



# FAIRFAX COUNTY

## DEPARTMENT OF PLANNING AND ZONING

Zoning Evaluation Division  
12055 Government Center Parkway, Suite 801  
Fairfax, Virginia 22035-5509

(703) 324-1290

Fax (703) 324-3924

V I R G I N I A

January 30, 2003

Stephen Fox  
10511 Judicial Drive, Suite 112  
Fairfax, VA 22030

Re: Interpretation for RZ 2001-SU-034 and RZ 2001-SU-035  
Rugby Road: noise mitigation

Dear Mr. Fox:

This is in response to your letters of December 10 and December 13, 2002, requesting an interpretation of the proffers accepted by the Board of Supervisors in conjunction with the approvals of RZ 2001-SU-034 and RZ 2001-SU-035. As I understand it, your question is if the following would be in substantial conformance with the proffers: (1) the use of materials other than those described in Proffers #9A and 9B to achieve the proffered interior noise mitigation level, and (2) interior noise mitigation in fewer units based on the provision of a refined acoustical study. This determination is based on your letters of December 10 and December 13, 2002. Copies of these letters are attached for reference.

RZ 2001-SU-034 and RZ 2001-SU-035 were approved by the Board of Supervisors on January 28, 2002, subject to proffers dated December 11, 2001 and January 16, 2002, respectively. The applications were to rezone 1.93 acres and 14.88 acres from the R-1 District to the R-5 District for the development of nine and 85 attached units, respectively. The proffers committed to a maximum interior noise level of approximately 45 dBA Ldn for all units within those areas identified by staff as subject to noise impacts from Route 50, Rugby Road, and the Fairfax County Parkway (e.g., "...all units located within 420 feet from the center line of Route 50..."). These proffers identified minimum sound transmission class (STC) ratings for the exterior building materials in those areas. Copies of the proffers are attached for reference.

In your letters of December 10 and 13, 2002, you indicated that the developer would like to submit a refined acoustical analysis in an attempt to demonstrate whether materials with an STC class lower than those stated in the proffers could provide the proffered interior noise level of approximately 45 dBA Ldn and whether the areas impacted by noise are smaller than those estimated at the time of rezoning.

It is my determination that a refined acoustical analysis may be submitted for the review and approval of the Department of Planning and Zoning and the Department of Public Works and Environmental Services prior to the approval of building plans. If the refined acoustical study demonstrates to the satisfaction of Department of Planning and Zoning and Department of Public Works and

Environmental Services that the noise impact area is in fact different from that anticipated at the time of rezoning and/or alternative materials would achieve the proffered interior noise level, such modifications would be in substantial conformance with the proffers.

These determinations have been made in my capacity as the duly authorized agent of the Zoning Administrator.

If you have any questions regarding this interpretation, please feel free to contact Tracy Swagler at (703) 324-1290.

Sincerely,



Barbara A. Byron, Director  
Zoning Evaluation Division

BAB/\\s35ocw01\zed\zed\swagler\interpretations\rugby road.doc

Attachments: A/S

cc: Michael Frey, Supervisor, Sully District  
Ron Koch, Planning Commissioner, Sully District  
John Crouch, Chief, Zoning Permit Review Branch, DPZ  
Michelle Brickner, Acting Director, Office of Site Development Services, DPWES  
Angela Rodeheaver, Section Chief for Site Analysis, DOT  
Craig Carinci, Director, Environmental and Facilities Inspection Division, DPWES  
File: ~~RZ 2001-SU-035~~, RZ 2001-SU-035; PI 0212-139

STEPHEN K. FOX  
A PROFESSIONAL CORPORATION  
ATTORNEY AT LAW  
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SUITE 112  
FAIRFAX, VIRGINIA 22030

(703) 273-7220  
sfox@patriot.net

December 10, 2002

RECEIVED  
Department of Planning & Zoning  
DEC 13 2002  
273-7225  
Zoning Evaluation Division

*Via Fax and U.S. Mail*

Barbara A. Byron, Director  
Zoning Evaluation Division  
Department of Planning and Zoning  
County of Fairfax  
12055 Government Center Parkway, Suite 830  
Fairfax, Virginia 22030

Re: Request for Proffer Interpretation; Proffer No. 11 (Noise Abatement); Rezoning  
2001-SU-034; 035

Dear Ms. Byron:

This letter, requesting a proffer interpretation relating to proffers numbered 11 (Noise Abatement) in the above-designated rezoning cases, is written on behalf of the developer of the Rugby Road project. At the outset, my client wishes to communicate that it is in no way attempting to circumvent its responsibility for abating the interior noise element of the units to be constructed on the property. However, the thrust of this request relates to the fact that the interior noise level of 45 DBA LDN may be accomplished by using alternative construction materials, rather than those specified in the proffer.

The issue presented is: May the developer, through presentation of a refined acoustical analysis performed in coordination with the County planning staff, demonstrate that the interior noise element of the proffer can be met by utilizing alternative and/ or substitute materials different from those specifically detailed in the proffer?

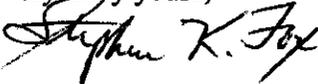
By way of discussion, under the sub-heading of "Interior Noise", the proffer specifies that exterior walls, doors, and windows shall have certain sound transmission class (STC) ratings, suggesting that utilization of those measures will result in achievement of the required interior noise decibel level. The proffer, however, does not include any reference to the conduct of a refined acoustical study, although it may be argued that given the nature of noise abatement, such an acoustical study is both necessary and required. In this case, the developer desires the opportunity to present a refined acoustical study which will demonstrate that the use of several alternative/ substitute materials and/ or other noise abatement measures will abate noise to the required decibel level. For example, but not by way of exclusive delineation, we are advised that windows possessing an STC rating of 28 are not generally available. However, windows having an STC rating of 27 are generally available and will serve the purposes of meeting the interior standard equally as well.

Barbara A. Byron  
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It is submitted that the very nature of meeting noise abatement standards requires a refined acoustical study, and that such alternative means as suggested by a study should be deemed to substantially comply with the proffers.

We would be pleased to provide any additional information that you may need in support of this proffer interpretation request.

Very truly yours,

A handwritten signature in black ink that reads "Stephen K. Fox". The signature is written in a cursive style with a large, sweeping initial "S".

Stephen K. Fox

SKF/kt

cc: Mr. Barry Schwartz  
Mr. Matt Kroll  
Mr. Mike Meyers, P.E.  
Ms. Tracy Swagler  
Mr. Noel Kaplan

STEPHEN K. FOX  
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ATTORNEY AT LAW  
10511 JUDICIAL DRIVE  
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FAIRFAX, VIRGINIA 22030

(703) 273-7220  
sfox@patriot.net

FAX (703) 273-7225

December 13, 2002

*Via Facsimile and First Class mail*

Barbara A. Byron, Director  
Zoning Evaluation Division  
Department of Planning and Zoning  
County of Fairfax  
12055 Government Center Parkway, Suite 830  
Fairfax, Virginia 22030

Re: Amendment to Request for Proffer Interpretation; Proffer No. 11 (Noise Abatement);  
Rezoning 2001-SU-034; 035

Dear Ms. Byron:

This letter amends the proffer interpretation request submitted on December 10, 2002. In reviewing the request, we noted that the question submitted for review and interpretation is more narrowly stated than the circumstances dictate. In addition to the inquiry regarding the substitution of materials based upon a refined acoustical analysis, we pose the following question:

**Inquiry 2: May the developer, by presentation of a refined acoustical analysis performed in coordination with County planning staff, amend the noise levels and impact areas (i.e., the specified distances from roadways) by determining which units/buildings may have sufficient shielding to permit a reduction in the mitigation measures specified in the proffers?**

The intent of Proffer 11A, in part, is to ensure that the development "...achieve[s] a maximum interior noise level of approximately 45 dBA ...." Based upon the developer's experience, it is believed that an acoustical analysis will demonstrate that interior/exterior noise levels for specific units may be shielded by intervening buildings or structures such that the noise impact areas specified in the proffers might be amended. The proffers specify that abatement measures shall be taken with reference to units located within certain distances from roadways (e.g., "...units within 420 feet from the center line of Route 50..."). These distances, we believe, can be modified as demonstrated by a refined acoustical analysis, still meeting the required interior noise level. The noise impact distances set forth in the proffers were established during the rezoning process, utilizing a generalized model which could not, at that time, take into consideration all factors which contribute to noise attenuation in a fully developed project.

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Department of Planning & Zoning

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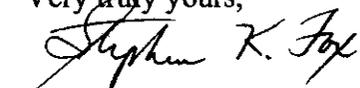
Zoning Evaluation Division

Barbara A. Byron, Director  
December 13, 2002  
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The developer's intent is to comply with the performance standard of the proffer, but it wishes to have flexibility in determining specifically which units/buildings are impacted by highway noise, as well as determining which construction materials will abate noise to the required decibel level.

We would be pleased to provide any additional information to assist you in responding to the questions presented.

Very truly yours,



Stephen K. Fox

SKF/kt

cc: Ms. Tracy Swagler  
Mr. Noel Kaplan  
Mr. Barry Schwartz  
Mr. Matt Kroll  
Mr. Mike Myers, P.E.

**Madison Homes, Inc.**  
**Rugby Road**  
**RZ 2001 SU 035**  
**Proffers**  
**January 16, 2002**  
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hereto. The aforesaid dedication shall be made at the time of site plan approval or upon the demand of Fairfax County and/or VDOT, whichever occurs first.

8. Route 50 Dedication - The Applicant shall dedicate 12 additional feet of right of way for an additional travel lane on Route 50 to the Board of Supervisors in fee simple. The aforesaid dedication shall be made at the time of site plan approval or upon the demand of Fairfax County and/or VDOT, whichever occurs first.

9. Fairfax Center Area Road Fund Contribution - The Applicant shall contribute to the Fairfax Center Area Road Fund for 27 lots located in the Fairfax Center Area in accordance with the "Procedural Guidelines" adopted by the Board of Supervisors on November 22, 1982, as amended, subject to credit for all creditable expenses, as determined by the Fairfax County Department of Transportation and DPWES.

#### **Park Authority Contribution**

10. At the time of site plan approval, Applicant shall contribute \$28,900.00 to the Fairfax County Park Authority for its use in establishing and maintaining parks and recreational facilities in Fairfax County. The contribution amount shall be adjusted by increases to the Construction Cost Index from the *Engineering News Record* from the date of Board of Supervisors' approval of this rezoning application, to the date of site plan approval.

#### **Noise Abatement**

11. A. Interior Noise: In order to achieve a maximum interior noise level of approximately 45 dBA Ldn, all units located within 420 feet from the center line of Route 50,

**Madison Homes, Inc.**  
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and all units located within 150 from the center line of Rugby Road, shall have the following acoustical attributes:

i. Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39.

ii. Doors and windows shall have a laboratory STC rating of at least 28. If glazing constitutes more than 20% of any facade it should have the same laboratory STC rating as walls.

iii. Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

B. Interior Noise (DNL 75 dBA): In order to reduce interior noise to a level of approximately 45 dBA, Ldn for units within 90 feet from the centerline of Route 50, the following measures shall be employed:

i. Exterior wall should have a laboratory sound transmission class (STC) rating of at least 45.

ii. Doors and windows should have a laboratory STC rating of at least 37 unless windows constitute more than 20% of any facade exposed to noise levels of 65 dBA, Ldn or above. If windows constitute more than 20% of the exposed facade, then the windows should have an STC rating of at least 45.

iii. All surfaces should be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.