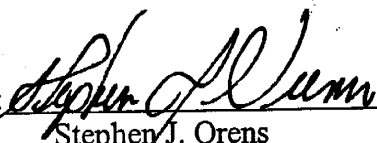
Any additional witnesses that will specifically be part of the Applicant's direct presentation will be identified by an appropriate supplemental to this Pre hearing Statement. It is possible that other interested citizens not affiliated with the Applicant may also testify.

V. Estimated Time Required for Presentation

The estimated time required for the presentation of the Applicant's case is one day.

Respectfully Submitted,

DUFOUR & ORENS, CHTD.

By: 
Stephen J. Orens
Rebecca D. Willens
Heather R. Cameron
Casey L. Moore
4920 Elm Street #200
Bethesda, Maryland 20814
Attorneys for the Applicant

EDUCATION:

Wayne State University, 1976
Master of Urban Planning

Missouri University, 1967
Bachelor of Civil Engineering

PROFESSIONAL AFFILIATIONS:

Registered Professional Engineer, Maryland
American Institute of Certified Planners
American Planning Association

QUALIFIED EXPERT WITNESS:

State of Maryland Tax Court
Montgomery County Circuit Court
Montgomery County Hearing Examiner
Montgomery County Board of Appeals
Montgomery County Planning Commission
City of Gaithersburg Planning Commission and Council
City of Rockville Planning Commission and Council
Prince George's County Hearing Examiner
Prince George's County Planning Commission
Anne Arundel County Hearing Examiner
Frederick County Commissioners

PROFESSIONAL ACTIVITIES:

Court appointed Commissioner to hear property partitioning suit.
Participant in Maryland Institute for Continuing Professional Education of Lawyers Mock Zoning hearing.
Co-author of "Transferable Development Rights" in Planning magazine.
Past President, Montgomery County Chamber of Commerce.
Guest lecturer at American University Law School on expert witness testimony

PROFESSIONAL EXPERIENCE:

Perrine Planning & Zoning, Inc.
Rockville, MD 1986-Present

Principal of a planning firm specializing in land use planning, site planning, rezoning, feasibility and site location studies for residential, commercial and industrial users.

PHILIP E. PERRINE, AICP, PE

RESUME (Cont)

J. Dougherty Co, Inc.

Gaithersburg, MD 1983-1986

Member of an urban design and regional planning firm. Responsible for planning and zoning for a variety of projects.

Dewberry & Davis

Gaithersburg, MD 1981-1983

Assistant Branch Manager, Business Development & Zoning. Responsible for marketing and business development for Montgomery County Office. Project manager for various rezoning and land development projects. Prepared feasibility studies. Provided expert witness testimony for rezoning cases.

Maryland-National Capital Park & Planning Commission

Silver Spring, MD 1972-1981

Chief, Development Review Division (1977-1981). Directed division with staff of 12 and budget of \$350,000. Division included three separate offices: Rezoning, Subdivision, and Public Information. Responsibilities included preparation of work program and budget, hiring of staff, and directing production of division.

Detroit City Plan Commission

Detroit, MI 1971-1972

Planner. Performed land use studies, represented Commission at public hearings and community meetings.

Booker & Associates, Inc.

St. Louis, MO 1967-1970

Design Engineer. Performed civil engineering design, including interstate highway design, state park development plans, and site development plans.

RESUME

David M. O'Bryan, P.E.

Director of Operations, V.P.
Charles P. Johnson and Associates
Silver Spring, Maryland

Education

B.S. Cum Laude/1982/Civil Engineering/University of Maryland

Registration and Affiliations

Professional Engineer, Maryland, 1986, #14752
Suburban Maryland Engineers Society, President, 1997-1998
Maryland National Capitol Building Association: Associate Vice-President 2000-2002
active in Montgomery County Liaison Committee, Montgomery County Development
Process Sub-committee, Environmental Committee
Montgomery County DPS Engineering Design Process Issues Subcommittee Chairman 1995 -
present

Capabilities

Mr. O'Bryan is Director of Operations for Charles P. Johnson and Associates Silver Spring, Maryland office. The office provides Land Planning, Engineering and Surveying services in the Suburban Maryland area, including Montgomery County.

Mr. O'Bryan has extensive Land Development experience in the Suburban Maryland area including all phases of land development engineering in Montgomery, Prince George's, Anne Arundel, and Frederick Counties. His background includes engineering feasibility analysis and reports, design of sediment controls, design of stormwater management facilities, floodplain and dam breach analysis, grade establishment design, water and sewer facility design, storm drain and paving plan design, and numerous miscellaneous engineering and planning designs associated with land development and roadway construction. In his 22 year career with Charles P. Johnson and Associates he has supervised the complete engineering operation and currently oversees the Engineering, Planning, and Survey Divisions. He is qualified as an expert witness and has provided testimony on projects at Public Hearings, Planning Boards, citizen associations, Board of Appeals and Hearing Examiners.

Experience

Charles P. Johnson and Associates, Inc., Silver Spring, MD

1990 - Present Director of Operations, Vice-President
Supervises the Silver Spring, MD office including the Planning, Engineering, and Survey Divisions and participates in all aspects of Land Development Engineering and Planning.

1988 - 1990 Engineering Division Manager

Supervised Engineering Division (three Sections) and participated in the design of all aspects of Land Development Engineering

1985 - 1988 Engineering Section Head

Supervised the Engineering Section and participated in the design of all aspects of Land Development Engineering

1982 - 1985 Civil Engineer

Designed all aspects of Land Development Engineering including engineering feasibility studies, stormwater management facilities, floodplains, dam breach studies, street grades, sediment control plans, storm drain and paving plans, etc.

1980 - 1982 Co-op Engineer

Designed street grades, storm drain and paving plans.

Representative Projects (Expert Witness Testimony)

SNOWDEN'S MANOR (2003)

Expert witness testimony regarding engineering issues for a Special Exception for an animal boarding facility, Board of Appeals, Montgomery County, MD

GEORGE MEANY CENTER FOR LABOR STUDIES (2002)

Expert witness testimony regarding site layout and Stormwater Management issues for Special Exception modification to add additional buildings, Board of Appeals, Montgomery County, MD

GAITHERSBURG RECYCLING (2002)

Expert witness testimony regarding site grading and layout at the Board of Appeals, Montgomery County, Maryland

WORMAN'S MILL (2001)

Variance testimony at the Board of Zoning Appeals, City of Frederick, Maryland

MANDELL PROPERTY (2001)

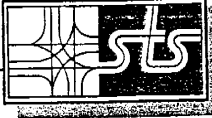
Expert witness testimony for rezoning for the Hearing Examiner, Montgomery County, Maryland

SLOANE VS. HALLE (1999)

Expert witness testimony in the Circuit Court for Montgomery County regarding civil engineering and site drainage issues.

VARIOUS CELLULAR PHONE TOWERS (1996-1998)

Expert witness testimony regarding civil site engineering issues for special exceptions for several cellular phone towers in Montgomery and Frederick Counties, Maryland.



Street Traffic Studies, Ltd.

PROFESSIONAL HISTORY

Stephen G. Petersen, P.E.

Traffic Planning and Engineering Consultant

Mr. Petersen was educated as a civil engineer and received his BCE in 1953 from Rensselaer Polytechnic Institute in Troy, New York. After graduation he took a position with a Boston, Massachusetts consulting engineering firm engaged in highway design. This engagement was interrupted by two years of service in the United States Army. Upon discharge, he returned to the original employer at a job site in Watertown, New York.

This early professional experience generated a desire for additional education that prompted an application to and subsequent enrollment in the Yale Bureau of Highway Traffic, New Haven, Connecticut. In 1957, after graduation with a Certificate in Highway Traffic, Mr. Petersen took a position with the New Jersey Bureau of Traffic Safety. His responsibilities were to provide advice and counsel to municipalities in northern New Jersey relative to solving safety problems and evaluating the need for traffic controls including traffic signals. Based upon the findings of his field studies, he then prepared functional plans and recommendations to address the problems.

After three years in New Jersey, Mr. Petersen was recommended to become the first Staff Engineer at the Institute of Traffic Engineers, the professional society for the traffic engineering profession located in Washington, D.C. This was an opportunity for exposure to the full cross section of the technical activities in which the Institute and its members were engaged. These activities included not only traffic operations, but planning, design and administration as it applied to the whole field of traffic and transportation engineering. Two years later, he was appointed as the Executive Secretary.

In 1965, Mr. Petersen felt the need to return to active professional practice and became employed by Alan M. Voorhees & Associates, a firm specializing in transportation planning throughout the United States. Over a period of six years he participated in numerous traffic engineering and planning studies particularly in the central business districts of cities such as Schenectady, New York, Memphis, Tennessee, and Roanoke, Virginia. This experience led to Mr. Petersen's decision to enter private practice in 1971. However, during this period he also acquired additional credentials by seeking and securing his MCE degree from the Catholic University of America, in 1968, as well as becoming registered as a Professional Engineer in New York, New Jersey, Maryland, Virginia and the District of Columbia.

The practice Mr. Petersen initiated in 1971 led to engagements in a wide variety of assignments involving traffic planning and engineering for both public and private clients. His practice evolved during the next six years to the point where he established Street Traffic Studies, Ltd. in 1977. The firm's practice continued to cover the same aspects as his private practice, but evolved to the point where it became noted as a support service for the development industry during the building boom of the 1980s. These years included numerous occasions when he was called upon to present findings of his work as an expert witness before regulatory bodies and the courts in Maryland, Virginia, Pennsylvania and the District of Columbia.

As his professional practice evolved, he was elevated to Fellow status in the Institute of Transportation Engineers and to Member in the American Society of Civil Engineers, professional societies related to his work.

John T. Stovall, AIA

Principal, NSArchitects

Education

Bachelor of Architecture, Pennsylvania State University

Registrations

Registered Architect in the District of Columbia, Maryland, Virginia, and Pennsylvania.

Experience

Mr. Stovall has practiced architecture in the Metropolitan Washington area for 38 years. As an owner and principal of three architectural firms, he has been responsible for the design of numerous residential, commercial, institutional and transportation facilities. This responsibility includes design, client relations, contract negotiations, scheduling, planning, cost control, coordination, and direction of large, multi-discipline engineering teams in the completion of significant design commissions. Important work experience includes the following:

Residential

More than 10,000 new and 3,100 renovated Garden Apartment units throughout the greater Washington Area, four prototype townhouse designs incorporating state of the art construction materials and energy efficient systems for the NAHB Research Center. Recent projects include: the \$12 million Yorkshire Garden Apartments for Ralph J. Duffie Inc; the \$9.2 million Vineyards Condominium Apartments for the Milton Company; the \$19 million renovation of Lee Gardens; the \$9 million renovation of Chillum Heights; and the \$15 million Glenarden Apartment Renovation for Associated Financial. We are currently designing the \$15 million Seven Oaks Garden Apartments for Ralph J. Duffie Inc.

Commercial and Institutional

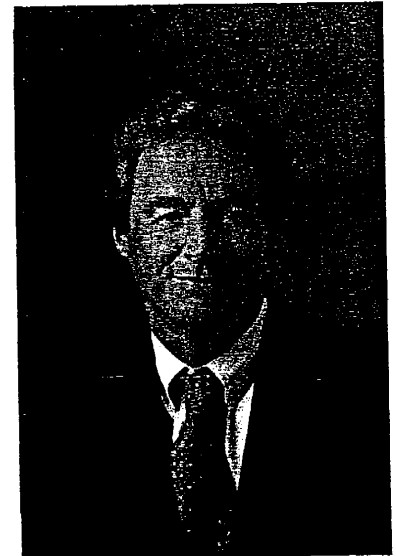
The \$8.4 million Spring Valley Master plan, Office and Garage Facility for the W.C. & A.N. Miller Company; The \$40 million Headquarters Facility for the Washington Suburban Sanitary Commission; the \$2 million Conference center for the National Association of Home Builders Research Center; the \$19 million Southern Maryland General Mail Facility for the United States Postal Service; the \$2.4 million Administration Facility and 9 branch offices for the Sandy Spring National Bank; the \$13 million Shops at Sumner Place for the W.C. & A.N. Miller Company; and the \$8 million Fort Myer Administrative Facility for the Baltimore District of the U. S. Army Corps of Engineers.

NSArchitects

a design corporation

Allen E. Neyman, AIA

John T. Stovall, AIA



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SILVER SPRING, MD 20910-2802
301.587.3333 FAX: 301.589.7357
E-MAIL: ns@nsarchitects.com

NSArchitects

a design corporation

Allen E. Neyman, AIA
John T. Stovall, AIA

Transportation

The \$12 million Shady Grove Yard Service and Inspection Shop, the \$10 million Landover Metrobus Garage Facility, and the \$32 million Greenbelt Yard Service and Inspection Shop for the Washington Metropolitan Area Transit Authority.

Organization and Advisory Committee Service

- Chairman of the Residential Committee for the District of Columbia Building Codes Advisory Committee
- Chairman of the Codes and Standards Committee for the Maryland National Capital Building Industry Association
- Past President of the Potomac Valley Chapter of the American Institute of Architects (PVAIA)
- Appointed by the Montgomery County Executive to the County's Fire Sprinkler Task Force
- Appointed by the Prince George's County Executive to the County's Accessibility Code Task Force
- Appointed member of the Anne Arundel County Committee to rewrite the Anne Arundel County Amendments to the BOCA Building Code

Public Speaking

Topic: Architecture / Fighting Crime

Organization / Meeting: Maryland Association of Housing and Redevelopment Agency

A discussion of two sites that, before our redesign, were near failure and ultimate abandonment as a result fears emanating from the on-going drug trade, crimes, shootings and lawless environment.

Topic: Complying with the Americans with Disabilities Act.

Organization / Meeting: Property Management Association (PMA), the Apartment and Office Building Association (AOBA), and the College of Property Management Foundation

A case history presentation outlining definitions, requirements and examples to an audience of concerned association members with the need to understand the law and provide compliance for their properties.

Topic: The Fair Housing Amendments Act of 1988

Organization / Meeting: Institute for Professional and Executive Development, Inc. (IPED), and Warren, Gorham & Lamont's Housing and Development Reporter.

A seminar presentation to housing authority, housing management and public administrators needing to understand the cost and design implications of the Fair Housing Administration Act.

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ATTACHMENT I

- **AERIAL**
- **SITE PLAN**
- **ZONING MAP**



March 6, 2006

VIA HAND DELIVERY

Elsabett Tesfaye, Senior Planner
Community Based Planning Division
M-NCPPC
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Duffie/Garnkirk Farms Local Map Amendment (G-832)

Dear Ms. Tesfaye:

Thank you for responding to our request that you provide us with copies of each Division's memorandum of recommendations pertaining to the Garnkirk Farms LMA. Thus far we have received copies of the memoranda from the Community Based Planning and Transportation Planning Divisions. It is our understanding, based upon our discussion with you, that Environmental Planning has not yet completed their Memorandum. Obviously the following comments are applicable only to the two memoranda that we have received.

We continue to recognize and appreciate the hard work that you have personally put into this case and our concerns and comments responding to the two division memoranda are in no way directed at you. We much appreciate your efforts in this case and the procedural transparency that you have helped provide.

First and foremost we and our clients are extremely disappointed that even after more than thirty meetings, we find matters raised for the first time in a report that will become part of the administrative record and will undoubtedly influence both the Planning Board and Hearing Examiner in their respective considerations of this Local Map Amendment. Both memoranda include proposed conditions of approval and recommendations that were never previously brought to the attention of the applicant.

We find it distressing that, in the case of the Transportation Division memorandum, there is a particular condition that flatly contradicts what Mr. Etamadi stated to us in his letter dated January 27, 2006, and that our efforts to cooperate with the County, with regard to making the Cawood property available for county acquisition, turned into an onerous proposed binding element that the property be placed in reservation for ten years. Clearly no consideration was given to the cost of carrying property for ten years, even if county property taxes are abated.

We must ask ourselves why we bothered spending countless hours in meetings, telephone conferences and drafting written correspondence addressing every single question and issue raised by staff only to have new, never before mentioned, issues raised in the final memorandum. As you know, throughout this process RJD always demonstrated a

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Bethesda, Maryland 20814

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willingness to accept a compromise to resolve issues that were raised by Staff. Yet, despite all of the hard work on this case for over a year, every compromise was countered by a new issue to replace the one resolved. And now, after all of that, new issues again arise in the final division memoranda.

Our comments on the problematic portions of the Community Based Planning Memorandum are as follows:

Page 5 of the Memorandum has a two-page section exclusively devoted to "Concerns To Be Addressed at the Time of Site Plan." The conceptual drawings that were submitted as part of the Development Plan are preliminary concepts. The tone of this portion of the Community Based Planning Division Memorandum implies that our Development Plan is insufficient as a development plan and conveys to both the Planning Board and Hearing Examiner that there are deficiencies that must be corrected, when in fact that conclusion is simply not justified. I cannot recall any zoning staff report that devotes this much attention to what should happen in a subsequent review process. In our opinion this is nothing more than retribution for refusing to be bound to a condition that expresses one designer's aesthetic preference for that of our professional planner. The inclusion of this two-page segment of the Memorandum is most inappropriate.

Karen Kumm is clearly the author of this section of the Memorandum. Ms Kumm is preoccupied with the definition of single-family attached homes and the application of that definition to the proposed two over two attached units. Ms. Kumm states that "front garden terraces in front of the units" are required in order to meet the Zoning Ordinance definition of a single family attached unit. We defy you to find that requirement in the Zoning Ordinance. Section 59-A-2.1 of the Zoning Ordinance defines a "Dwelling unit, one-family attached" as:

"A dwelling unit that is in a structure consisting entirely of dwelling units, each of which (1) is attached to one or more other dwelling units, (2) has at least one direct entrance from the outside, **and (3) has an abutting ground level outdoor area for the exclusive use of its occupants.** This definition does not include a "dwelling unit, townhouse," as defined in this section." (Emphasis added.)

Ms. Kumm continues to seek to insert her own views into the clear language of the Zoning Ordinance and to import addition language into the enacted definition that does not exist. The Zoning Ordinance requires an "abutting ground level outdoor area for the exclusive use of its occupant." It does not require this area to be "green" or "landscaped and defined" as stated by Ms. Kumm. These sorts of additional requirements that are not codified in the Ordinance are arbitrary and capricious, as well as contrary to the well-established practices of the staff and Planning Board with regard to attached single-family dwellings. If the County Council intended that the "abutting ground level outdoor area" be green, the Council and its professional staff certainly knew the proper language to use to express that intent.

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Ms. Kumm makes several more incorrect assumptions. She states under this same "Concerns" section that "The front of the units are shown as landscaped foundation plantings and setback from sidewalks a minimum of 6 feet" implying that this is in some way deficient. Other than Ms. Kumm persisting with her repetitive personal preferences, that the "abutting ground level outdoor area" be green, there is no obvious point to this entire paragraph of the memorandum. This Development Plan is conceptual, as is clearly stated on the plan itself.

As we have stated ad nauseam, we are in the first phase of a three-step development approval process. We have not contracted with any builder at this juncture or designed the two over two units. The elevations shown are conceptual, as are their precise location. To include this detailed level of review at the zoning stage and in a written document to be transmitted to both the Planning Board and the Hearing Examiner erroneously implying that the development plan is deficient is highly prejudicial to the applicant and inappropriate.

In addition to the above, paragraph two of the introduction to the Community Based Planning Division memorandum fails to mention the single-family detached units that are a part of this Development Plan. Further, the memorandum refers to the multi-family units as "apartments," an outmoded term with negative connotations, which is also an inappropriate reference as it gives the impression that these units will be exclusively rental units, when they may in fact be condominium units.

Our responses to the problematic portions of the Transportation Planning Memorandum are as follows:

Condition 3: "The applicant shall participate in **constructing two exclusive left-turn lanes** from northbound Gateway Center Drive to Westbound Stringtown Road Extended at the intersection of Gateway Center Drive to Westbound Stringtown Road Extended. The applicant shall coordinate with the Montgomery County Department of Public Works and Transportation to incorporate these improvements with the Capital Improvement Program (CIP) project for Stringtown Road." (Emphasis Added)

The applicant, through its transportation engineer, Stephen G. Petersen and Street Traffic Studies, Ltd., submitted a LATR Report dated October 8, 2004 that was amended on September 15, 2005 to provide updated traffic counts. The LATR Report, in reference to this intersection, refers on page 22, to a "minor modification to the assignment of movements to the northbound traffic lanes at the planned and committed intersection of Gateway Center Drive and Stringtown Road Extended." Similar language is found in the LATR Report submitted for the Eastside Preliminary Plan by Craig Hedberg, which states

"A modification to the currently-planned lane use at the proposed Gateway Center Drive/Stringtown Road Extended intersection was identified... This improvement

involves redesignating the exclusive northbound through lane as a second exclusive northbound left turn lane. The through volumes would then share the right turn lane.” (See pp. 20 of Eastside’s LATR Report that was updated in December 2005.)

Both Eastside and Garnkirk Farms traffic engineers’ have characterized the required improvement as “minor modification” and a “redesignating of lanes”. Yet, despite this consistent language, Transportation Planning staff refers to “construction of two-exclusive left turn lanes.” There is a significant disconnect between the Transportation Planning staff proposed Binding Condition and the uncontradicted conclusions of the applicant’s traffic engineer, whose report and methodology were accepted by Transportation Planning under the LATR guidelines.

There is already one planned and committed left turn lane that has been designed at this yet unbuilt intersection. The Applicant is responsible for bringing a second left turn lane to fruition- not assuming the responsibility of constructing two full left turn lanes when one has already been assigned to a different developer. Further, there is a question as to whether this “modification” will need to occur at all as this proposed condition refers to modifying an as yet unbuilt intersection.

It is frustrating to have to continuously restate the fact that this is a zoning case and not a preliminary plan. The legal test at **zoning** is whether a particular segment of infrastructure is “reasonably probable of fruition.” We have met that test. The applicant will not voluntarily agree to this condition as a binding element of the zoning approval. It is inappropriate to make off-site transportation improvements, which are subject to change in the future, binding elements of a local map amendment. If this recommended improvement is deemed necessary at the time of Preliminary Plan Review it will be addressed at that time as part of the applicant’s Adequate Public Facilities analysis.

Condition 4: “The applicant shall participate in constructing exclusive right-turn lanes from southbound MD 355 to westbound Shawnee Lane and from eastbound Shawnee Lane to southbound MD355 at the intersection of MD355 and Shawnee Lane. The applicant shall coordinate with the Eastside Developer in providing these intersection improvements. Applicant shall be required to participate in implementation of a different intersection improvement if a new traffic count at the time of preliminary plan determines the need for a change in improvements provided that the staff approves the method of traffic counts at this location.”

Once again, it appears that the finality of decision-making is a fragile concept subject to the whim of the last staff person to become involved in a review. This improvement to Shawnee Lane and Route 355 is the obligation of Miller & Smith, the developer of Eastside. That Miller & Smith is obligated for this improvement, and that RJD is not, is consistent with the stated distribution of responsibility to which we, and they, agreed in several meetings with former Transportation Supervisor Ronald Welke prior to his

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retirement. Mr. Welke's decisions did not retire when he did. The improvement to Shawnee Lane and Route 355 is a committed improvement obligation of Miller & Smith and RJD will not agree to be responsible for this improvement in addition to the agreed upon obligation to construct two lanes of Observation Drive, and the other improvements identified by Mr. Petersen after several meetings with Transportation Division staff.

We strongly object to the fact that the Transportation Planning Division staff chose to ignore in its review of this zoning application case intersection traffic count data that it accepted in reviewing the contemporaneously filed traffic study submitted as part of Eastside's Preliminary Plan. The improvement recommended in Condition No. 4 cannot be required for this applicant at zoning and found unnecessary based on the same factual data for Eastside at Preliminary Plan. Transportation staff is well aware that there was an anomaly in one traffic count that was subsequently and identically addressed by both Mr. Petersen for RJD and by Mr. Hedberg for Miller & Smith.

Subsequent to the submission of Mr. Petersen's revised traffic report in September 2005, he examined, in consultation with Mr. Hedberg, the unusual late peak hour condition that appeared in his May 19, 2005 count at the intersection of Shawnee Lane and MD 355. Specifically, this intersection showed a morning peak hour of 8:30-9:30am, which was inconsistent with seven (7) prior counts of the same intersection, including the count that had been in our initial report that was submitted in November 2004. The initial Traffic Report found the morning peak hour for the intersection of Shawnee Lane and Frederick Road to occur from 7:00 to 8:00 and not from 8:30 to 9:30. The earlier morning peak hour of 7:00 to 8:00 was consistent with data from earlier traffic counts at that intersection that were taken over a six-year period beginning in 1999.

Upon discovery of this peak hour discrepancy, Mr. Petersen conducted a five-day traffic count at the Shawnee Lane/Frederick Road intersection in October 2005 to scientifically determine whether the counts taken over a six-year period were valid, or whether the May 2005 count, taken on a single day, was in fact a correct indication of typical traffic volumes. The October 2005 traffic count results were submitted to the Transportation Planning Division on January 6, 2006. Those same counts were used by Mr. Hedberg in his LATR Report for Eastside. Those counts unequivocally show that the May 2005 count was an anomaly. We submitted a letter to Mr. Etemadi regarding the anomaly and received the enclosed letter from him in return, dated January 27, 2006. Specifically, Mr. Etemadi states:

"We are willing to ask the zoning hearing examiner to allow staff to take new traffic counts for this intersection and make the final determination about the need or type of improvements for this intersection at the time of Preliminary Plan." (Emphasis added.)

The applicant, through legal counsel, agreed to this compromise despite the overwhelming evidence that no improvement at this intersection is required and the acceptance of that fact in the review of the Eastside Preliminary Plan.

Following receipt of Mr. Etemadi's letter we naively believed that this issue was resolved. Not so. The Transportation Planning Division Memorandum appears to now repudiate the compromise to which we had agreed, based on the January 27th letter. Not only is this specific improvement now a proposed binding obligation of RJD in the context of a zoning application, but should the improvement at Shawnee and MD 355 not be required at preliminary plan, RJD would then be required to make substitute, additional unspecified improvements with zero evidence that any such improvements are required for the Garnkirk Farms development to meet the congestion standard of 1450 critical lane movements. The current language, as written in the memorandum, is akin to a blank check.

Once again this applicant is left holding the bag for an issue that had previously been resolved. RJD is already responsible for building a very expensive improvement- the grading and construction of two full lanes of Observation Drive along their property line. We must point out that there is no nexus between the construction of Observation Drive and Garnkirk Farms generated traffic. Observation Drive is a major highway that this project does not need to meet its LATR test. We had agreed to this improvement as a means of equitably distributing road improvement obligations between two contemporaneous developments. This applicant has also, upon the request of staff, dedicated additional right of way beyond that required by the master plan for Observation Drive at its approach to Shawnee Lane. We will not agree to a blank check.

In addition to providing additional right of way, RJD purchased the Cawood Property, at full market value, to provide an acceptable location for transit related parking on land that would be less costly to the county than would land valued at PD-11 density. At every step of the way RJD has sought to work with and accommodate the County and the M-NCPPC and RJD will not agree to honor all of its commitments AND be bound to build improvement that are either unspecified or are the obligations of another developer. We made this argument to Mr. Kim and his response was "**What if** the other development does not move forward?" Mr. Kim's "what if" clearly explains why, at zoning, that which is uncertain or unknown is not properly a binding obligation. If at the time of Preliminary Plan that other development is no longer viable, different improvements may be required.

Condition 5: "The applicant shall place the Cawood Property in reservation for ten years for future acquisition by the governmental authority should it be required for transportation related parking..." (Emphasis added.)

Absolutely not. RJD acquired the Cawood Property in April 2005, after numerous discussions with M-NCPPC and DPWT staff regarding strategies to provide for the parking necessary for the transitway stop proposed by DPWT to be located at the intersection of Shawnee Lane and Observation Drive. As a good will gesture, RJD acquired the Cawood Property, at full market price, and offered to place the property in reservation at zoning to be used for transit station parking.

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If the Cawood property were part of this application, which it is not, and if this were a preliminary plan application, which it is not, the Planning Board could have required that it be placed in reservation for three years under Section 50-31(a) of the County Code. Technically speaking, the County has no authority or jurisdiction to require the applicant to place any land in reservation prior to the submission of a preliminary subdivision plan. Further, the period of time permitted for a property to be held in reservation is 3 years, as set forth explicitly in the Code. The Code restriction on the length of time that property may be placed in reservation is in accord with the period of time found by appellate courts to be reasonable.

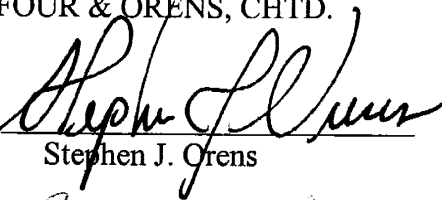
That said, Counsel for RJD, in response to a suggestion that three years might not be adequate, agreed to recommend that RJD agree to a five-year reservation. Clearly no good deed goes unpunished. The Transportation Planning Division's proposed binding condition of zoning approval, that an offsite parcel be placed in reservation for a period of ten years, would be reversible error if adopted by the Planning Board, and is contrary to the well-established and unambiguous law. Despite the foregoing, the applicant would still be willing to agree, at the time of zoning, to place the Cawood property in reservation for a period of five years or for a period of three years from the date of Preliminary Plan approval.

We ask that you take our comments into consideration during your final review and preparation of the staff planning report for G-832. As always, if you require further assistance, please do not hesitate to contact us.

Sincerely,

DUFOUR & ORENS, CHTD.

By:



Stephen J. Orens

By:



Rebecca D. Willens

cc: Ralph J. Duffie, Inc.
Faroll Hamer, Acting Director
Rose Krasnow, Chief of Development Review
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Sue Edwards, I-270 Corridor Team Leader