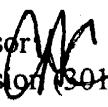
**MEMORANDUM**

DATE: July 29, 2005

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief
Development Review Division

FROM: Catherine Conlon, Supervisor
Development Review Division (301-495-4542) 

REVIEW TYPE: Preliminary Plan of Subdivision – Amendment to Conditions

APPLYING FOR: Amendment to Previous Conditions for Roadway Improvements

PROJECT NAME: Gateway Commons

CASE #: 1-02048A

REVIEW BASIS: Chapter 50, Montgomery County Subdivision Regulations

ZONE: R-200/TDR7

LOCATION: Located in the southwest quadrant of the intersection of Frederick Road (MD 355) and Stringtown Road

MASTER PLAN: Clarksburg

FILING DATE: July 13, 2005

HEARING DATE: August 4, 2005



STAFF RECOMMENDATION: Amend the conditions of the preliminary plan as follows:

- 1) Previous Condition 3 shall be amended as:
 - (3) ~~As a condition of site access, construct the outside lanes of Stringtown Road (A-260 from Gateway Drive to intersection with Observation Drive as a two-lane arterial road including a five-foot sidewalk, an eight-foot bike path, street trees, and grading for a future four-lane divided roadway.~~

- (3) As a condition of site access approval, the applicant shall participate in the pro-rata cost as determined by DPWT for constructing Stringtown Road (A-260) from Gateway Center Drive to MD 355 as a four-lane divided arterial road as part of the County's CIP Project that includes a five-foot sidewalk, an eight-foot bike path, street trees, and intersection improvements at Gateway Center Drive as described in the Road Participation Agreement; or, in accordance with the participation agreement with Montgomery County, the applicant shall construct the two outside lanes of Stringtown Road (A-260) from Gateway Drive to the intersection with Observation Drive as a two-lane arterial road, including a five-foot sidewalk, an eight-foot bike path, street trees, and grading for a future full four-lane divided roadway. This portion of two outside lanes of Stringtown Road shall be open to traffic prior to the issuance of 201st building permit.
- 2) Previous Condition 4 shall be amended as:
- (4) ~~As a condition of site access, construct the outside lanes of Observation Drive (A-19) from Stringtown Road to the on-site intersection with relocated MD 355 by-pass as a two-lane arterial road with a future transit way in the median including a five-foot sidewalk, an eight-foot bike path, street trees, and grading for a future four-lane divided highway.~~
- (4) The applicant shall construct the outside lanes of Observation Drive (A-19) from Stringtown Road to the on-site intersection of the MD 355 Bypass as a two-lane arterial road with a future transit way in the median, including a five-foot sidewalk, an eight-foot bike path, street trees, and grading for a future four-lane divided roadway. Before the 100th building permit is issued, this project shall be fully bonded for Storm Drain and Paving. The roadway shall be open to traffic before the 201st building permit is issued.
- 3) Previous Condition 5 shall be amended as:
- (5) ~~For the first 200 building permits as a condition of site access, construct the outside lanes of MD 355 by pass through the property as a two-lane arterial road including a five foot sidewalk, and eight foot bike path, street trees, and grading for a future four-lane divided roadway.~~
- (5) The applicant shall construct two outside lanes of the MD 355 Bypass within the property from Observation Drive to within 45 feet (as measured from the center line of the right-of-way) of the property line as a two-lane arterial road including a five-foot sidewalk, an eight-foot bike path, street trees, and grading for a future four-lane divided roadway. Before the 100th building permit is issued, the roadway project shall be fully bonded for Storm Drain and Pavement construction (full construction). This section of the MD 355 Bypass shall be open to traffic before the 201st building permit is issued. If and when the remainder of the MD 355 by-pass is constructed by others, Applicant shall allow entry within the proposed right-of-way for purposes of construction of the remaining on-site portions of the MD 355 by-pass from Observation Drive to the property line.

- 4) Previous Condition 6 shall be deleted.
- ~~(6) Prior to issuance of the 201st building permit, but not later than eighteen (18) months after approval of the Preliminary Plan, obtain two (2) appraisals of the fair market value of the right of way for the By Pass ("ROW") and make a cash offer to the owners of this ROW of up to 110 percent of the highest appraised value ("maximum cost") via certified letter.~~
- ~~a. If the offer is not accepted by the owner(s), or no response is received, the County shall act to acquire the ROW. The applicant shall be responsible to reimburse the County the maximum cost and to construct a half section of the roadway in accordance with County standards at their sole cost and expense.~~
- ~~b. In the event neither the applicant nor the County acquires the ROW within three years of preliminary plan approval of Gateway Commons, the applicant shall be free to proceed with full build out of Gateway Commons and be issued all remaining building permits without obtaining the ROW or constructing the By Pass.~~
- 5) All other previous conditions of approval as included in Planning Board Opinion dated August 13, 2002 remain in full force and effect.

Background

The Planning Board previously reviewed the subject preliminary plan application on July 18, 2002. The plan was approved with the conditions noted in the Planning Board Opinion dated August 13, 2002 (Attachment A). Subsequent to this action a Site Plan was also approved by the Planning Board.

Site and Project Description

The Subject Property is 45.25 acres in size and located in the southwest quadrant of the intersection of MD 355 and Stringtown Road in Clarksburg (Attachment B). The zoning on the property is R-200/TDR7. Per the previous preliminary plan approval, development on the subject property was limited to 292 residential dwelling units consisting of 26 one-family detached, 176 townhouses, and 90 multi-family condominium apartments on 202 lots (Attachment C).

Discussion

On July 11, 2005, Gateway Commons, L.L.C. ("Applicant") submitted a request to amend Conditions 5 and 6 of the approved preliminary plan (Attachment D). These conditions deal with roadway improvements required as part of the Adequate Public Facilities (APF) review for the plan. Condition 5 obligates the Applicant to construct the MD 355 Bypass through the property. Condition 6 stipulated that the Applicant attempt to purchase offsite right-of-way for the roadway and, failing the applicant's acquisition of the right-of-way, also stipulates that the Applicant would reimburse the County if they chose to act to acquire it. In the event that the right-of-way was not acquired within three years from the original preliminary plan approval

date, Condition 6 permits the Applicant to proceed with full build-out without acquiring the right-of-way or constructing the offsite roadway.

The applicant has demonstrated to Staff that they made a good-faith effort to acquire the offsite right-of-way within eighteen months but were not successful. Staff has also confirmed that the County is not pursuing acquisition of this right-of-way and, therefore, pursuant to the terms of the condition, Condition 6 will expire automatically on August 13, 2005. Since the offsite portion of the MD 355 Bypass will not be constructed, the Applicant is requesting that Condition 5 be amended to reflect that they will terminate their construction of the onsite roadway 45 feet from their property line. This is necessary to provide a logical terminus to the roadway.

The applicant is required to construct only the outside lanes of Stringtown Road from Gateway Center Drive through the intersection with Observation Drive as a two-lane arterial with all necessary grading for a future four-lane divided roadway (Condition 3 of the attached Opinion). The County Department of Public Works and Transportation has a CIP Project for construction of Stringtown Road from I-270 to MD 355 as a four-lane divided arterial roadway. The applicant has been working with DPWT to determine the needs of the county and Gateway Commons with regard to timely construction of certain roadways in the area. In order to accelerate and consolidate the construction of Stringtown Road improvement, the County and the applicant have agreed to enter into a Road Participation Agreement (RPA) which will expedite the construction of this portion of Stringtown Road. In turn, it can potentially expedite the construction of Stringtown Road Extension in the future.

The timing of this request for preliminary plan amendment is tied to the RPA with the County. The County hopes to advertise the project in the next couple of weeks and begin construction by the end of August or beginning of September, 2005. However, the agreement stipulates that the Applicant needs Planning Board approval to change the existing preliminary plan conditions. By expediting the review of this amendment it is anticipated that the construction schedule can begin on time and the road will be completed within one-year.

Based on the RPA between the Applicant and the County, and the County's support of the Applicant's request to amend the conditions to reflect the agreement, Staff is recommending approval of modified conditions dealing with the construction of Stringtown Road and the MD 355 Bypass. Staff's recommended conditions differ from those requested by the Applicant. To reflect the recent experience in Clarksburg where roadways have not been progressing in a timely manner, Staff has added timing elements to the previously approved conditions.

The revised wording of the conditions represent changes that Transportation Planning Staff intend to implement for similar conditions for roadway projects in future development applications, refining the language as needed. Being mindful of the need for applicants to have some units underway or sold before making the financial commitments to full construction of large roadway projects, and for the location of the roadways to be somewhat in balance with the phasing of the development, Staff is recommending the requirement for bonding of full construction of a road occur after release of some of the building permits. Staff is also recommending that language requiring applicants to "complete" a road project be modified to

require applicants to open the road to traffic. Clarksburg discussions have also revealed that while a developer may not wish to put the final pavement in place on a roadway while construction is still underway on units, a road can be open to traffic. The road must be "completed" before the bond will be released, so there is a strong incentive to get it done, but if traffic can fully use the road, the basic goal is accomplished.

Conclusion

Staff recommends approval of the requested amendments to the conditions of approval for this application based on our review and findings that the expedited construction of the Stringtown Road Extension will provide the transportation facilities needed for this area. Staff believes the application remains consistent with the requirements of Chapter 50, the Subdivision Regulations and Chapter 59, the Zoning Ordinance. All applicable conditions of the August 13, 2002 Planning Board Opinion will remain in full force and effect.

Attachments

Attachment A	Previous Planning Board Opinion
Attachment B	Vicinity Map
Attachment C	Preliminary Plan
Attachment D	Applicant's 7/11/05 Letter