

Item # 8

**CLIFFORD, DEBELIUS, CRAWFORD,
BONIFANT & FITZPATRICK, CHTD.**

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MEMORANDUM

TO: Planning Commission Staff
 FROM: James R. Clifford, Sr., Esq.
 DATE: January 29, 2004
 RE: Petrucelli Property - Ancient Oak West - Plan # 1-03080

In anticipation of the Hearing before you for the above referenced plan, I would like to provide the following information:

The question has arisen as to whether or not the Architectural Control Committee of the Ancient Oak West Home Owners Association has jurisdiction over the Petrucelli Property and, if so, do they have the legal standing to prevent the subdivision of the subject property.

FACTS:

- The Petrucellis own Lots 2 and 3, Block B, Plat One, Ancient Oak Subdivision. This plat was recorded in Plat Book 76 at Plat 7576 in 1964. Lot 2 consists of 166,588 square feet. Lot 3 consists of 171,591 square feet. The property is zoned to allow 20,000 square foot lots.
- A Declaration of Covenants was recorded on March 1, 1965 in Liber 3329 at folio 479. It appears it was the intention of this document to subject the above mentioned lots to a Home Owners Association and Architectural Control Committee. However, the document incorrectly stated the Plat, thereby failing to bind the subject lots to this Declaration.
- Assuming for the sake of argument that the Declaration did bind the lots, within that Declaration the Architectural Control Committee is authorized to approve or reject resubdivision of lots effected by that Declaration, but must do so in writing within fifteen (15) days of submission for approval. No lot size standard is set forth in that Declaration.
- In an abundance of caution, the Petrucellis had Benning and Associates send both the original plan for (six) 6 lots on June 4, 2003 and then later the modified plan for (five) 5 lots on October 16, 2003 to the Architectural Control Committee for review and approval. Neither submission was ever responded to in writing by the Architectural Control Committee and therefore, under Article 7 of the Declaration, the Covenant has been deemed satisfied.

DARNESTOWN CIVIC ASSOCIATION
14100 DARNESTOWN ROAD
20878

Item # 8

January 22, 2004

M-NCPPC
Planning Board Chairman
8787 Georgia Avenue
Silver Spring, Md. 20910

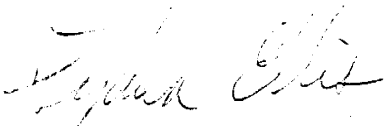
Re: P.P. 1-03080 Ancient Oak West

Dear Chairman Berlage and Planning Board members,

Since this parcel is within the Darnestown Triangle, this plan has received an added dose of scrutiny. When the plan went before the Development Review Committee last spring, the SHA representative suggested a possible sidewalk along the frontage of these properties. The Darnestown Civic Association (DCA) believes a sidewalk at this location would be unnecessary and impractical.

The original plan proposed four new houses in this resubdivision. We were pleased when subdivision staff recognized that three new lots would be far more harmonious with the neighborhood. While this configuration may not contain the optimum number of sites, given the zoning, this proposal adequately represents the kind of plan in lot size and situation appropriate for the Triangle. The DCA does not object to this preliminary plan.

Sincerely,



Stephen M. R. Ellis,
Zoning Chairman & Trustee

Item #8

*Harry P. Ridenour Jr.
15208 Water Oak Drive
Darnestown, Maryland 20878-3546*

January 26, 2004

Mr. Derick P. Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910-3760

Dear Mr. Berlage:

I have received a notice that a subdivision plan is scheduled for discussion and vote by the Montgomery-National Capital Park and Planning Commission (M-NCPPC) on Thursday, January 29, 2004. It is called the Ancient Oak West Plan, File Number 1-03080, for five one family detached dwelling units, with two existing. This subdivision plan would result is each lot being slightly over one acre for the 7.86 acre area.

First, I am the owner of lots 5 and 6 in the Ancient Oak West subdivision, or approximately eight acres, which are directly behind the proposed subdivision area. This subdivision represents lots primarily of two acres or more, and was developed with bridal paths running through the subdivision. Currently, every lot in the subdivision borders the bridal path, which is currently used for walking and hiking. A subdivision of less than two acres is not consistent with the current community. Therefore, as I did on April 20, 2002, I still **oppose** this subdivision plan.

In addition, all of the property in this subdivision is subject to land covenants, which were recorded in Liber 3329, Folio 479, dated February 23, 1965 and recorded March 1, 1965. On May 16, 1978, the original members of the Architectural Control Committee transferred their responsibility as members of the Architectural Control Committee to current residents of the community as was recorded Liber 5165, Folio 078 on July 12, 1978. I am a current member of the Architectural Control Committee.

The land covenants restrict the size and location of houses, as well as the granting or construction of public roads, right of ways, easements and resubdivisions. Below are certain paragraphs included in the covenants.

“2. Building Location: No dwelling shall be erected less that sixty (60) feet from the front property line or less than twenty-five (25) feet from the side property line....”

“4. Prohibition of public roads, right of way and easements: No public road, right of way, or easement of any kind shall be granted or permitted across any part of

this lot (or tract of land), without the permission in writing of the architectural Control Committee. This covenant does not prohibit the establishment of a private road for the use of the purchaser for purposes of ingress and egress from his or her home or garage.”

“6. Architectural control: No building shall be erected, placed or altered on this lot (or tract of land) until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Approval shall be as provided in paragraph 7.”

“11. No resubdivision of the said property, nor any division of the same, shall be made without the consent of the Architectural Control Committee.

Since the April 20, 2002 letter was sent to the M-NCPPAC, Ann E. Cangelosi and I, representing the Architecture Control Committee, have met with representatives of the Darnestown Civic Association and an attorney representing Mr. Pettucelli, and have informed each that we will not approve a subdivision plan of less than two acres per lot or a plan where the lots do not border the bridal path. We continue to **oppose** this plan because the proposed plans that have been submitted to the Architectural Control Committee violate these standards.

In 1986, a large lot owner on Water Oak Drive, Harry Bonfils, proposed a subdivision plan to subdivide his lot in less than two-acre lots. The Architectural Control Committee did not approve the plan. Mr. Bonfils attempted to get the M-NCPPC to approve the subdivision plan over the objections of the Architecture Control Committee at a hearing, like the current one proposed. In 1986, the M-NCPPC refused to ignore the land covenants, honored the objections of the Architectural Control Committee, and rejected Mr. Bonfils' petition.

In addition, there have been several other efforts over the past fifteen to twenty years by subdivision landowners to subdivide their properties, and all issues were resolved through the cooperation of the respective landowners to maintain bridal path access and two acre minimums.

We respectfully request that M-NCPPC **reject** this subdivision plan.

Sincerely,



Harry P. Kidenour Jr.

Item #8

*Harry P. Ridenour Jr.
15208 Water Oak Drive
Darnestown, Maryland 20878-3546*

April 20, 2002

Montgomery County Government
Development Review Division
MNC-P&PC
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Sir or Madam:

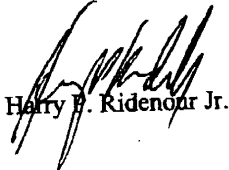
I have received a copy of the subdivision application from Benning & Associates, Inc. regarding the proposed subdivision for Seneca Highlands, an area of approximately 13.75 acres in the Ancient Oak West subdivision. The minimum lot size proposed is 40,000 SF, in accordance with the pending zoning of RE-1 for this area, as recommended in the draft version of the Potomac Subregion Master Plan.

I am the owner of lots 5 and 6 in the Ancient Oak West subdivision, which are directly behind the proposed Seneca Highlands subdivision. This subdivision represents lots primarily of two acres or more, and was developed with bridal paths running through the subdivision. Many of the current and former land owners had horses on the property. The development of lots less than two acres is not consistent with the existing community. Therefore, I am opposed to the proposed subdivision plan.

In addition, all of the property in this subdivision is subject to land covenants. The covenants restrict the size and location of houses, as well as the granting or construction of public roads, right of ways and easements without the approval of the Ancient Oak Architectural Control Committee. The proposed subdivision violates these standards. Montgomery County has previously upheld these covenants in 1985 when the Architectural Control Committee opposed a subdivision plan similar to this one by a large lot owner on Water Oak Drive to subdivide property in less than two acre pieces. In addition, another lot owner has been prevented from subdividing in less than two acre lots. Mr Pettuccelli should be aware of the covenants since the Committee had previously approved the construction plans for his home some years ago pursuant to the these land covenants.

As a member of the Ancient Oak West Architectural Control Committee, we will oppose such subdivision plans if and when such plans are submitted to the Committee for approval.

Sincerely,



Harry P. Ridenour Jr.