

Request for Waiver of Regulations

August 28, 1997

MEMORANDUM FOR: James H. McDaniel, Director, Community Planning and Development, 3GD
FROM: Jacquie M. Lawing, General Deputy Assistant Secretary for Community Planning and Development

**SUBJECT: Waiver Request for the James Lee Neighborhood,
Community Development Block Grant (CDBG) Program
Fairfax County, Virginia**

This is in response to your memorandum of March 18, 1997, requesting a waiver of the CDBG regulations at 24 CFR 570.703(l), as discussed at §570.201(c), to permit Fairfax County, Virginia to use \$100,000 in Section 108 Loan Guarantee funds for the reconstruction of streets on land under private ownership. Fairfax County believes that failure to grant the requested waiver would result in an undue hardship and adversely effect the purposes of the Housing and Community Development Act of 1974, as amended, because these three streets do not meet the requirements for state maintenance through no fault of the low- and moderate- income residents of the James Lee neighborhood who would directly benefit from having these streets reconstructed.

The CDBG regulations authorize the reconstruction of public facilities and improvements, including streets, carried out by the recipient or other public or private nonprofit entities. The three streets in question are owned by the adjacent property owners. It is understood, however, that these streets are through streets and are used as rights-of-way by the general public. The County has the authority to improve existing private roads if the roads can be improved to meet state standards so the State can take over road maintenance. In this case, however, the roads can not be made sufficiently wide enough to meet state standards and therefore cannot be taken over by the County. Accordingly, Fairfax County is prohibited by State law from using County taxpayer funds to upgrade or maintain these private roads. This street reconstruction project is part of a long term community improvement program carried out by the County in the James Lee neighborhood and, as such, does not qualify under the provisions of §570.204 as required by §570.703(i)(2), which permits otherwise ineligible activities to be carried out by Community Based Development Organizations if the regulatory requirements of this section are met.

It is implicit in reading the terms of §570.201(c), that public facilities and improvements funded with CDBG funds must be owned by either a public entity, a public or private non-profit entity or by a subrecipient. Such is not the case in this instance. Also implicit in the regulation is a requirement for public accessibility. This Office is willing to waive the ownership requirement, if there is other legally binding evidence that these streets will be operated so as to be open for use by the general public during all normal hours of operation as required by §570.201(c) in similar situations. This provision can possibly be met, for example, by the existence of an irrevocable trust extending for the anticipated life of the improvement. It is recommended that your office work with the Field Counsel and the County to determine the specific mechanism that is considered legally binding under Virginia state law to meet this requirement.

The regulation in the General HUD Program Requirements at 24 CFR 5.110 provides that "upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this title" of the regulations. Based upon the information provided, I hereby waive the requirement at 24 CFR 570.703(l) as discussed at §570.201(c) regarding ownership of public facilities and improvements, subject to a legally binding mechanism that permits these roads to remain open to the general public.

If you have any questions concerning this, please contact the Entitlement Communities Division at (202) 708-1577.

cc:

DGBE Hirschmann 7282 DGBE Maguire-Zinni 7282

DGBE Chron 7282 DGB Kennedy 7286

DG Williams 7214 CDD E.Lester 8158

DGBF Webster 7180 DC J. Smith 7208

DGBE:HIRSCHMANN:lan:7-1-97/708-1577/b:fairfax.wvr.pm 181815dgbe