

**MEMORANDUM**

DATE: December 9, 2005
TO: Montgomery County Planning Board
VIA: William M. Mooney *W. Mooney*
 Acting Deputy Director
FROM: Rose Krasnow, Chief *RK*
 Michael Ma, Supervisor *Ma*
 Development Review Division
 (301) 495-4523



REVIEW TYPE: Consideration of alleged building height violations and failure to provide recreation facilities in a timely manner; Consideration of sanctions and plan of compliance

REVIEW BASIS: Div. 59-D-3.6 of the Montgomery County Zoning Ordinance and Section 50-41 of Montgomery County Subdivision Regulations

CASE #: 820030410 (formerly 8-03041)

PROJECT NAME: Maple Ridge Townhomes (Also known as Seaton Square)

DEVELOPMENT: 59 townhouses including 8 MPDUs

ZONE: RT-8

LOCATION: Between Lockwood Drive and Columbia Pike (US 29), approximately 1,500 feet west of New Hampshire Avenue (MD 650)

MASTER PLAN: White Oak & Vicinity

APPLICANT: HD-Maple Ridge LLC

HEARING DATE: December 15, 2005

STAFF RECOMMENDATION: Continuance of the hearing on issues related to recreation facilities to February 2, 2006; Finding that the height of the dwelling units exceeds the maximum building height allowed in the R-T zone; Removal of the Stop Work Order subject to the following conditions:

1. Ryan Homes, the builder of the subject townhomes, shall pay a civil fine of \$524,650 prior to occupancy of the 10 un-conveyed units (on Lots 24 through 27 and 29 through 34) or January 15, 2006, whichever comes first.
 2. Ryan Homes shall agree to implement a Plan of Compliance to correct the building height violations. The plan shall include the following:
-

- a. The 10 un-conveyed units (on Lots 24 through 27 and 29 through 34) shall be modified to meet the 35-foot maximum building height limit in accordance with the Zoning Ordinance prior to occupancy of any units or June 30, 2006, whichever comes first.
 - b. The 49 conveyed units shall be modified to meet the 35-foot maximum building height limit in accordance with the Zoning Ordinance prior to June 30, 2006.
 - c. Ryan Homes shall obtain affirmative title insurance coverage for all conveyed units insuring against any zoning issue with respect to building height to address possible concerns about the subsequent transfer of marketable title.
3. Failure to correct the building height violation for all the units prior to June 30, 2006, shall result in a daily fine against Ryan Homes in the amount of \$100 per non-conforming unit from December 15, 2005 to June 30, 2006. Ryan Homes shall pay the fine prior to July 15, 2006. In addition, Ryan Homes shall bring the Site Plan back to the Planning Board to determine a new plan of compliance.

BACKGROUND

Maple Ridge Townhomes (aka Seaton Square) is a 59-unit townhouse development that is currently under construction. Site plan 820030410 (formerly 8-03041) for Maple Ridge was approved by the Planning Board on October 16, 2003. Fifty-three units have been completed of which forty-nine conveyed. The last row of six units are not completed, but are under roof.

HD Maple Ridge, LLC is the applicant/developer of this development and is responsible for installation of the required recreation facilities. Ryan Homes is the builder of the townhouses, and the one subject to citation for the height violations.

Stop Work Order

As part of the site plan audit required by the County Council, the Department of Permitting Services (DPS) and M-NCPPC staff inspected the Maple Ridge development and made a preliminary finding that:

1. The height of the dwelling units exceeds the maximum building height allowed in the R-T zone.
2. Some of the dwelling units do not meet the minimum rear setback requirement.
3. The recreation facilities had not been completed prior to 70 percent occupancy of the development as required by the site plan approval condition.¹

Based on the above findings, M-NCPPC staff issued a Stop Work Order (Appendix A) on November 4, 2005, which stops all construction activities except for those required and authorized to correct violations or ordered by permitting agencies. A Planning Board hearing was scheduled for December 15, 2005, to review the order.

¹ Staff and HD-Maple Ridge, LLC, the land developer for this project, are in the process of resolving the recreational facility issue, and staff recommends that this item be continued. This issue is complicated by third-party litigation against the Commission related to these facilities.

Items to Be Reviewed by the Planning Board

Subsequent to the issuance of the Stop Work Order, the Director of DPS, through an e-mail (Appendix B) to David Little dated November 10, 2005, found that no rear setback standards have been violated in the subject development.

The developer is currently working to have the recreation facilities installed and requested to postpone the hearing on recreation facilities until February 2006. Staff recommends continuance of the hearing on recreation facilities to February 2, 2006.

Building height, therefore, is the only item to be reviewed by the Planning Board at this time.

PROJECT DESCRIPTION: Site Vicinity

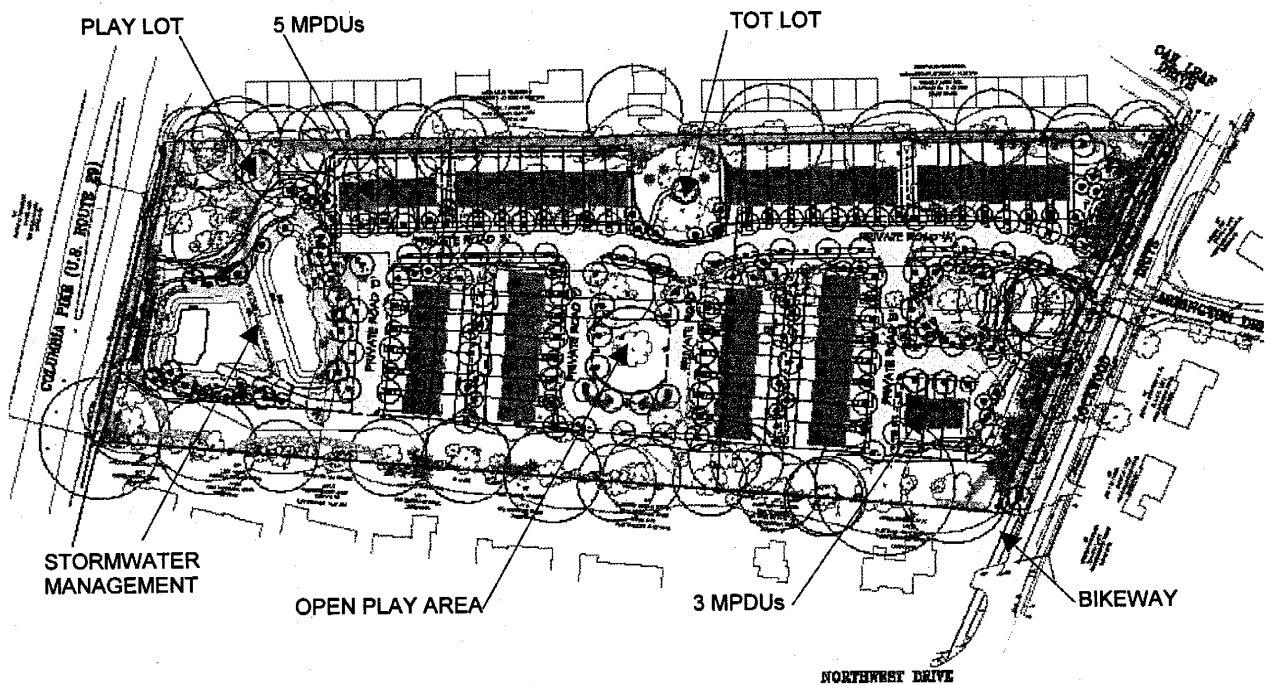
The subject property is zoned RT-8 and located between Lockwood Drive and Columbia Pike (US 29), approximately 1,500 feet west of New Hampshire Avenue (MD 650). It is bounded by a townhouse development to the north zoned RT-12.5 and one-family detached homes zoned R-90 to the south. Across Columbia Pike from the site to the west is Burnt Mills Elementary School. Subdivisions located across Lockwood Drive from the site to the east are R-90 zoned one-family detached homes.



PROJECT DESCRIPTION: Proposal

The development consists of 59 townhouses with a variety of recreational facilities, including an open play area, a play lot, a tot lot, a picnic area, three sitting areas, and sections of pathways. The townhouses are grouped in 9 rows, which vary from 3 to 8 units in length. Eight MPDUs will be provided in two rows of units located in the southeastern and northwestern corners of the development.

An eight-foot-wide bikeway has been constructed by the applicant along the Lockwood Drive frontage extending to Northwest Drive to the south and to Oak Leaf Drive to the north. A 5-foot-wide sidewalk will be provided throughout the development. The approved site plan also shows sections of pathways connecting internal sidewalks with on-site recreational facilities and the proposed bikeway along Lockwood Drive. The central portion of the site will be preserved as community open space.



PROJECT DATA TABLE (RT-8 Zone)

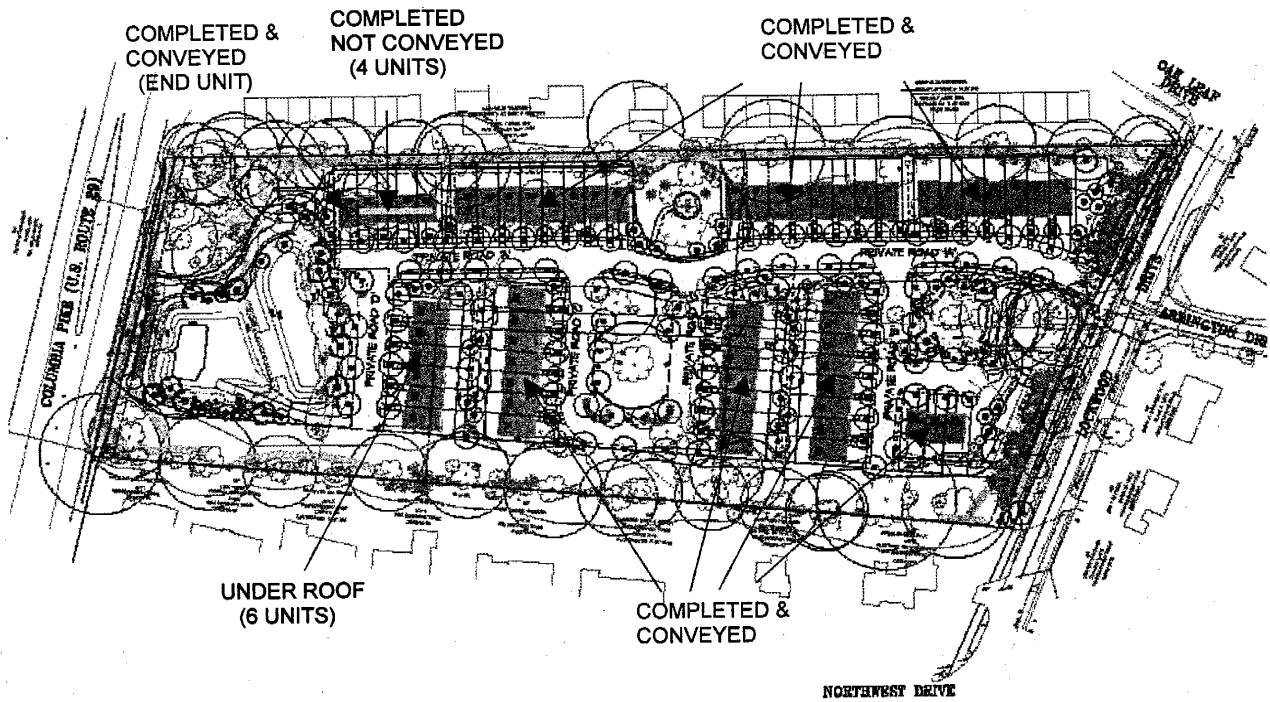
Development Standard	Permitted/ Required	Proposed and Approved
Min. Tract Area (s.f.):	20,000	354,578
Density of Development (d.u./ac.)	8	7.25
Number of Dwelling Unit	64	59
MPDU	8 (12.5%)	8
Building Setbacks (ft.)		
from detached homes	30	52
from the street	25	25
from adjoining lots		
rear	20	20
side	10	10
Building Coverage (%):	40 ¹	17.5
Green Area (%)	45 ¹	47
Building Height (ft.):	35	35
Parking Spaces	118	125

1. development including moderately priced dwelling units

PROJECT DESCRIPTION:

Development Status

Fifty-three units, including the 8 MPDU's, have been completed. Forty-nine of these units, including MPDUs, have been conveyed to third-party purchasers. The last row of six units are not yet completed, but are under roof.



ANALYSIS:

Building Height Requirement

The subject property is zoned R-T-8.0. Section 59-C-1.733 of the Zoning Ordinance (Maximum Building Height) provides that the maximum height of building is 35 feet for a main building and 25 feet for an accessory building.

Approved Site Plan

The 'Site Data' table shown on the approved Site Plan 8-03041 specifies 35 feet as "Building Height Allowed" and "Building Height Proposed". A copy of the table is shown below. A copy of the Planning Board Opinion (Appendix C) and a copy of the approved Site Plan (Appendix D) are attached.

SITE DATA

Site Area:		8.14 Ac.
Zoning:	(Residential, Townhouse)	RT-8.
Development Type:		Standard Method w/ MPDU's
Proposed Use:		3/4 Bedroom Townhomes
100 Year Floodplain:		0.00 Ac.
Density Allowed:	(8 D.U./Ac.)	64 Lots
Density Shown:		59 Lots
M.P.D.U.'s Required:	(12.5%)	8 D.U.
M.P.D.U.'s Shown:		8 D.U.
Parking Required:	(2/D.U.)	118 Spaces
Parking Provided:		125 Spaces
Garage Parking:		110 Spaces
Driveway Parking:		8 Spaces
Surface Parking:		17 Spaces
Open Space Required:	(45% Minimum)	3.65 Ac.
Open Space Provided:	(47%)	3.80 Ac.
Building Height Allowed:		35'
Building Height Proposed:		35'
Building Coverage Allowed:	(Tract)	40%
Building Coverage Proposed:		17.5%
Development Standards:	Zone	Proposed
Building Setbacks:		
From public street:	25'	25'
From adjoining lot		
Rear:	20'	20'
Side:	10'	10'
From Single Family	30'	52'

Constructed Dwelling Units

All of the proposed 59 townhouses have been constructed and completed except for a row of six units (Lots 29 through 34) which are currently under construction. DPS staff inspected the development and found that the height of all 59 units exceeds the 35 feet limit, ranging from 35.3 to 38.5 feet (Appendix E). The height of the MPDUs is lower than that of the market rate units, but they are still too tall by DPS measurement.

Building Height Measurement

The development provides private streets throughout the site to serve individual townhouses.

DPS staff measured the building height from the street in accordance with the definition of "Height of building" in the Zoning Ordinance. Section 59-A-2.1. (Definitions) of the Zoning Ordinance defines the "height of building" as follows:

The vertical distance measured from the level of approved street grade opposite the middle of the front of a building to the highest point of roof surface of a flat roof; to the mean height level between eaves and ridge of a gable, hip, mansard, or gambrel roof; except, that if a building is located on a terrace, the height above the street grade may be increased by the height of the terrace. In the case of a building set back from the street line 35 feet or more, the building height is measured from the average elevation of finished ground surface along the front of the building. On corner lots exceeding 20,000 square feet in area, the height of the building may be measured from either adjoining curb grade. For lots extending through from street to street, the height may be measured from either curb grade.

Builder's Position on Building Height

The builder, Ryan Homes, argued that the height of the townhouse units should be measured from the average grade in front of each unit instead of from the street. It is the builder's opinion that the 'street' in the definition of 'Height of building' refers to 'public streets'. Since the subject townhouses front on private streets and are located more than 35 feet from public streets (Lockwood Drive and Columbia Pike), Ryan Homes believes that the height should be measured from the average grade in front of each unit. Based on this measurement method, all of the eight MPDUs are below the 35 foot height limit. The height of the remaining 51 market rate units is approximately 36 feet, 5 inches.

As the time this report was written, DPS staff had not changed their interpretation of the building height measurement method.

BUILDING HEIGHT VIOLATION

Based on the Inspection Results (Appendix E) prepared by DPS staff Susan Scala-Demby, dated December 2, 2005, staff found that all of the 59 townhouses in the Maple Ridge development are not in conformance with the 35-foot maximum building height requirement as established in Section 59-C-1.733 of the Zoning Ordinance and are in violation of the proposed and approved building height (35 feet) specified on the approved Site Plan 820030410 (formerly 8-03041).

CIVIL FINES

Section 50-41(c) of Montgomery County Subdivision Regulations provides:

(c) *Imposition of Civil Fines and Penalties.*

(1) *A citation may require the payment of a civil fine or penalty for the alleged violation of the Planning Board Action.*

- (2) *The maximum amount of the fine for each violation of a Planning Board Action is set at \$500.00 for each day that the violation has occurred.*
- (3) *Each day that the violation has not been corrected shall be considered a separate violation and the applicable fine or penalty will continue to accrue each day until corrected, without the need of issuing a new citation each day.*

Sec. 59-A-1.3. of the Zoning Ordinance provides:

Violations, penalties, and enforcement.

- (a) *Violations of this chapter may be punishable as provided in State law.*
- (b) *In addition to all other remedies provided by law, any violation of this chapter may, as an alternative, be punished by a civil fine of \$500.00 for each offense or such lesser penalty as may be set by regulation adopted under method 2. Each day a violation continues is a separate offense.*

Staff recommends a civil fine for all of the 49 completed and conveyed units that violate both the Zoning Ordinance requirement and approved Site Plan 8-03041. The fine is set at \$50 per unit for each day the violation has occurred between the completion of the unit and the public hearing date (December 15, 2005) for individual units. Staff used DPS's final building inspection date for individual units as the unit completion date, which ranges from December 27, 2004, to November 17, 2005. Therefore, the number of days that individual units are in violation varies from 353 to 28. The total amount of the daily fine for all of the 49 units is \$524,650.

PLAN OF COMPLIANCE

Ryan Homes' Proposal

As stated in the Builder's Position on Building Height section above, Ryan Homes believes that only the 51 market-rate units exceed the 35-foot height limit, by approximately 17 inches. To meet the building height limit for the six un-conveyed units (on Lots 29 through 34), Ryan Homes proposed to rebuild the roofs of these units at its sole cost by removing the top portion of the roof truss and constructing a "widow's walk" at the highest point of the roof. It will begin work on rebuilding these roofs within two weeks of obtaining the appropriate permits and expects to complete that work within two weeks from the start (weather permitting).

For the 45 conveyed market-rate units (on Lots 1 through 23 and 35 through 56), Ryan Homes proposed to work on a limited Zoning Text Amendment that will designate these units as lawful conforming structures. It also proffered to obtain affirmative title insurance coverage for all of the conveyed units insuring against any zoning issue with respect to building height, for purposes of addressing possible concerns about subsequent transfer of marketable title.

Staff Recommendation

Staff is very concerned that the height standard required by the zone and approved by the Board was violated. Therefore, staff recommends an immediate fine under Section 50-41 of \$524,650. In addition, Ryan Homes should be required to bring the units into compliance. Amending the

site plan does not resolve the height issue since the requirement of the zone is violated. Replacing the roofs on all of the units would clearly be the most straightforward method of resolving this issue but may not be possible since 49 of the units have already conveyed. The Board cannot resolve this problem, but it is incumbent on Ryan Homes to do so. If the problem is not resolved by June 30, 2006, Ryan Homes will be assessed an additional fine as outlined above and must come back to the Board to determine a new plan of compliance.

APPENDIX

- A. Stop Work Order dated 11/04/2005.
- B. E-mail from Robert Hubbard to David Little, dated November 10, 2005.
- C. Planning Board Opinion for 8-03041
- D. Approved Site Plan 8-03041
- E. Inspection Results prepared by DPS staff Susan Scala-Demby, dated December 2, 2005