**MEMORANDUM**

DATE: February 10, 2006

TO: Montgomery County Planning Board

VIA: Faroll Hamer *FH*
Acting Director

FROM: Rose Krasnow, Chief *RK*
Development Review Division

REVIEW TYPE: Consideration of alleged setback violations, 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: February 23, 2006



STAFF RECOMMENDATION: Finding that no violations have occurred with respect to alleged setback violations, finding that no violation has occurred with respect to the timely provision of required recreation facilities, finding that the height of the dwelling units exceeds the maximum building height allowed in the R-T zone. The Stop Work Order will be removed subject to the following conditions:

Ryan Homes, the builder of the subject townhomes, shall be assessed a fine of \$92,250, based on a fine of \$50.00 per day from the date the stop work order was issued up to the date that the first hearing on this matter was scheduled (December 15, 2005). The monies collected shall be spent as follows:

- a. \$1000 per unit shall be paid into the Capital Reserve Fund of the HOA (\$45,000)
- b. \$525 per unit shall be spent on additional landscaping (\$23,625)
- c. \$525 per unit shall be directed toward a community improvement either on or offsite (\$23,625)

BACKGROUND

Maple Ridge Townhomes (aka Seaton Square) is a 59-unit townhouse development, the construction of which is almost complete. Site plan 820030410 (formerly 8-03041) for Maple Ridge was approved by the Planning Board on October 16, 2003. Forty-nine of the fifty-nine units have been conveyed. Of the remaining 10, 6 are market rate units and 4 are MPDU's.

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 is responsible for the height and setbacks of the units.

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.

Based on the above findings, M-NCPPC staff issued a Stop Work Order (Attachment 1) 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.

ITEMS TO BE REVIEWED BY THE PLANNING BOARD

Setback Violations - Subsequent to the issuance of the Stop Work Order, the Director of DPS, through an e-mail (Attachment 2) to David Little dated November 10, 2005, found that no rear setback standards have been violated in the subject development. Specifically, the site plan language read that the rear setback should be measured from the adjoining lot, but DPS had measured the setback from the property line. All the units in question backed onto HOA-owned land, which is not buildable and does not constitute a lot. As a result, staff concluded that the setback standard had not been violated.

Recreational Amenities - During the summer of 2005, the developer contacted inspection staff at MNCPPC to see if it was possible to substitute a brand of play equipment that differed from the one specified in the site plan. The site plan itself was brand specific and did not include the phrase "or equivalent." However, Park & Planning was reviewing its entire process relating to the establishment of standards to determine the equivalency of playground equipment, and was also establishing a new procedure for processing minor amendments. As a result, staff did not respond to the applicant in a timely manner and 70% occupancy was reached before playground equipment was installed. On December 13, 2005, staff approved a substitution request as part of a Consent Order entered in the Circuit Court of Maryland in Case No. 263679-V, subject to public notice and approval of a minor amendment (Attachment 3). The applicant filed the necessary amendment and provided notice as required, but chose to proceed with the installation of the substitute equipment at its own risk. Installation was completed in January of 2006. In light of the above, staff believes that no violation should be found with respect to the installation of recreational amenities.

Building Height – If the Planning Board agrees with the above, building height is the only issue to be reviewed at this time.

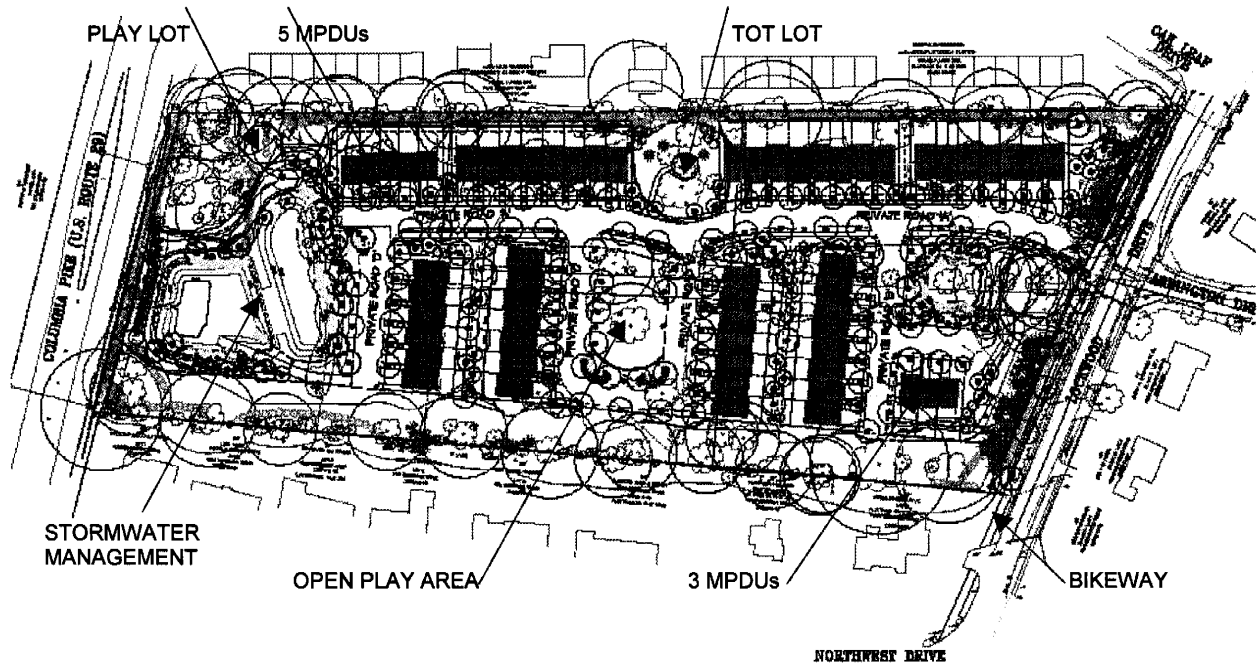
PROJECT DESCRIPTION: Site Vicinity

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 zoned RT-12.5 to the north 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 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 are 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.



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 and approved". A copy of the table is shown below. A copy of the Planning Board Opinion (Attachment 4) and a copy of the approved Site Plan (Attachment 5) are attached.

PROJECT DATA TABLE (RT-8 Zone)

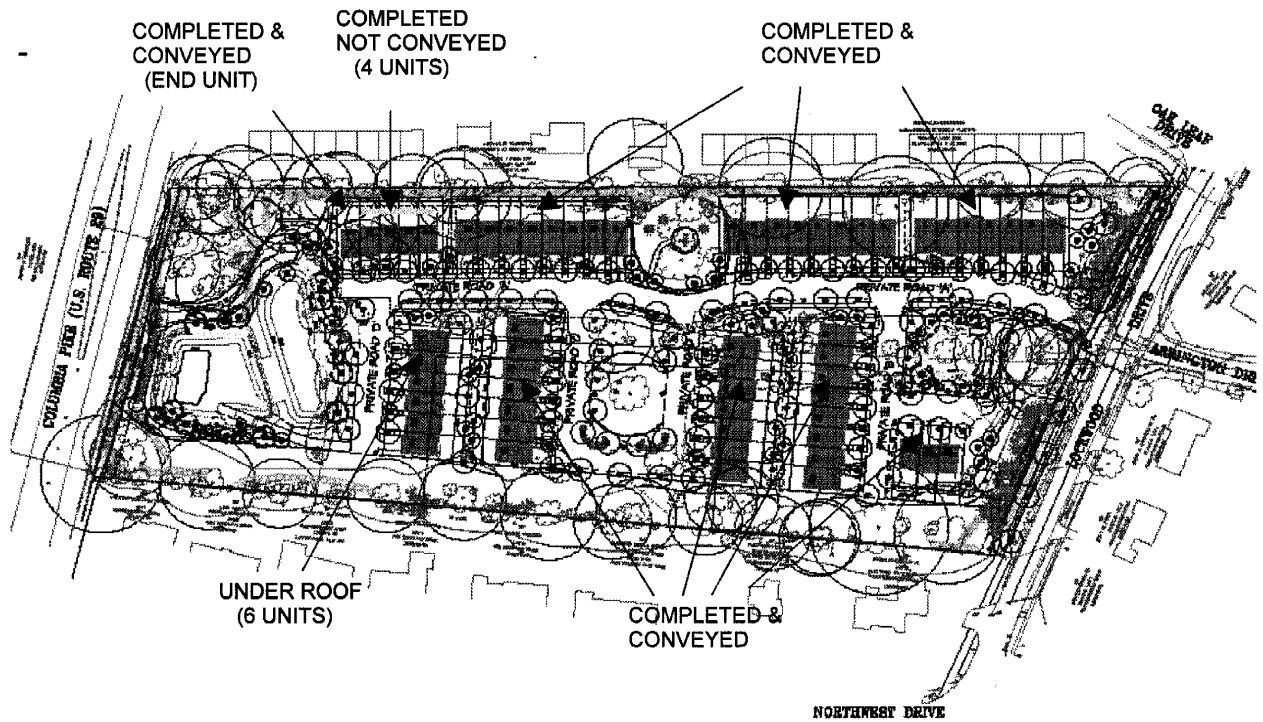
Development Standard	Permitted/ Required	Proposed and Approved
Min. Tract Area (s.f.):	20,000	354,578
Density of Development (d.u./ac.)	8	7.25
Number of Dwelling Units*	64	59
MPDUs	8 (12.5%)	8
Building Setbacks (ft.)		
from detached homes	30	52
from the street	25	25
from adjoining lots		
rear	20	20
side	10	10

Building Coverage (%):	40	17.5
Green Area (%)	45	47
Building Height (ft.):	35	35
Parking Spaces	118	125

* development including moderately priced dwelling units

PROJECT DESCRIPTION: Development Status

When the stop work order was placed on the site on November 4, 2005, fifty-three units, including the 8 MPDU's, had been completed. Forty-nine of these units, including 4 MPDUs, had been conveyed to third-party purchasers. The four remaining MPDU's were complete but had not been conveyed. In addition, the last row of six market rate units (Lots 29 – 34) were under roof, but not yet completed. None of the six had conveyed.



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.

Based on the Inspection Results (Attachment 6) prepared by DPS staff Susan Scala-Demby, dated December 2, 2005, which showed heights ranging from 35.3 feet to 38.5 feet, staff found that all of the 59 townhouses in the Maple Ridge development were 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). Although the heights of the MPDUs are lower than that of the market rate units, the DPS measurements indicated that they still exceeded the 35 foot height limit.

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. The builder suggested to DPS 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 believed 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 would fall below the 35 foot height limit, and the tallest of the market rate units would be 36 feet, 5 inches. However, at the time the initial staff report was written for a hearing scheduled for December 15, 2005, DPS staff had not changed their interpretation of the building height measurement method.

EVENTS SINCE DECEMBER 15TH, 2005

Park and Planning Staff have met several times with builder Ryan Homes since the original hearing was postponed in December. Ryan avers that there had been no intent to violate the zoning ordinance and site plan. Rather, a best-selling townhouse unit was selected for construction in Maple Ridge, and Planning Board members had seen the chosen unit at the time

of approval. The building permit applications likewise showed the height of the units as being taller than 35 feet, however, since no one was checking heights, the building permits were released even though the units were too tall.

Immediately upon learning of the height problem, Ryan Homes had several discussions with DPS, and DPS agreed that the method used to measure height should be changed since the units did not front on public streets. As a result, DPS submitted new height measurements to Park and Planning (see Attachment 7) on January 9, 2006, which indicate that the 8 MPDUs do not exceed the 35 foot height limit, while the height of the market rate units ranges from 35.3 feet 36.6 feet. While still too tall, these units now only exceed the allowable height by a few inches to approximately 1 ½ feet, whereas some of these units were more than three feet too tall under the original method of measurement.

Ryan Homes also took immediate steps to bring the six market rate units that had not conveyed into compliance with the zoning/site plan height limit. In order to do this, they had to remove the top roof truss of each unit, and install a flat roof at this spot. A widow's walk was then installed around the flat part of the roof in order to soften the look and make these units compatible with those units that were already occupied. The third party purchasers of these six units were all informed of the necessity of making this change, and settlement dates were delayed. At this time, the modifications to the six market units have all taken place.

Because the 45 units that are still too tall have already been transferred to third parties, Ryan does not have the ability to bring these dwellings into compliance. Fortunately, DPS has indicated that, as the Zoning authority, they would not go after these third party purchasers for being in violation of the height restrictions. DPS has stated, moreover, that the owners would still be able to make modifications to their units, as long as these modifications did nothing to worsen the height violation. Should one or more of the non-compliant units be destroyed, however, either through fire or some other disaster, the owners would be required to rebuild at the lower height. Clearly, this could be done in the same way that the six market rate units were brought into compliance, so it would not really have an effect as far as compatibility with the remaining units.

SANCTIONS

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.*

In its original staff report, staff recommended a civil fine for each of the 49 completed and conveyed units that violate both the Zoning Ordinance requirement and approved Site Plan 8-03041. The fine was set at \$50 per unit/per day, for each day the violation existed based on the date of completion of the unit and the public hearing date (December 15, 2005). Staff used DPS's final building inspection date for individual units as the unit completion date. These dates ranged from December 27, 2004, to November 17, 2005. Therefore, the original fine was being assessed for a period as short as 28 days for the most recently constructed units, to as long as 353 days for the older units. Based on that calculation, staff had recommended a fine of \$524,650 for the 49 conveyed units.

Staff is now recommending a fine of \$92,250. While considerably lower than the fine recommended prior to the hearing scheduled in December, the amount is still significant. Moreover, a number of circumstances have led staff to recommend the lower fine.

The fine is still being assessed at the rate of \$50.00 per day, but the assessment period was changed to include only the time period between the date of issuance of the Stop Work Order (November 4, 2005) and the date scheduled for the original hearing (December 15, 2005) or a period of 41 days. Staff has decided that the fact that the units do not conform to the height standard of either the zone or of the site plan was caused by a failure to conduct proper due diligence but was not done willfully. Had the builder been told, at any earlier point in the process that the units were too tall, it is reasonable to assume that they would have responded in a manner similar to that with which they responded once the stop work order was issued, i.e. they would have taken all steps possible to bring the non-compliant units into compliance and to build the rest correctly.

It should also be noted that the fine is now being assessed against only 45 units, not 49 as was the case in December, because the new set of measurements provided by DPS establishes the height of the four MPDU's that had conveyed prior to the date of the December hearing as being in compliance with the 35 foot standard. This, too, affects the overall amount of the fine.

Staff also feels that the lower fine is more appropriate because the applicant did not stand to gain additional density or any additional floors by exceeding the height limit. As was mentioned earlier, the unit was chosen simply because it always sold well. It should also be pointed out that no complaints were received concerning the height of these townhouses, either from the new owners or from homeowners in adjacent or nearby neighborhoods. Finally, it should be noted that the builder has spent considerable dollars to bring the six market rate units into compliance (at a cost close to \$56,000) and has expended additional monies to cover the extra costs that

accrued to the contract purchasers due to the delays in their closing dates that occurred as a result of the stop work order and the need to complete the remedial work that had to be undertaken.

Originally, staff recommended that if the non-compliant units were not brought into compliance within six months, the fine would be doubled from \$50 to \$100, and would be assessed against the 49 units for the entire six month period. The builder would then have to come back to the Board to work out a new Plan of Compliance. Staff was concerned that the third party purchasers not be left with any cloud on their titles and wanted to insure that remedial action was taken. However, since the builder has no right to enter onto the premises of the conveyed units, they do not actually have the ability to affect such changes. The earlier staff report also discussed the possibility that the County Council might pass a text amendment that would retroactively grandfather these non-compliant units, for purposes of addressing possible concerns about subsequent sales of these units. Based on discussions with several people, the likelihood of such a text amendment now seems highly remote, particularly since Maple Ridge appears to be the only project uncovered in the audit that exceeds not only the height required by the site plan, but also the height of the zone. In addition, staff has learned that the Board of Appeals is unlikely to grant the homeowners a variance, since there really was no hardship that made it necessary to build these units taller than the height allowed in the zone. Therefore, staff does not believe that a case can be made to continue to charge a fine to the builder, when the builder has no way to bring the units into compliance. Fortunately, as discussed above, it seems unlikely that the unit owners will suffer significantly as a result of their units being non-compliant with respect to height. Therefore, staff recommends that a violation be found and that a one-time only fine be assessed.

PLAN OF COMPLIANCE

Staff Recommendation

Staff remains concerned that the development community in general, and Ryan Homes in specific, has not paid close attention to the development standards set by the Board at the time of approval. Clearly, in the current instance, this inattention led to the construction of townhouses that not only exceeded the site plan standard but also exceeded the allowable height in the zone. Therefore, staff recommends that a violation be found and that an immediate fine of \$92,500 be assessed under Section 50-41. Since these monies cannot be used to bring the non-conforming units into conformity, staff has proposed that they be applied in other ways that will benefit the community in question, i.e. Maple Ridge (now known as Seaton Square). Staff recommends that the fine be used as follows:

- 1) Ryan Homes will contribute \$1000 to the Seaton Square HOA Capital Fund (Reserve Fund) for each of the 45 non-compliant units.
- 2) Ryan Homes will provide additional landscaping to the Seaton Square community at a cost of \$23,625 (\$525 per unit for each of the 45 non-compliant units)
- 3) Ryan Homes will contribute toward an additional community amenity or an amenity in a nearby park at a cost of \$23,625 (\$525 per unit for each of the 45 non-compliant units).

ATTACHMENTS:

1. Stop Work Order dated 11/04/2005
2. E-mail from Robert Hubbard to David Little, dated November 10, 2005.
3. Letter & Notice from Holland & Knight regarding Substitution of Playground Equipment
4. Planning Board Opinion for 8-03041
5. Approved Site Plan 8-03041
6. Inspection Results prepared by DPS staff Susan Scala-Demby, dated December 2, 2005
7. Inspection Results prepared by DPS staff Susan Scala-Demby, dated January 9, 2006.



Maryland-National Planning Commission
DEVELOPMENT REVIEW DIVISION
 8787 Georgia Avenue
 Silver Spring, Maryland 20910



STOP WORK ORDER

**UNA ORDEN DE PARRAR EL TRABAJO SE HA FIJADO EN ESTA PROPIEDAD.
 Usted debe parar todo el trabajo inmediatamente!**

THIS IS AN OFFICAL NOTICE. REMOVAL, OBSTRUCTION OR ALTERATION IS PROHIBITED BY LAW!

Plan No.: 8-2003041 (Maple Ridge Townhomes)

Name and Address of Owner: H D Maple Ridge LLC
 3905 National Dr. Ste 105
 Burtonsville MD 20866

Nature of Violation: Non-conformance to approved site plan and county zoning ordinance, for building height and setback. Not having recreational facilities installed prior to 70% occupancy of units.

Place & Time Violation Occurred: Maple Ridge Town homes, Ongoing

Action to be Discontinued: All construction, including building, grading and utility work.

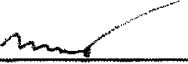
Action Not Discontinued: Work related to installation of recreational amenities, tree care and landscaping. Work required to comply with any regulatory agency having jurisdiction over compliance with applicable regulations (e.g., Montgomery County's Department of Permitting Services). Only those activities required and authorized to correct violations or *ordered* by permitting agencies are allowed.

Action to be Taken: Correct height and setback violations. Install recreational amenities. Submit plan of compliance.

Planning Board Hearing Date to Review Order: December 15, 2005

Certification of Inspector

I hereby certify that the contents of the foregoing paper are true to the best of my knowledge, information and belief.



Marco Fuster
 Inspector
 301-495-4521

IMPORTANT NOTICE

Written permission is required to resume work. Call 301-495-4521 (Marco Fuster) to schedule a re-inspection.

If you wish to contest/dispute this *STOP WORK ORDER*, contact M-NCPPC Office of General Counsel at 301-495-4646 to schedule an appointment.

Posted: 11/04/05 1:40 PM
 (Date/Time)

Attachment 2

Ma, Michael

From: Scala-Demby, Susan [Susan.Scala-Demby@montgomerycountymd.gov]
Sent: Thursday, November 10, 2005 3:24 PM
To: Ma, Michael
Subject: FW: Maple Ridge Townhouse Subdivision
Follow Up Flag: Review
Due By: Saturday, November 12, 2005 2:55 PM
Flag Status: Flagged

Robert, Mac Spicer and I met to discuss the issue of adjoining lots. We have concluded it does not apply here because there are no lots that adjoin each other in the rear. See Robert's note to Dave Little below.

The Department of Permitting Services is pleased to have this opportunity to serve your needs. Visit the zoning page on the Permitting Services website at <http://permittingservices.montgomerycountymd.gov/dpstmpl.asp?url=/permitting/z/zoning.asp>
 Susan Scala-Demby
 Permitting Services Manager
 Department of Permitting Services
 255 Rockville Pike, 2nd Floor
 Rockville MD 20850-4166
 240-777-6255

-----Original Message-----

From: Hubbard, Robert
Sent: Thursday, November 10, 2005 2:56 PM
To: 'Dave Little'
Cc: Scala-Demby, Susan; robert.harris@hklaw.com; RJTHOMETZ@aol.com; sfishman@nvrinc.com
Subject: RE: Maple Ridge Townhouse Subdivision

Dear Dave,

Susan Scala-Demby, Mac Spicer and I have researched the rear setback standard in the RT-8 zone, as applicable to the Maple Ridge Townhouse Subdivision, and concluded that no rear setback standards have been violated. As you state the rear setback is measured from an adjoining lot. A lot is a parcel of landed intended for a building or an accessory structure. The building lots in the subdivision do not adjoin other lots and therefore no setback is required. Thank you for your patience while I researched this important development standard.

Robert Hubbard
 Director, Department of Permitting Services
 255 Rockville Pike
 Rockville, MD 20850
 (240) 777-6363
 (240) 777-6361 (FAX)
 robert.hubbard@montgomerycountymd.gov

-----Original Message-----

From: Dave Little [mailto:dlittle@glwpa.com]
Sent: Wednesday, November 09, 2005 1:54 PM

12/8/2005

To: Hubbard, Robert
Cc: Scala-Demby, Susan; robert.harris@hkllaw.com; RJTHOMETZ@aol.com; sfishman@nvrinc.com
Subject: Maple Ridge Townhouse Subdivision

Mr. Hubbard, I am sending this e-mail to confirm my conversation with you yesterday Nov. 7. that you agreed with our interpretation of the Zoning Ordinance Setback language for the RT-8 zone, 59-C-1.73(c)-Building Setbacks from an Adjoining Lot and how it was applied to the Maple Ridge townhouse units on the Approved Site Plan. I also clarified with you that this is a Zoning Ordinance Setback requirement and not a Park & Planning Site Plan setback issue, thereby DPS can make the final decision with Park & Planning concurrence if need be. You were going to double check with staff and get back to me within a couple of days, depending on your schedule.

Quite simply, the Zoning Ordinance provides for a minimum rear setback of 20 feet "from an adjoining lot." In the subject case, none of the townhouses has a rear yard that adjoins another lot as "lot" is defined in the Zoning Ordinance. Rather, the rears of all of the lots adjoin HOA parcels. Therefore, the Zoning Ordinance really does not provide for any rear setback in this situation. At worst, the Zoning Ordinance could be interpreted to acquire a 20 foot rear set back from one unit as it relates to the lot line of an adjoining unit (e.g. lots 34 and 51 of the subject project). In the subject case, however, each of the units is setback approximately 16 feet from the HOA parcel and the HOA parcel itself is approximately 10 feet wide providing a setback of approximately 26 feet from one unit to an "adjoining lot." Moreover, the project was built precisely as depicted in the Site Plan and the Signature Set for the Site Plan as well as all building permit plans.

Finally, Bob Harris has spoken with Staff at the Park and Planning Commission and is in the process of confirming their oral agreement that the lots do meet the required rear yard setback as discussed above.

Thank you for assistance and I look forward to hearing from you.

Dave Little

Gutschick, Little & Weber, P.A.
3909 National Drive, Suite 250
Burtonsville, MD 20866
Phone: 301-421-4024
Phone (Baltimore): 410-880-1820
Phone (Northern VA): 301-989-2524
Fax: 301-421-4186
www.glwpa.com

The information transmitted is intended only for the addressee shown above. Any design information (calculations, drawings, etc.) included in this transmission or any attachments is intended for the sole purpose agreed upon with Gutschick, Little & Weber, P.A. (GLW). If this information is to be used for any other purpose or transmitted to any other persons, prior consent must be received from GLW.

Robert R. Harris
301 215 6607
robert.harris@hklaw.com

February 6, 2006

Ms. Faroll Hamer
Acting Director
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Maple Ridge/Seaton Square (Application No. 8-20030410/Site Plan No. 8-03041)
Recreational Equipment Substitution Request

Dear Ms. Hamer:

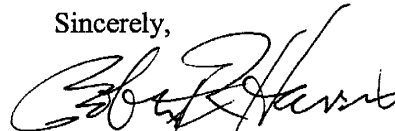
The purpose of this letter is to complete the approval process for substituting recreation equipment at this project.

By way of background, last summer, our client (HD Maple Ridge, LLC) sought Staff approval for substitute recreation equipment for this site. Pursuant to the direction of Staff, that request was later supplemented in October and November with additional information. By memorandum of December 15, 2005, and in accordance with a Consent Order entered on December 13, 2005 by the Circuit Court for Montgomery County, Maryland in Case No. 263679-V, Staff approved the substitution request subject to public notice requirements and, if required, execution of any other documents.

Since then, HD Maple Ridge, LLC acquired the substitute equipment approved by Staff and its installation was completed in January. We are enclosing a copy of the mailing list and the notice that was sent out today informing owners within the project and contract purchasers, as well as adjoining and confronting property owners of the substitution, although we do not believe notice is required under the interim guidelines for Site Plan Amendments, adopted December 22, 2005, because this request was submitted long before those guidelines were adopted.

We do not believe any further action is necessary. Please advise us if this is not correct.

Sincerely,



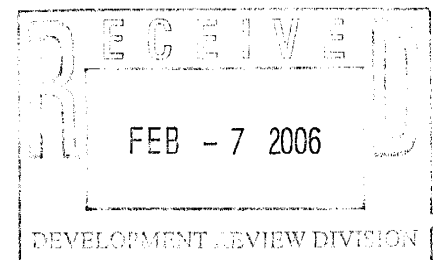
Robert R. Harris

Enclosure

cc: Rose Krasnow
Rich Thometz

3532775_v1

Annapolis • Atlanta • Bethesda • Boston • Bradenton • Chicago • Fort Lauderdale • Jacksonville • Lakeland • Los Angeles
Miami • New York • Northern Virginia • Orlando • Portland • Providence • Rancho Santa Fe • Sacramento • St. Petersburg
San Antonio • San Francisco • Seattle • Tallahassee • Tampa • Washington, D.C. • West Palm Beach



NOTICE TO ADJOINING AND CONFRONTING PROPERTY OWNERS
RECREATION SUBSTITUTION REQUEST/MINOR SITE PLAN AMENDMENT

FEBRUARY 6, 2006

Name of Plan: Maple Ridge/Seaton Square

Application File No. 8-20030410 (formerly Site Plan No. 8-03041)

Current Zoning: RT-8

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

Number of Lots: 59

The above-referenced request to substitute recreation equipment has been filed with the Montgomery County Planning Board. The Maryland-National Capital Park and Planning Commission approved the recreation equipment on December 15, 2005 and the equipment was installed in January. If you have any comments, please send them in writing by February 21, 2006 to the Maryland-National Capital Park and Planning Commission, Development Review Division, 8787 Georgia Avenue, Silver Spring, MD 20910 and please send a copy of any such comments to Robert R. Harris, Holland & Knight, 3 Bethesda Metro Center, Suite 800, Bethesda, MD 20814. If you have any further questions, please contact the Development Review office at the Park and Planning Commission at 301/495-4585.