(3) To satisfy Policy Area Transportation Review:

a. The applicant shall participate in widening MD 27 to six through travel lanes from Observation Drive in Germantown through the Brink Road intersection, and to four through travel lanes through the A-305 intersection; continue two northbound travel lanes through the Skylark Road intersection, including dedication along the site frontage. This improvement along MD 27 is consistent with the master plan recommendation. If, after master plan dedication along the west side of MD 27, sufficient right-of-way is not available for the proposed widening, the applicant has to either acquire additional right-of-way on the east side of MD 27 or dedicate additional right-of-way and widen MD 27 on their development side

b. The applicant shall dedicate on-site portions and participate in constructing Relocated Newcut Road (A-302) as a two lane divided arterial roadway between MD 27 and the A-305 intersection and as a four lane divided roadway between A-305 and MD 355

c. The applicant shall dedicate and participate in constructing A-305 as a four lane divided arterial roadway between MD 27 and Stringtown Road

d. The applicant shall dedicate and participate in constructing Foreman Boulevard as a two lane arterial roadway from its current terminus at Timber Creek Lane to A-305

e. The applicant shall dedicate and participate in widening Stringtown Road as a four lane arterial along their frontage. This roadway improvement can be implemented by either the Department of PublicWorks and Transportation's CIP project, as a developer participation project or as the Clarksburg Town Center Development District.

(4) To satisfy Local Area Transportation Review;

a. The applicant shall participate in constructing a second left-turn lane from northbound MD 355 to westbound MD 27

b. The applicant shall participate in constructing additional turn/approach lanes on MD 27 and Brink Road at the intersection of MD 27/Brink Road

c. The applicant shall participate in providing a separate left-turn lane from southbound MD 355 to eastbound Brink Road and a separate left-turn lane from westbound Brink Road to southbound MD 355.

(5) The applicant shall agree that the roadway improvements listed as conditions of approval are under construction in accordance with the phasing of road improvements for Clarksburg/DiMaio development as described in David D. Flanagan's letter dated March 14, 2001 and confirmed in our letter dated March 29, 2001.

(6) The applicant shall construct the following roads as standard closed section primary residential streets:

- Street "C" between A-305 and Street "I"
- Street "M" between A-305 and Street "E"
- Street "E" between A-305 and Street "M"
- Street "T" between A-305 and Street "W"
- Street "Y" between Streets "T" and "Z"
- Street "GG" between its intersections with A-305
- Street "R" – approximately 400' from A-305 (or correspond to first intersection)
- Street "Z" next to School

(7) The applicant shall construct two roundabouts on A-305 as shown on the preliminary plan to define the boundaries of the business district portion of this roadway.

(8) The applicant shall construct A-305 as a business district street between the two roundabouts in accordance with DPWT Standard No. MC-219.03

(9) All roads rights of way shown on the approved preliminary plan shall be dedicated by the applicant, to the full width mandated by the Clarksburg Master Plan, unless other wise designated on the preliminary plan

(10) All roads shown on the approved preliminary plan shall be constructed by the applicant to the full width mandated by the approved and adopted Master Plan, and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan "To be Constructed by_____" are excluded from this condition

(11) Additional forest save areas to be created adjacent to the environmental buffer at the northwestern portion of the property. This will require reconfiguration of the layout for that portion of the property at site plan

(12) At site plan, the following stormwater management facilities to be reconfigured to maintain at least half of the environmental buffer widths as undisturbed areas: Ponds B, C, L, N, and V. Reconfigure Pond Q and adjacent sewer line to maintain most of the environmental buffer as undisturbed area. Eliminate, if possible, or minimize the footprint of Pond J by providing stormwater management quantity and quality controls at alternative locations. For remaining stormwater management facilities, any environmental buffer encroachments to be no more than that shown on the concept study, dated 4/12/01 ← FIND (MARK P.)

(13) Compliance with the conditions of approval for the preliminary forest conservation plan dated July 25, 2001. The applicant must meet all conditions prior to MCDPS issuance of sediment and erosion control permits, as appropriate. Conditions include, but are not limited to, the following:

   a. Prior to the submission of the first site plan, submit a plan identifying specific areas proposed for natural regeneration and justifying its use in these specific areas. The plan should include measures to enhance the success of natural regeneration. At this time, areas proposed for natural regeneration must be identified in the field so that M-NCPPC may evaluate these areas as to the feasibility of natural regeneration

   b. Environmental buffers, forest conservation and planting areas, and any natural regeneration areas to be within park dedication areas or in Category I conservation easements. Conservation easements to be shown on record plats

(14) Conformance to the conditions as stated in DPS preliminary water quality plan approval letter, dated 7-25-01.

(15) Measures to mitigate traffic noise impacts on residential uses to be shown at site plan. Mitigation measures to be shown along Ridge Road. Mitigation measures may also be needed along Stringtown Rd., A-302, and A-305

(16) At site plan, provide permanent signage along conservation easement areas to make identify environmentally sensitive areas that are to remain protected Applicant to construct an 8 foot wide paved hiker/biker trail in the Clarksburg Greenway on the property applicant currently owns. The alignment will follow the approximate route as set out in Phase I of the Trail Facility Plan, with the detailed trail location and other design and construction considerations to be worked out by the time of the Infrastructure Plan

(17) Applicant will construct the portions of the hiker/biker trail from Stringtown Road east to Newcut Road and north to the DiMaio Property that are not on applicant's property, provided that M-NCPPC acquires the ownership or easement rights across the needed property along the trail alignment and funds the proportionate cost to Applicant for construction of these additional sections of trail

(18) Applicant will construct Foreman Boulevard and Midcounty Highway to allow for grade separated crossing for the hiker/biker Greenway Trail. The trail crossings should be constructed to accommodate the trail under the roads without changing the natural location, configuration or composition of the stream channel, and should be located to minimize flooding of the trail and minimize surface water runoff from the paved trail directly into the stream

(19) The property within the delineated Clarksburg Greenway along Little Seneca Creek and Little Seneca Tributary will be dedicated to M-NCPPC and the hiker/biker trail constructed or clearly delineated and marked prior to construction of the residences that abut the Greenway

(20) The park area marked as Jeane Onufry Local Park will be graded, surfaced with topsoil, fine graded to a maximum of +/- 6" over 100', and seeded as appropriate for ball field cover. Grading plans will be submitted to park staff for review and approval. The park area will be dedicated to M-NCPPC

(21) The school/park site off of Midcounty Highway will be graded, surfaced with topsoil, fine graded to a maximum of +/- 6" over 100', and seeded as appropriate for ball field cover. Grading plans will be submitted to park staff for review and approval. The parking and ball field area at the north end of the site will be separately delineated and dedicated to M-NCPPC

(22) Phasing of the dedication of the school/parks sites shall be incorporated as part of the phasing schedule included with site plan approval

(23) At site plan address specifically the following:
   a. Dwelling unit type and layout within the mixed use center
   b. Coordinate with adjoining property owner to achieve a well integrated and designed commercial center that locates parking to the rear and provides special treatment for paving, seating, landscaping, lighting ant other pedestrian amenities
   c. Provide adequate "windows" into open space areas
   d. Dwelling unit orientation along all road rights of way

(24) Provide a minimum of 600 TDR's pursuant to the objectives of the Clarksburg Master Plan based on current dwelling unit approval

(25) Final number and location of units including number of TDR's to be determined at site plan

(26) Final number of MPDU's to be determined at site plan dependent on Condition #23

(27) No clearing, grading, unless designated on "Infrastructure Plan" and recording of lots prior to site plan approval

(28) The validity of the Preliminary Plan will remain valid until July 30, 2013 and shall be phased for recordation of lots as follows:

1. Phase One: 300 lots by July 30, 2004
2. Phase Two: 1,000 lots by July 30, 2007
3. Phase Three: 1,700 Lots by July 30, 2010
4. Phase Four: All lots by July 30 2012

Prior to the expiration of the validity periods, a final record plat for all the property delineated in each phase must be recorded or a request for an extension must be filed

Preliminary Plan Amendment A
1-01030A

January 23, 2003

21A

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed: January 23, 2003
Action: Approved Staff Recommendation
Motion of Comm. Bryant, seconded by Comm. Wellington with a vote of 4-0;
Comms. Bryant, Perdue, Robinson and Wellington voting in favor
Comm. Berlage temporarily absent

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-01030
NAME OF PLAN: CLARKSBURG VILLAGE

On 11/29/00, CLARKSBURG VILLAGE, L.L.C. submitted an application for an amendment of two a preliminary plans of subdivision (1-01030 Clarksburg Village and 1-93007 Nanna Property) of property in the R-200/TDR3 and 4, R-200 and P-D 4 zones. The application proposed to create 2,590 lots, 20,000 Square Feet Retail/Office and 5,000 Square Feet Day Care Facility on 741.4 acres of land. The applications were redesignated Preliminary Plan 1-01030. On 01/09/03, Preliminary Plan 1-01030, Clarksburg Village was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented by staff and on the information on the Preliminary Subdivision Plan Application Form, attached hereto and made a part hereof, the Montgomery County Planning Board finds Preliminary Plan 1-01030 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-01030.

Approval to Revise the Previous Conditions of Approval to Combine Preliminary Plan No. 1-01030 – Clarksburg Village with 1-93007 – Nanna Property

(1) Approval under this preliminary plan is limited to a maximum of 2,590 Residential Dwelling Units, 20,000 Square Feet Office/Retail Use and 5,000 Square Feet Daycare Facility

(2) At least sixty (60) days prior to the submission of a complete Site Plan application the applicant shall submit an "Infrastructure Plan" for Planning Board review. The plan shall include the following:
   a) Location and types of stormwater management facilities for quality and quantity controls that comply with the conditions of MCDPS' preliminary water quality plan
   b) Delineate bike and pedestrian access pathways including all at grade and below grade crossings along all road rights of way and at stream crossings
   c) All roadway networks including both private and public connections. Streetscape, lighting, sidewalks and paving materials
   d) Delineation of "Greenway" and other open space areas including all environmental buffers
   e) School sites and Park areas
   f) Recreation guideline concept plan
   g) Proposed schedule for clearing and grading of site

(3) To satisfy Policy Area Transportation Review:

a) The applicant shall participate in widening MD 27 to six through travel lanes from Observation Drive in Germantown through the A-305 intersection; transitioning to two travel lanes through the Skylark Road intersection, including dedication along the site frontage. This improvement along MD 27 is consistent with the master plan recommendation. If, after master plan dedication along the west side of MD 27, sufficient right-of-way is not available for the proposed widening, the applicant has to either acquire additional right-of-way on the east side of MD 27 or dedicate additional right-of-way and widen MD 27 on their development side

b) The applicant shall dedicate on-site portions and participate in constructing Relocated Newcut Road (A-302) as a two lane divided arterial roadway between MD 27 and the A-305 intersection and as a four lane divided roadway between A-305 and MD 355

c) The applicant shall dedicate and participate in constructing A-305 as a four lane divided arterial roadway between MD 27 and Stringtown Road

d) The applicant shall dedicate and participate in constructing Foreman Boulevard as a two lane arterial roadway from its current terminus at Timber Creek Lane to A-305

e) The applicant shall dedicate and participate in widening Stringtown Road as a four lane arterial along their frontage. This roadway improvement can be implemented by either the Department of Public Works and Transportation's CIP project, as a developer participation project or as the Clarksburg Town Center Development District.

(4) To satisfy Local Area Transportation Review;

a) The applicant shall participate in constructing a second left-turn lane from northbound MD 355 to westbound MD 27

b) The applicant shall participate in constructing additional turn/approach lanes on MD 27 and Brink Road at the intersection of MD 27/Brink Road

c) The applicant shall participate in providing a separate left-turn lane from southbound MD 355 to eastbound Brink Road and a separate left-turn lane from westbound Brink Road to southbound MD 355.

(5) The applicant shall agree that the roadway improvements listed as conditions of approval are under construction in accordance with the phasing of road improvements for Clarksburg/DiMaio development as described in Mr. Rafferty's letter dated August 5, 2002 and confirmed in Transportation Planning Division memorandum dated August 22, 2002

(6) The applicant shall construct the following roads as standard closed section primary residential streets:

- Street "C" between A-305 and Street "I'
- Street "M" between A-305 and Street "E"
- Street "E" between A-305 and Street "M".
- Street "T" between A-305 and Street "W"
- Street "Y" between Streets "T" and "Z"
- Street "GG" between its intersections with A-305
- Street "R" – approximately 400' from A-305 (or correspond to first intersection)
- Street "Z" next to School

(7) The applicant shall construct two roundabouts on A-305 as shown on the preliminary plan to define the boundaries of the business district portion of this roadway.

(8) The applicant shall construct A-305 as a business district street between the two roundabouts in accordance with DPWT Standard No. MC-219.03

(9) All roads rights of way shown on the approved preliminary plan shall be dedicated by the applicant, to the full width mandated by the Clarksburg Master Plan, unless other wise designated on the preliminary plan

(10) All roads shown on the approved preliminary plan shall be constructed by the applicant to the full width mandated by the approved and adopted Master Plan, and to the design standards imposed by all applicable road codes. Only those roads (or portions thereof) expressly designated on the preliminary plan "To be Constructed by_____" are excluded from this condition

(11) Additional forest save areas to be created adjacent to the environmental buffer at the northwestern portion of the property. This will require reconfiguration of the layout for that portion of the property at site plan

(12) At site plan, the following stormwater management facilities to be reconfigured to maintain at least half of the environmental buffer widths as undisturbed areas: Ponds B, C, L, N, and V. Reconfigure Pond Q and adjacent sewer line to maintain most of the environmental buffer as undisturbed area. Eliminate, if possible, or minimize the footprint of Pond J by providing stormwater management quantity and quality controls at alternative locations. For remaining stormwater management facilities, any environmental buffer encroachments to be no more than that shown on the concept study, dated 4/12/01

(13) Compliance with the conditions of approval for the preliminary forest conservation plan dated July 25, 2001. The applicant must meet all conditions prior to MCDPS issuance of sediment and erosion control permits, as appropriate. Conditions include, but are not limited to, the following:

a) Prior to the submission of the first site plan, submit a plan identifying specific areas proposed for natural regeneration and justifying its use in these specific areas. The plan should include measures to enhance the success of natural regeneration. At this time, areas proposed for natural regeneration must be identified in the field so that M-NCPPC may evaluate these areas as to the feasibility of natural regeneration

b) Environmental buffers, forest conservation and planting areas, and any natural regeneration areas to be within park dedication areas or in Category I conservation easements. Conservation easements to be shown on record plats

(14) Conformance to the conditions as stated in DPS preliminary water quality plan approval letter, dated 7-25-01.

(15) Measures to mitigate traffic noise impacts on residential uses to be shown at site plan. Mitigation measures to be shown along Ridge Road. Mitigation measures may also be needed along Stringtown Rd., A-302, and A-305

(16) At site plan, provide permanent signage along conservation easement areas to make identify environmentally sensitive areas that are to remain protected Applicant to construct an 8 foot wide paved hiker/biker trail in the Clarksburg Greenway on the property applicant currently owns. The alignment will follow the approximate route as set out in Phase I of the Trail Facility Plan, with the detailed trail location and other design and construction considerations to be worked out by the time of the Infrastructure Plan

(17) Applicant will construct the portions of the hiker/biker trail from Stringtown Road east to Newcut Road and north to the DiMaio Property that are not on applicant's property, provided that M-NCPPC acquires the ownership or easement rights across the needed

property along the trail alignment and funds the proportionate cost to Applicant for construction of these additional sections of trail

(18) Applicant will construct Foreman Boulevard and Midcounty Highway to allow for grade separated crossing for the hiker/biker Greenway Trail. The trail crossings should be constructed to accommodate the trail under the roads without changing the natural location, configuration or composition of the stream channel, and should be located to minimize flooding of the trail and minimize surface water runoff from the paved trail directly into the stream

(19) The property within the delineated Clarksburg Greenway along Little Seneca Creek and Little Seneca Tributary will be dedicated to M-NCPPC and the hiker/biker trail constructed or clearly delineated and marked prior to construction of the residences that abut the Greenway

(20) The park area marked as Jeane Onufry Local Park will be graded, surfaced with topsoil, fine graded to a maximum of +/- 6" over 100', and seeded as appropriate for ball field cover. Grading plans will be submitted to park staff for review and approval. The park area will be dedicated to M-NCPPC

(21) The school/park site off of Midcounty Highway will be graded, surfaced with topsoil, fine graded to a maximum of +/- 6" over 100', and seeded as appropriate for ball field cover. Grading plans will be submitted to park staff for review and approval. The parking and ball field area at the north end of the site will be separately delineated and dedicated to M-NCPPC

(22) Phasing of the dedication of the school/parks sites shall be incorporated as part of the phasing schedule included with site plan approval

(23) At site plan address specifically the following:

a) Dwelling unit type and layout within the mixed use center
b) Coordinate with adjoining property owner to achieve a well integrated and designed commercial center that locates parking to the rear and provides special treatment for paving, seating, landscaping, lighting ant other pedestrian amenities
c) Provide adequate "windows" into open space areas
d) Dwelling unit orientation along all road rights of way

(24) Provide a minimum of 600 TDR's pursuant to the objectives of the Clarksburg Master Plan

(25) Final number and location of units to be determined at site plan

(26) Final number of MPDU's to be determined at site plan dependent on Condition #23

(27) No clearing, grading, unless designated on "Infrastructure Plan" and recording of lots prior to site plan approval

(28) All prior applicable conditions of Preliminary Plan No. 1-93007, Nanna Property remain in full force and effect

(29) The validity of the Preliminary Plan will remain valid until July 30, 2013 and shall be phased for recordation of lots as follows:

Phase One:	300 lots by July 30, 2004
Phase Two:	1,000 lots by July 30, 2007
Phase Three:	1,700 Lots by July 30, 2010
Phase Four:	All lots by July 30 2013

Prior to the expiration of the validity periods, a final record plat for all the property delineated in each phase must be recorded or a request for an extension must be filed

Site Plan 8-02038
Clarksburg Village Infrastructure Plan

December 18, 2003

MONTGOMERY COUNTY PLANNING BOARD

OPINION

DATE MAILED: December 18, 2003

SITE PLAN REVIEW #: 8-02038

PROJECT NAME: Clarksburg Village Infrastructure Plan

Action: Approval subject to conditions. Motion was made by Commissioner Bryant, seconded by Commissioner Perdue, with a vote of 5-0, Commissioners Berlage, Bryant, Robinson, Perdue and Wellington voting for, and no Commissioners voting against. All Commissioners were present.

The date of this written opinion is December 18 2003, (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before January 18, 2004 (which is thirty days from the date of this written opinion). If no administrative appeal is timely filed, this Site Plan shall remain valid for as long as Preliminary Plan #1-01030 is valid, as provided in Section 59-D-3.8.

On July 31, 2003, Site Plan Review #8-02038 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

1. *The Site Plan is consistent with an approved development plan or a project plan for the optional method of development if required;*
2. *The Site Plan meets all of the requirement of the R-200, R-200/TDR-3, R-200/TDR-4 and PD-4 zones;*

3. *The locations of the buildings and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient;*
4. *Each structure an use is compatible with other uses and other Site Plans and with existing and proposed adjacent development;*
5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation;*
6. *The Site Plan meets all applicable requirements of Chapter 19 regarding water resource protection;*

Therefore, the Montgomery County Planning Board APPROVES Site Plan #8-02038, which consists of 2,590 units on 741.40 acres subject to the following conditions:

1. M-NCPPC Parks

   a. Clarksburg Greenway to be built on the property applicant currently owns. The alignment will follow the route established by the Clarksburg Greenway Facility Plan and be constructed to park standards and specifications. The Applicant will provide necessary bridges and boardwalk per the Facility Plan or as approved by Park Staff

   b. Applicant will construct the portions of the hiker/biker trail from Stringtown Road east to Newcut Road and north to the Greenway Village Property that are not on applicant's property, provided that M-NCPPC acquires the ownership or easement rights across the needed property along the trail alignment and funds the proportionate cost to Applicant for construction of these additional sections of trail.

   c. Applicant will construct Foreman Boulevard to allow for a grade separated crossing for the hiker/biker Greenway Trail. The trail crossing should be constructed to accommodate the trail under the road without changing the natural location, configuration or composition of the stream channel, and should be located to minimize flooding of the trail and minimize surface water runoff from the paved trail directly into the stream. Trail crossing to meet the "staff guidelines" as set out in the attached Meeting Summary of March 18, 2002 unless otherwise agreed to by M-NCPPC staff and Applicant. The final trail/road crossing details shall be submitted to M-NCPPC staff for approval. The details of the Greenway Trail crossing of Midcounty Highway will be determined at time of Site Plan. A grade separated crossing will be considered at this location provided environmental concerns can be reasonably accommodated.

   d. The property within the delineated Clarksburg Greenway along Little Seneca Creek and Little Seneca Tributary will be dedicated to M-NCPPC and the hiker/biker trail constructed or clearly delineated and marked prior to construction of the residences that abut the Greenway. Signage to reviewed and approved by staff. Dedication to be made at time of record plat and boundaries to be clearly staked to delineate between parkland and private property. Dedicated property to be transferred free of trash and unnatural debris.

e. Applicant to construct an 8' wide hiker/biker trail to connect from the bike trail along A-305 to the trail system in parkland on the adjacent Greenway Village subdivision.

f. The park area marked as Jeane Onufry Local Park will be graded according to the park layout concept plan, surfaced with topsoil, fine graded to a maximum of +/- 6" over 100', and seeded as appropriate for ball field cover. The park will be dedicated to M-NCPPC at time of record plat. Additional recreational improvements to be constructed by Applicant on the park site with Development District funds, must be constructed to park standards and specifications. Specific types of recreation facilities and their arrangement on the park property must be coordinated with, and approved by, M-NCPPC staff.

g. Because of the limited size of both the Jeane Onufry Local Park and the school/park site, Applicant must provide stormwater quantity management off the park and school sites to accommodate the runoff from the park and school sites. Storm water quality to be provided by others on each site.

2. Park School Site

The school/park site off of A-305within the Phase I site plan area, shall be dedicated as follows:

a. The ball-field area (approximately 3 acres) at the north end shall be dedicated to M-NCPPC at the time of record plat for Phase I Site Plan. The site will be graded by the Applicant simultaneous with the construction of A-305, surfaced with topsoil, fine graded to a maximum of +/- 6" over 100', and seeded as appropriate for ball field cover.

b. The remainder of the site, the approximately ten acre "School Site," to the south shall either be conveyed in fee simple to M-NCPPC or other party as directed by M-NCPPC at the time of record plat for Phase I Site Plan. MNCPPC shall convey to MCPS fee simple title to the School Site if and when MCPS selects the School Site for a public school facility and establishes a construction project in the Board of Education's Capital Improvement Plan. The Applicant shall grade the School Site simultaneously with the construction of the A-305 and provide for quantity control for MCPS.

3. A site plan enforcement agreement shall be submitted to staff with the signature set for this approval. Any changes to the Infrastructure Plan will require its amendment.

4. Grading prior to staff release of signature set (but after staff review and approval of the Forest Conservation Plan) shall be allowed in accordance with exhibit presented by applicant and as may be adjusted with MCDPS and Environmental Planning Staff (for forest conservation plan) review.

5. Retail areas shall include special streetscape, lighting, sidewalks and paving material pending site plan review.

30A

Site Plan 8-03002
Phase One

December 18, 2003

31A

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Executive Director

MONTGOMERY COUNTY PLANNING BOARD

OPINION

DATE MAILED: December 18, 2003

SITE PLAN REVIEW #: 8-03002

PROJECT NAME: Clarksburg Village

Action: Approval subject to conditions. Motion was made by Commissioner Bryant seconded by Commissioner Perdue, with a vote of 5-0, Commissioners Berlage, Bryant, Robinson, Perdue and Wellington voting for, and no Commissioners voting against.

The date of this written opinion is December 18, 2003, (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before January 18, 2004 (which is thirty days from the date of this written opinion). If no administrative appeal is timely filed this Site Plan shall remain valid for as long as Preliminary Plan #1- 01030 is valid, as provided in Section 59-D-3.8.

On July 31, 2003, Site Plan Review #8-02038 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

1. *The Site Plan is consistent with an approved development plan or a project plan for the optional method of development if required;*
2. *The Site Plan meets all of the requirement of the R-200, R-200/TDR-3, R-200/TDR-4 and PD-4 zones, and is consistent with an urban renewal plan approved under Chapter 56;*
3. *The locations of the buildings and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient;*

4. *Each structure an use is compatible with other uses and other Site Plans and with existing and proposed adjacent development;*
5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation;*
6. *The Site Plan meets all applicable requirements of Chapter 19 regarding water resource protection*

Therefore, the Montgomery County Planning Board APPROVES Site Plan #8-03002 for the following:

FINAL WATER QUALITY APPROVAL FOR SPECIAL PROTECTION AREA

Approval of Final Water Quality Plan for Site Plan # 8-03002 with the following conditions:

1. Reforestation is to begin as soon as possible after the issuance by the Montgomery County Department of Permitting Services (DPS) issuance of grading permits, with appropriate phasing to allow for the construction of sediment and erosion control structures.

2. Conformance to the conditions as stated in the DPA letter dated July 18, 2003 approving the elements of the SPA water quality plan under its purview, attached.

DRC.Montrose Crossing.dec103

SITE PLAN

STAFF RECOMMENDATION: Approval of 471 SFD, 414 Townhouses (inclusive of 44 MPDU Townhomes) and 48 MPDU Multifamily homes inclusive of a total of 92 MPDU's and 144 TDR's with the following conditions to be met prior to signature set:

1. Park School Site

The school/park site off of A-305within the Phase I site plan area, shall be dedicated as follows:

a. The ball-field area (approximately 3 acres) at the north end shall be dedicated to M-NCPPC at the time of record plat for Phase I Site Plan. The site will be graded by the Applicant simultaneous with the construction of A-305, surfaced with topsoil, fine graded to a maximum of +/- 6" over 100', and seeded as appropriate for ball field cover.

b. The remainder of the site, the approximately ten acre "School Site", to the south shall either be conveyed in fee simple to M-NCPPC or other party as directed by M-NCPPC at the time of record plat for Phase I Site Plan. MNCPPC shall convey to MCPS fee simple title to the School Site if and when MCPS selects the School Site for a public school facility and establishes a construction project in the Board of Education's Capital Improvement Plan. The Applicant shall grade the School Site simultaneously with the construction of the A-305 and provide for quantity control for MCPS.

2. Lighting and Landscaping Plan

Staff to review the final landscape plans for adequacy of buffer along A-305 and inclusion of native plant. Staff to review final lighting plans for private streets and driveways and garages for conformance to IESNA guidelines for reducing light pollution.

3. Environmental Planning

a. All residential units that will be subject to projected future exterior noise levels equal or exceeding 65 dBA Ldn, must be constructed to meet the 45 dBA Ldn interior noise standard.

Certification from an acoustical engineer that the building shell of impacted buildings along A-305 has been designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn. Certification shall be distributed to M-NCPPC technical staff for review prior to release of building permit.

The builder shall construct these units in accord with acoustical design specifications, with any changes that may negatively affect acoustical performance approved by an acoustical engineer and M-NCPPC staff in advance of installation.

Prior to occupancy, the builder must certify, via written notice to M-NCPPC staff, that the residential units are constructed in accordance with the acoustical design specifications as identified.

All residential units that are subject to projected future exterior noise levels equal or exceeding 65 dBA Ldn shall be protected with exterior noise attenuation fencing.

b. SWM waiver of open section streets within Special Protection Areas

c. Forest Conservation Plan shall satisfy all conditions of approval prior to recording of plat and DPS issuance of sediment and erosion control permit.

4. Division of Permitting Services
   a. SWM Memo - Conditions of DPS Stormwater Management Concept approval letter dated July 18, 2003.
   b. Streets and Paving Memo of June 24, 2003.

5. Affirmation of Waiver of Subdivision Standards

   a. The Planning Board approves the waivers shown previously and are specified here as:
      1. Section 50-26 (h)(3) Waiver of Sidewalk one side of street for Cool Valley Ct and Tulip Tree Terrace
      2. Section 50-26(e)(3) – 25 Ft Truncation to radius truncation
      3. Section 50-26-(a)(1) Max block length of 1,600 ft – One Block at Rainbow Arch Drive and Robin Song Drive is longer
      4. Section 50-29(a)(2) –SFD Unit frontage on Public Street – for courtyards
      5. Section 50-29(a)(3)lot lines perpendicular to ROW – at radius
      6. Section 59-C-(a)(4) allow more than one unit on lot – for attached TH's (piggybacks)

6. Block Design Standards

   For all single family lots less than 60 feet width at the building restriction line with front load garages, the following restrictions apply:

   1. No house elevations or colors will be the same as any home on either side or across the street.
   2. A minimum of 20% and a maximum of 70% of the homes will have a brick or stone front.
   3. A minimum of 30% of the homes will have a front porch of at least 15 feet in width.
   4. No more than 50% of the homes shall have garages which project closer to the street than the front wall or porch of the home. Homes with this type of elevation may be built only two in a row.
   5. Homes with the same elevation and color shall not be built within sight of each other.

7. M-NCPPC Parks Greenway Trail

   a. Applicant to construct an 8-foot wide asphalt/boardwalk hiker/biker trail in the Clarksburg Greenway on the property applicant currently owns. The alignment will follow the route established by the Clarksburg Greenway Facility Plan and be

constructed to park standards and specifications. The Applicant will provide necessary bridges and boardwalk per the Facility Plan or as approved by Park staff.

b. Applicant will construct the portions of the hiker/biker trail from Stringtown Road east to Newcut Road and north to the Greenway Village Property that are not on applicant's property, provided that M-NCPPC acquires the ownership or easement rights across the needed property along the trail alignment and funds the proportionate cost to Applicant for construction of these additional sections of trail.

c. Applicant will construct Foreman Boulevard to allow for grade separated crossing for the hiker/biker Greenway Trail. The trail crossing should be constructed to accommodate the trail under the road without changing the natural location, configuration or composition of the stream channel, and should be located to minimize flooding of the trail and minimize surface water runoff from the paved trail directly into the stream. Trail crossing to meet the "staff guidelines" as set out in the attached Meeting Summary of March 18, 2002, attached, unless otherwise agreed to by M-NCPPC staff and Applicant. Due to the substantial length of the trail under Foreman Boulevard, Applicant to install adequate lighting along the trail under the road. Final trail/road crossing details to be submitted to M-NCPPC staff for approval.

d. The property within the delineated Clarksburg Greenway along Little Seneca Creek and Little Seneca Tributary will be dedicated to M-NCPPC and the hiker/biker trail constructed or clearly delineated and marked prior to construction of the residences that abut the Greenway. Dedication to be made at time of record plat and boundaries to be clearly staked to delineate between parkland and private property. Dedicated property to be transferred free of trash and unnatural debris.

e. The entire school/park site on Snowdens Mill Parkway, including the ball field area at the north end, will be graded by Applicant, surfaced with topsoil, fine graded to a maximum of +/- 6" over 100', and seeded as appropriate for ball field cover.

8. Signature Set Documentation

Submit a Site Plan Enforcement Agreement, Development Review Program and Homeowner Association Documents for review and approval prior to release of the signature set as follows:

a. Development Program to include a phasing schedule as follows:

1) Streets tree planting must progress, as street construction is completed, but no later than six months after completion of the units adjacent to those streets.

2) Community-wide pedestrian pathways and recreation facilities must be completed prior to seventy percent occupancy of each phase of the development.
3) Landscaping associated with each parking lot and building shall be completed as construction of each facility is completed.
4) Pedestrian pathways and seating areas associated with each facility shall be completed as construction of each facility is completed.
5) Clearing and grading to correspond to the construction and infrastructure phasing.
6) Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, or other features.
7) Noise attenuation design completed and accepted by M-NCPPC technical staff prior to release of building permits.
8) Site plan #8-03002 will withhold 231 market-rate building permits (30 MPDUs /13%) until building permits for the construction of the required MPDUs (offsite) in the next phase are released. MPDU construction within Phase I to be included in Phasing Plan.
9) Greenway dedication with record plat and trail construction prior to unit construction
10) Park School dedication

b. Signature set of site, landscape/lighting, forest conservation and sediment and erosion Control plans to include for M-NCPPC technical staff review prior to approval by Montgomery County Department of Permitting Services (DPS):
1) Limits of disturbance.
2) Methods and locations of tree protection.
3) Forest Conservation areas.
4) Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading.
5) The development program inspection schedule and Site Plan Opinion.
6) Conservation easement boundary.
7) Streets trees 40 or 50 feet on center along all public streets.
8) Centralized, screened trash areas for all multi-family and one-family attached units except townhouses.
9) Units to conform to zoning restrictions.

c. No clearing or grading prior to M-NCPPC approval of signature set of plans unless authorized by Infrastructure Plan or other approvals.

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Preliminary Plan Amendment B
1-01030B

July 6, 2005

38A

M-NCPPC

MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Date Mailed: JUL - 6 2005

Action: Approved Staff Recommendation
Motion of Commissioner Bryant, seconded by Commissioner Robinson, with a vote of 5-0;
Chairman Berlage and Commissioners. Perdue, Bryant, Wellington, and Robinson voting in favor.

MONTGOMERY COUNTY PLANNING BOARD

OPINION

Preliminary Plan 1-01030B
NAME OF PLAN: Clarksburg Village

The date of this written opinion is JUL - 6 2005 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State).

INTRODUCTION

On 2/13/04, the applicant, Elm Street Development ("Applicant") submitted an application for the approval of a second amendment to a previously approved and amended preliminary plan of subdivision of property in the R-200/TDR-4, R-200/TDR-3, R-200, PD-4 zone. The instant application for amendment sought the Board's approval ~~to create an additional 64 lots (for a development total of 2,654)~~ on 689.5 acres of land located at southwest quadrant of the intersection of Stringtown Road and Peidmont Road, in the Clarksburg master plan area. The application was designated Preliminary Plan 1-01030B.[1] On 12/23/04, Preliminary Plan 1-01030B was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the

[1] The application was incorrectly noticed as Preliminary Plan No. 1-01030A, which is the plan number for the first amendment.

Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. A corporate officer of the Applicant appeared in person and testified that the Applicant agreed with the Staff recommendation and the recommended condition of approval.

At the hearing, Staff advised the Board that it had received a letter from an adjacent homeowners association ("HOA") expressing a concern with the alignment of A-305, an arterial road that traverses the subject property. Staff stated that the HOA wanted the record to reflect that they do have an issue with the alignment. Staff testified that the alignment in question is not before the Board as a part of the instant application but that Staff would consider the concerns of the HOA at such time as it reviews the site plan for the relevant phase of the Clarksburg Village development.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Preliminary Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing, including the Staff Report dated December 17, 2004; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

PROJECT DESCRIPTION

This amendment includes the addition of approximately 30 acres of land to the area of approved preliminary plan. The 30-acre tract is located along Stringtown Road in Clarksburg between the previously approved Clarksburg Village and Clarksburg Highlands preliminary and site plans. The site is completely forested except for a strip of forest cleared for the construction of a WSSC sewer line to service the Clarksburg Town Center development. The property is zoned R-200. The proposed development of the site includes single-family detached units, townhouses and associated infrastructure. The entire site is within the Clarksburg Special Protection Area.

The site is located within the Little Seneca Creek watershed. Water flows to the Town Center tributary, a first order tributary, and then directly to the Little Seneca Creek. The streams are designated as Use IV-P. The natural resource inventory for the 30-acre tract delineates the onsite environmental buffers, forests, steep and moderately steep slopes.

STAFF ANALYSIS AND FINDINGS FOR THE PRELIMINARY PLAN AMENDMENT

Staff's review of Preliminary Plan #1-01030B, Clarksburg Village, indicated that the subject plan conforms to the recommendations of the Clarksburg Master Plan. The application proposed to add acreage to the overall site and construct 64 additional one-family attached residential dwelling units.

TRANSPORTATION

Staff determined that no additional transportation improvement conditions were needed for the proposed 64-townhouse addition to the approved Clarksburg Village development. The previously required transportation improvements provide sufficient transportation capacity to accommodate the proposed addition and no other transportation issues have been identified regarding the proposed amendment. Staff concluded that the subject preliminary plan satisfies the Adequate Public Facilities test.

ENVIRONMENTAL

Water quality plans are required as part of the Special Protection Area regulations. Under the SPA law, Montgomery County Department of Permitting Services (DPS) and the Planning Board have different responsibilities in the review of the water quality plan. DPS has reviewed and conditionally approved the elements of the water quality plan under their purview. The Planning Board responsibility is to determine if the site imperviousness, environmental guidelines for special protection areas, and forest conservation requirements have been satisfied.

Forest Conservation

The applicant proposed to amend the previously approved preliminary plan by adding an additional 30 acres of land to the Clarksburg Village property. The final forest conservation for Clarksburg Village will also be amended with this approval.

The undeveloped 30-acre tract includes 27.5 acres of forest. The applicant proposed removal of 7.5 acres of forest from the tract and the retention of the remainder of the forest onsite. The total planting requirements for the Clarksburg Village final forest conservation plan will be modified and the forest planting amount will also changed. The applicant proposed to meet the forest conservation requirements for the entire Clarksburg Village development through a combination of forest retention, onsite forest planting of unforested portions of stream valley buffers, planting of upland areas, landscape credit. A five-year maintenance period is required for all forest plantings per the environmental guidelines.

Site Imperviousness

There are no impervious limitations within the Clarksburg SPA. The impervious amount proposed for the additional 30-acre tract is less than 10 percent. Environmental Planning and the applicant worked together to reduce the amount of forest loss, and impervious surfaces, to better protect the environment for this addition to the previously approved plan.

Environmental Guidelines

The environmental guidelines for SPAs require examination of many tools to maximize achievement of site performance goals. For instance, the goal of protecting seeps, springs, and wetlands is better achieved with naturalized buffers surrounding these areas. The natural resource inventory for the Clarksburg Village site identified the environmental buffers, steep and moderately steep slopes, soil types, and priority forests. Environmental buffers include wetlands and wetland buffers, floodplains, and streams and stream valley buffers. The applicant will place forest conservation easements on the environmental buffers and all forests preserved outside of the environmental buffers.

Site Performance Goals

As part of the final water quality plan, several site performance goals were established for the project:

1. Protect the streams and aquatic habitat.
2. Maintain the nature on-site stream channels.
3. Maintain stream base flows.
4. Identify and protect stream banks prone to erosion and slumping.
5. Minimize storm flow runoff increases.
6. Minimize increases in ambient water temperatures.
7. Minimize sediment loading.
8. Minimize pollutant loadings (nutrient and toxic substances).
9. Protect springs, seeps, and wetlands.

Stormwater Management

To help meet these performance goals, the stormwater management plan requires water quality control and quantity control to be provided through a system of linked best management practices (BMPs). Dry ponds, vegetated swales, dry swales, bioretention structures, sand filters, and infiltration/recharge structures will be used for stormwater management.

STAFF RECOMMENDATION

Staff concluded that Preliminary Plan #1-01030B, Clarksburg Village, conforms to the Clarksburg Master Plan and meets all necessary requirements of the Subdivision Regulations. As such, Staff recommended approval of the amendment to the preliminary plan subject to specified conditions.

FINDINGS

Having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopt and incorporate by reference; the recommendations of the applicable public agencies[2]; the applicant's position; and other evidence contained in the Record, which is hereby incorporated in its entirety into this Opinion, the Montgomery County Planning Board finds that:

a) The Preliminary Plan No. 1-01030B substantially conforms to the Clarksburg master plan

b) Public facilities will be adequate to support and service the area of the proposed subdivision.

c) The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.

d) The application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A. This finding is subject to the applicable condition(s) of approval.

e) The application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan meets MCDPS' standards.

f) The Record of this application does not contain any contested issues; and, therefore, the Planning Board finds that any future objection, which may be raised concerning a substantive issue in this application, is waived.

[2] The application was referred to outside agencies for comment and review, including the Washington Suburban Sanitary Commission, the Department of Public Works and Transportation, the Department of Permitting Services and the various public utilities. All of these agencies recommended approval of the application.

CONDITIONS OF APPROVAL

Finding Preliminary Plan No. 1-01030B in accordance with the purposes and all applicable regulations of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 1-01030B, subject to the following conditions:

1. Approval under this preliminary plan is limited to a maximum of 2,654 residential dwelling units, 20,000 square feet office/retail use, and 5,000 square foot daycare facility. All previous conditions of approval of the Planning Board opinion dated January 23, 2003, for Preliminary Plan No. 1-01030 remain in full force and effect.

APPROVED AS TO LEGAL SUFFICIENCY
M-NCPPC LEGAL DEPARTMENT
DATE 6/7/05

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

CERTIFICATION OF BOARD VOTE ADOPTING OPINON

At its regular meeting, held on Thursday, June 23, 2005, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent, ADOPTED the above Opinion, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Clarksburg Village, Preliminary Plan No. 1-01030B.

Certification As To Vote of Adoption
Technical Writer

Site Plan Amendment A
Phase One
8-03002A

June 29, 2005

46A

M-NCPPC

MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Date of Mailing: JUN 29 2005

MONTGOMERY COUNTY PLANNING BOARD
OPINION

Site Plan No.: 8-03002A
Project: Clarksburg Village
Date of Hearing: December 23, 2004

Action: ***APPROVAL OF FINAL WATER QUALITY PLAN SUBJECT TO CONDITIONS.*** *Motion to approve was made by Commissioner Bryant; duly seconded by Commissioner Robinson; with a vote of 5-0, Commissioners Berlage, Bryant, Wellington, and Robinson voting in favor.*

Action: ***APPROVAL OF SITE PLAN SUBJECT TO CONDITIONS.*** *Motion to approve was made by Commissioner Bryant; duly seconded by Commissioner Robinson; with a vote of 5-0, Commissioners Berlage, Perdue, Bryant, Wellington, and Robinson voting in favor. Commissioner Perdue was temporarily absent.*

The date of this written opinion is JUN 29 2005 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules of Court – State). This site plan shall remain valid as provided in Section 59-D-3.8.

INTRODUCTION

On December 23, 2004, Final Water Quality Plan and Site Plan Review #8-03002A were brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the

Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application.

The record for this application ("Record") closed at the conclusion of the public hearing, upon the taking of an action by the Planning Board. The Record includes: the information on the Site Plan Application Form; the Planning Board staff-generated minutes of the Subdivision Review Committee meeting(s) on the application; all correspondence and any other written or graphic information concerning the application received by the Planning Board or its staff following submission of the application and prior to the Board's action at the conclusion of the public hearing, from the applicant, public agencies, and private individuals or entities; all correspondence and any other written or graphic information issued by Planning Board staff concerning the application, prior to the Board's action following the public hearing; all evidence, including written and oral testimony and any graphic exhibits, presented to the Planning Board at the public hearing.

THE SUBJECT PROPERTY

The site is located to the east side of Stringtown Road, immediately north of the Little Seneca Creek stream crossing and immediately south of the Granite Rock Road entry to Clarksburg Village subdivision from Stringtown Road. Opposite Stringtown Road is the Clarksburg Town Center subdivision, Phase I, and existing homes, all single-family detached units.

FINAL WATER QUALITY PLAN APPROVAL

Development Review Division staff of the Montgomery County Department of Park and Planning ("Staff") recommended approval with conditions of the Final Water Quality Plan in its memorandum dated December 16, 2004 ("Water Quality Staff Report").

Water quality plans are required as part of the Special Protection Area regulations. Under the SPA law, Montgomery County Department of Permitting Services ("DPS") and the Planning Board have different responsibilities in the review of the water quality plan. DPS has reviewed and conditionally approved the elements of the Final Water Quality plan under their purview. The Planning Board's responsibility is to determine if the forest conservation requirements, environmental guidelines for special protection areas, and imperviousness requirements have been satisfied.

Site Performance Goals

As part of the final water quality plan, several site performance goals were established for the project. The goals included:

1. Protecting the streams and aquatic habitat.
2. Maintaining the nature of onsite stream channels.
3. Maintaining stream base flows.
4. Identifying and protecting stream banks prone to erosion and slumping.
5. Minimizing storm flow runoff increases.
6. Minimizing increases in ambient water temperatures.
7. Minimizing sediment loading.
8. Minimizing pollutant loading.
9. Protecting springs, seeps, and wetlands.

Environmental Guidelines

The environmental guidelines for SPAs require examination of many tools to maximize achievement of site performance goals. For instance, the goal of protecting seeps, springs, and wetlands is better achieved with naturalized buffers surrounding these areas. The natural resource inventory for the Clarksburg Village site identified the environmental buffers, steep and moderately steep slopes, soil types, and priority forests. Environmental buffers include wetlands and wetland buffers, floodplains, and streams and stream valley buffers. The applicant will place forest conservation easements on the environmental buffers and all forests preserved outside of the environmental buffers.

Forest Conservation

The applicant proposed to amend the previously approved preliminary and site plans by adding an additional 30 acres of land to the Clarksburg Village property. The final forest conservation for Clarksburg village will be amended with this approval.

The undeveloped 30-acre tract includes 27.5 acres of forest. The applicant proposed to remove 7.5 acres of forest from the tract and retain the remainder of the forest onsite. The total planning requirements for the Clarksburg Village final forest conservation plan will be modified, and the forest-planting amount will also change.

The applicant has proposed to meet the forest conservation requirements for the entire Clarksburg Village development through a combination of forest retention, onsite forest planting of unforested portions of stream valley buffers, planting of upland areas, landscape credit. A five-year maintenance period is required for all forest plantings per the environmental guidelines.

Site Imperviousness

There are no impervious limitations within the Clarksburg SPA. The impervious amount proposed for the additional 30-acre tract is less than ten percent (10%). Environmental Planning and the applicant worked together to reduce the amount of forest loss and impervious surfaces to better protect the environment for this addition to the previously approved plan.

Stormwater Management

To help meet the performance goals, the stormwater management plan requires water quality control and quantity control to be provided through a system of linked best management practices. Dry ponds, vegetated swales, bioretention structures , sand filters, and infiltration/recharge structures will be used for stormwater management.

PLANNING BOARD ACTION AND CONDITIONS FOR FINAL WATER QUALITY PLAN

The Montgomery County Planning Board APPROVES the Final Water Quality Plan for Site Plan #8-03002A with the following conditions:

1. Reforestation is to begin as soon as possible after the issuance by the Montgomery County Department of Permitting Services (DPS) issuance of grading permits, with appropriate phasing to allow for the construction of sediment and erosion control structures.

2. Conformance to the conditions as stated in the DPS letter approving the elements of the SPA water quality plan under its purview.

SITE PLAN APPROVAL

PROPOSED DEVELOPMENT

This amendment to the previously approved Site Plan includes two areas of expansion– one adjacent to Stringtown Road and the second adjacent to Grand Elm Street. They have been changed to townhouses and expanded single-family detached areas, respectively.

The townhouses are designed in courts with an open end oriented towards the wooded areas to the east. An internal sidewalk and path system provide for pedestrian linkages between units and to the play area located near the MPDU 2 over 2 units to the eastern end. Landscaping includes tree plantings along the unit frontages and streets and screen planting around the rear and side of townhouse back yards. A recreation area is provided (near the MPDUs) that includes open space, benches, and play structures.

The single-family detached units have expanded slightly down slope towards the stream and trail. The units now create an open space "window" to the park and that is aligned at the end of British Manor Drive and a bike path connection is created at the end of Bent Arrow Drive. The landscaping for these units include street trees in front and landscaping and reforestation areas associated with the open space "windows."

SUMMARY OF TESTIMONY AND EVIDENCE IN RECORD

Staff presented the project as consistent with the Staff Report.

David Flanagan testified on behalf of the Applicant and advised the Board that he agreed with the Staff recommendation, including the recommended conditions of approval.

At the hearing, the President of the Clarksburg Civic Association ("CCA"), Paul Majewski, testified on behalf of residents across Stringtown Road from the proposed development. Among the concerns expressed were: (1) he did not believe that the existing residents received notice that a townhouse community would be developed directly across Stringtown Road and, if they had been notified it was over a year prior to the hearing date. Mr. Majewski suggested dropping a number of units in order to increase the distance between the townhomes and the existing houses across Stringtown. . Mr. Majewski also expressed concerns about the proximity of the units to the remainder of Clarksburg Village, observing that there is a lack of trail connections to this section, effectively isolating the townhome development from the balance of the Clarksburg Village community. He

commented on the access point to the site, specifically the relation between that access road in relation to the crest of the hill and the curve of the road. Additionally, he stated a preference that the new Stringtown Road be completed before construction on the proposed development occur. Mr. Majewski requested buffering be installed on the west side of Stringtown Road also, suggesting that screening landscaping be planted.

With respect to notice, Staff testified that it had provided notice consistent with the Board's Rules of Procedure. Staff informed the Board that the Applicant sent notice of the application to the confronting landowners shortly after the application was filed on February 24, 2004, which notice included a drawing of the proposed development and showed that townhomes were proposed. Staff clarified for the Planning Board that the nearest proposed townhouse unit will be approximately 300 feet from the closest single-family home across Stringtown Road. Staff described the screening buffer, which will consist of street trees in the median and on either side of proposed Stringtown Road. Additionally, the Applicant's engineer pointed out that proposed Stringtown Road is the high point and would serve as a berm between the existing homes and the new development, because both residential areas are situated lower than the grade of the road. The Applicant offered to add landscaping to the signature set drawings to show upper and understory evergreen screening vegetation on the west side of Stringtown Road. Additionally, Staff noted that the project resembles many other recently approved subdivisions in Clarksburg, with townhouses confronting single-family detached housing along arterial right-of-ways.

FINDINGS

Based on all of the testimony and evidence presented and on the Staff Report, which is made a part hereof, the Montgomery County Planning Board finds:

1. An approved development plan or a project plan is not required for the subject development.

2. The Site Plan meets all of the requirements of the R-200 zone as demonstrated in the project Data Table on page 11 of the Staff Report.

3. The locations of the buildings and structures, the open spaces, the landscaping, the recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.

a. Buildings

The location of the townhouses creates a desirable relationship to the external streets of the neighborhood by facing front yards towards them. The orientation of units into courtyards makes the housing groups into identifiable neighborhood groups.

b. Open Spaces

The plan proposes 18.50 acres of open space for the R-200 portion of the site beyond the 1.70 acres required. The open spaces are between units and along the perimeter of the property. The open space along with existing trees will provide a natural setting for the units and will provide for the continuation of the Clarksburg Greenway.

c. Landscaping and Lighting

The landscaping concept adequately provides for an attractive, environmentally sound and functional project by providing shade, screens and buffers. The Plan also provides for the preservation of existing trees and incorporates them in to developed areas, creating environmental benefits of shade and less erosion. The street trees define the streets, provide a buffer between the units and the street and they provide for a pleasant walking environment. The foundation plants and open space accent plants will create an attractive separation between the units and the paved surfaces. The buffers will screen views to the street and views of the units providing separation and privacy as needed. The conditions of approval will ensure that the Applicant provides additional roadside buffer planting, improved unit foundation and alley planting and unit side yard buffer planting. As conditioned, landscaping is adequate for the project and will address many of the screening concerns voiced by the confronting neighbors.

The proposed lighting plan will include streetlights that are regulated by MCDPW&T. The styles of the light fixtures proposed are consistent with the light fixtures allowed by DPW&T within the Clarksburg Town Center Planning Area. Alleys will be lit by garage-mounted lights with cut-off features to prevent light pollution. Lighting is adequate for the project.

d. Recreation

Recreation demand is satisfied for the entire project. Final calculations will be incorporated into the signature set. The recreation will provide for a variety of outdoor exercise and play opportunities by providing numerous play areas within close proximity to housing. The Greenway Trail will provide for local and regional recreations opportunities. The Board finds that the Greenway Trail provides an adequate pedestrian link to the balance of the Clarksburg Village community.

e. Vehicular and Pedestrian Circulation

Access points to the site for the townhouses are to be provided from Stringtown Road with an internal street created parallel to it. The access to each townhouse court is well described with good orientation. The single family detached units are directly oriented to the internal public streets.

An eight-foot-wide shared use path (Class I bikeway) is located on the far side of Stringtown Road. With the approval of this site plan, the Greenway Trail will be constructed to the south of this project and it will include an important bike-path and foot-path link to this project and within this region. Connections within the single family detached units will be made directly to the path. The townhouses will utilize sidewalks on A-305 to make the connection to the bike path.

Internal sidewalks will also be provided to facilitate pedestrian circulation throughout the development.

4. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

The building locations are compatible with adjacent development with the difference in densities buffered by open space and plantings. The residential land uses as proposed within the project will be compatible with internal land uses.

The potential noise levels generated by traffic are planned to be mitigated through the use of buffers utilizing berms, landscaping and noise walls/fences.

The activity associated with the proposed residential development will not cause any negative effect on adjacent residential uses, including the existing single-family detached residences across Stringtown Road. The Board notes that, as Staff pointed out at the hearing, the closest any proposed townhome will be located to a single-family residence across Stringtown Road is 300 feet, which separation the Board finds promotes compatibility. The Board finds that the testimony and evidence of record, including the practical effect of Stringtown Road serving as a berm between the existing and new development and the additional screening landscaping agreed to by the Applicant, demonstrates that the proposed development will be compatible with the confronting single-family residences.

5. The site plan meets all applicable requirements of Chapter 22A regarding forest conservation.

The applicant is proposing to amend the previously approved preliminary and site plans by adding an additional 30 acres of land to the Clarksburg Village property. The final forest conservation for Clarksburg Village will also be amended with this approval.

The undeveloped site 30-acre tract includes 27.5 acres of forest. The applicant is proposing to remove 7.5 acres of forest from the tract and retain the remainder of the forest onsite. The total planting requirements for the Clarksburg Village final forest conservation plan will be modified and the forest planting amount will also changed. The applicant has proposed to meet the forest conservation requirements for the entire Clarksburg Village development through a combination of forest retention, onsite forest planting of unforested portions of stream valley buffers, planting of upland areas, landscape credit. A five-year maintenance period is required for all forest plantings per the environmental guidelines.

6. Staff provided proper notice of the application and the public hearing.

The Planning Board finds, based on Staff testimony and evidence of record, including the contents of the public file, that the Applicant mailed notice of the filing of the instant application to the confronting landowners as required by the Board's Rules of Procedure. Moreover, the Board finds that Staff mailed its notices of the hearing to all required recipients in accordance with the Board's Rules of Procedure.

7. The Planning Board finds that any future objection concerning a substantive matter that was not raised prior to or at the public hearing on this application is waived.

PLANNING BOARD ACTION AND CONDITIONS FOR SITE PLAN APPROVAL

The Montgomery County Planning Board APPROVES Site Plan Review #8-03002A for 997 units in Phase I with a total of 135 Transfer Development Rights (TDRs) (with 358 TDR's for Phase I and II), and 108 Moderately Priced Dwelling Units (MPDUs), 363.87 acres, in the R-200/TDR-3 zone with the following conditions:

1. Preliminary Plan Conformance
   The proposed development shall comply with the conditions of approval for Preliminary Plan amendment 1-01030B.

2. Site Plan Conformance
   The proposed amendments to this site plan shall include the final conditions of approval as determined by the Planning Board's approval and Opinion dated December 18, 2003.

3. Site Design
   a. Provide increase in open spaces adjacent to townhouse units.
   b. Provide sign at bike path connection by Single Family Detached units to indicate public thoroughfare to the Greenway.

4. Landscaping
   a. Provide increased landscaping around unit foundations and alleys and side yards adjacent to streets.
   b. Provide additional street trees, internally, and additional buffer planting adjacent to both sides of Stringtown Road. Applicant to provide landscaping on the opposite side of Stringtown Road on a parcel of land immediately adjacent to the right-of-way, as reviewed and approved by Staff.

5. Lighting
   a. ~~Provide a lighting distribution and photometric plan with summary report and~~ tabulations to conform to IESNA standards for residential development.
   b. All light fixtures shall be cut-off fixtures.
   c. Reflectors or house shields shall be installed on all fixtures causing potential

glare or excess illumination, specifically on the perimeter fixtures abutting the adjacent residential properties.

d. Illumination levels shall not exceed 0.5 footcandles (fc) at any property line abutting county roads or adjacent residential properties.

6. Recreation Facilities
Provide final calculations showing addition of tot lot and sitting area to Phase I calculations.

7. M-NCPPC Park Facility
The applicant shall comply with the original conditions of site plan 8-03002.

8. Transfer Development Rights (TDRs)
Prior to recording the final plat, the applicant shall provide verification that 137 TDRs have been acquired for the proposed development. Applicant shall provide, to Staff, an updated TDR chart for this phase of the project.

9. Moderately Priced Dwelling Units (MPDUs)
The proposed development shall provide 108 MPDUs on-site (within Phase I). This amendment includes an amendment to Condition 8.a.8) of Site Plan 8-03002, which will reduce the number of market-rate building permits required to be withheld in Phase I (until building permits for the construction, within Phase II, of the required Phase I off-site MPDUs are released) from 231 to 166. MPDU construction within Phase I to be included in Phasing Plan.

10. Noise Attenuation
The applicant shall supply staff with a noise analysis that shows conformance to the original approval or the following standards:

a. Certification from an engineering firm that specializes in acoustical analysis, that the building shell for residential dwelling units to be constructed within the unmitigated 65 dBA Ldn noise contour is designed to attenuate projected exterior noise levels to an interior level not to exceed 45 dBA Ldn. The certification from the acoustical engineer shall be reviewed and approved by M-NCPPC Environmental Planning staff prior to issuance of building permits. Any changes that may affect acoustical performance shall be approved by the acoustical engineer in advance of installation and M-NCPPC Environmental Planning staff prior to their implementation.

b. Applicant shall conduct an outdoor-to-indoor noise analysis of constructed units to ensure the 45 dBA Ldn interior noise level is achieved within the unmitigated 65 dBA Ldn contour after construction and shall present verification of noise levels to M-NCPPC Environmental Planning staff prior to occupancy of the residential units.

c. For all residential dwelling units to be constructed within the 65 dBA Ldn unmitigated noise contour, the applicant/developer/builder shall disclose in writing to all prospective purchasers that those homes are impacted by existing and future highway noise. Such notification will be accomplished by inclusion of this information in all sales contracts, brochures and promotional documents, including the Illustrative Site Plan(s) on display within any sales related office(s), as well as in Homeowner Association Documents, and by inclusion on all subdivision and site plans, and with all Deeds of Conveyance. Notification shall be provided to M-NCPPC staff prior to issuance of any building permit.

11. Stormwater Management
The proposed development is subject to Stormwater Management Concept approval conditions dated December 15, 2004.

12. Common Open Space Covenant
Record plat of subdivision shall reference the Common Open Space Covenant recorded at Liber 28045 Folio 578 ("Covenant"). Applicant shall provide verification to M-NCPPC staff prior to issuance of the 698th (the same number used for completion of amenities) building permit that Applicants recorded Homeowners Association Documents incorporate by reference the Covenant.

13. Development Program
Applicant shall construct the proposed development in accordance with Development Program. A Development Program shall be reviewed and approved by M-NCPPC staff prior to approval of signature set of site plan. Development Program shall include a phasing schedule as follows:

a. Street tree planting shall progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.

b. ~~Community-wide pedestrian pathways and the open space sitting and play~~ areas and recreation facilities shall be completed prior to issuance of the 698th building permit.

c. Landscaping associated with each parking lot and building shall be

completed as construction of each facility is completed.

d. Pedestrian pathways and seating areas associated with each facility shall be completed as construction of adjacent units are completed.
e. Clearing and grading shall correspond to the construction phasing, to minimize soil erosion.
f. Provide each section of the development with necessary roads.
g. Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.

14. Clearing and Grading

The Applicant may begin clearing and grading prior to M-NCPPC approval of signature set of plans only after the final Forest Conservation Plan and Sediment Control Plans have been approved. Signature set of plans shall be approved by M-NCPPC prior to issuance of any building permit or recording of plat(s).

15. Signature Set

Prior to signature set approval of site and landscape/lighting plans the following revisions shall be included and/or information provided, subject to staff review and approval:

a. Development program, inspection schedule, and Site Plan Opinion.
b. Undisturbed stream buffers as shown.
c. Limits of disturbance.
d. Methods and locations of tree protection.
e. Forest Conservation easement areas.
f. MPDU, TDR, and recreation facility calculations.
g. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading.

APPROVED AS TO LEGAL SUFFICIENCY
TAB
M-NCPPC LEGAL DEPARTMENT
DATE 6/17/06

[CERTIFICATION OF BOARD VOTE ADOPTING OPINION ON FOLLOWING PAGE]

CERTIFICATION OF BOARD VOTE ADOPTING OPINON

At its regular meeting, held on Thursday, June 23, 2005, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, by unanimous consent, ADOPTED the above Opinion, which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for Clarksburg Village, Site Plan No. 8-03002A.

Certification As To Vote of Adoption
Technical Writer

Attachment
D

Correspondence
Elm Street Development

ELM STREET DEVELOPMENT

April 11, 2006

Ms. Faroll Hamer
Acting Director
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910-3760

RE: Clarksburg Village – R-200 TDR-3 Lot Size

Dear Faroll:

We recently realized that we have four single family detached lots in the R-200 TDR-3 Section of Clarksburg Village that are less than 4,000 s.q. in size. This fact may be a violation of the zoning ordinance.

Margaret Rifkin let me know you have been discussing which standards apply in R-200 TDR-3 and 4 zoned land. Your initial conclusion was that there may not be lot size minimums for single family detached lots. I certainly hope this conclusion holds, but I think it may be in error.

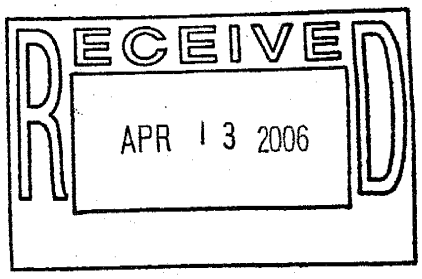
If 4,000 s.f. is a minimum requirement for lot size, our four lots under 4,000 s.f. can easily be enlarged by a re-recordation of the appropriate plats after a revision to the approved site plan. We would like to get this issue resolved on or before our hearing on April 27, 2006 with the Planning Board.

The four lots in question are lot 21 block O; 3 block O; 4 block F; and 10 block F. All of these lots are currently recorded except for lot 21 block O. The lots on block O are developed but have no homes on them. The lots on block F have completed and settled homes on them. If needed, we will re-record each lot adding the necessary lot square footage from the adjacent alley. An easement to the HOA for use as an alley would then be placed on this new lot area.

Please let us know how to proceed from here. Thank you for your help in resolving this issue at Clarksburg Village.

Sincerely,

David D. Flanagan
President



cc: Margaret Rifkin

□ *Annapolis*
175 Admiral Cochrane Drive, Suite 204
Annapolis, Maryland 21401
Phone: (410) 266-9700
Fax: (410) 266-9165

□ *Main Office*
6820 Elm Street, Suite 200
McLean, Virginia 22101
Phone: (703) 734-9730
Fax: (703) 734-0322

□ *Ellicott City*
5094 Dorsey Hall Drive, Suite 104
Ellicott City, Maryland 21042
Phone: (410) 720-3021
Fax: (410) 720-3035

ELM STREET
DEVELOPMENT

April 12, 2006

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

RE: Clarksburg Village (the "Project") --
28 "Attached" Dwelling Lots in R-200/MPDU Section of Phase One

Dear Faroll:

As a follow up to my April 5, 2006 meeting with you, I am sending this letter, including relevant background information and the attached enclosures. It is intended both (i) to memorialize our discussions and (ii) to respectfully ask that you confirm for Elm Street and our affected builders (Craftmark Homes, Inc., "Craftmark" and Michael Harris Development, Inc. "Michael Harris;" together, "Builders") that they are authorized to install either the "Shed Connection" (attached at **Exhibit 1-A**) and/or the "Revised Trellis Connection" (attached at **Exhibit 1-B**) to finally resolve the house connection detail issue for the 28 "Attached" Dwelling lots (the "Lots") in the R-200/MPDU section of this Project.[1]

Each detail was proposed and discussed at our meeting as an alternative to finally resolve this issue for the 28 Lots in question. For the reasons explained at our meeting, our hope is that M-NCPPC can now agree with DPS (per the December 2005 confirmation letters at **Exhibit 3**; the "Letters") that -- with the addition of this type of connection detail -- these 28 as-planned homes, approved with the Site Plan signature set (8 of which are lawfully occupied by innocent third-party purchasers) will be rendered Site Plan and zoning compliant in all respects, whether as "Dwelling unit, one-family attached" (for this Project only) and/or "Dwelling unit, one family semidetached (duplex)," as those terms are defined in Art. 59-A.[2] If so, any disputed claim that these

[1] This letter is not intended to exhaust all of our legal defenses which are reserved and which will be briefed by our counsel in due course. Also, this letter is not an admission of any violations if any are alleged.

[2] In the two (2) December 2005 Letters at **Exhibit 3**, each of which is signed by DPS c/o Robert Hubbard, Director, DPS expressly accepted the Site Plan sited, as-planned homes for these 28 Lots -- whether as-planned, as-

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McLean, Virginia 22101
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□ *Ellicott City*
5094 Dorsey Hall Drive, Suite 104
Ellicott City, Maryland 21042
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Fax: (410) 720-3035

as-planned and/or as-built/sold and/or lawfully occupied homes violate the lot size minimum of 6,000 SF in the R-200/MPDU section of Clarksburg Village should be moot. In short, these as-planned homes are not, and were never intended to be so-called "one-family detached" dwellings.

When analyzing the zoning demarcation line between R-200 TDR and R-200 MPDU in Phase One, we tried to soften any abrupt transition between the TDR single family detached homes and the immediately adjacent MPDU section by using "connected" homes; *i.e.*, homes that were neither townhouses nor completely detached homes -- in short, a transition hybrid -- so that the project layout, as between the R-200 TDR and R-200 MPDU areas, would appear seamless. Because of the differing lot size minimums for single family detached units in the R-200/MPDU zone, the "connected" home option is what we used. That was done in close consultation and with the express approval of your then senior Staff supervisor, Wynn Witthans. Consistent with that, Staff agreed the one family attached homes should look similar to the one

---

built, sold and/or now lawfully occupied -- as zoning-compliant (for this project only): "**Dwelling Unit, one-family attached,**" which is defined as "A dwelling unit that is in a structure consisting entirely of dwelling units, each of which (1) is attached to one or more other dwelling units, (2) has at least one direct entrance from the outside, and (3) has an abutting ground level outdoor area for the exclusive use of its occupants. This definition does not include a 'dwelling unit, townhouse,' as defined in this section."

Those Letters each state, in pertinent part:

> We are confirming that DPS has determined that as reflected by the intention of the approved Site Plan, all of the ... units listed on the enclosed Exhibit 1 as "attached" fall within the Zoning Ordinance definition for "Dwelling unit, one-family attached" (hereinafter referred to as the "Units"), as intended by the developer and M-NCPPC. The interpretation by DPS is limited to the facts and circumstances of the Project. The interpretation is not to be considered applicable County-wide. We further understand that DPS must approve the details for the connection that will attach the two Units together. (Such connection(s) is/are hereinafter referred to as the "Connection(s).")
>
> As an act of good faith (without prejudice) and in return for DPS rescinding the Stop Work Orders attached as Exhibit 2 ... (builder) agrees to forbear in its start of construction of those ... Units, not yet started, and identified as follows .... Construction, however, will be allowed to commence as soon as DPS approves the Connection. (Emphasis added).

Each of the referenced builders has abided by those agreed terms, have submitted proposed connection details for approval and are awaiting response/approval in regard to same.

As an important aside, were the connection detail at **Exhibit 1-A** acceptable (*i.e.*, the Shed Connection), then the as-built/connected units at issue could also be found to be conforming "Dwelling unit, one-family semi-detached (duplex)," defined as:

> **Dwelling unit, one-family semidetached (duplex):** One of 2 attached dwelling units located on abutting lots, separated from each other by a **party wall along the common lot line**, and separated and detached from any other dwelling unit on all other sides. (Emphasis added).

family detached homes located nearby in the R-200 TDR zone, except for an attachment between the units. We further understood from Staff that the connection detail could and would be worked out at a later date.

As evidence of those long-standing understandings with M-NCPPC c/o authorized Staff, I am attaching (as **Exhibit 5**) the 2/5/04 email from our engineer to M-NCPPC Staff describing the December 16, 2003 meeting wherein -- pursuant to the preceding agreement with Staff to use the "attached" home option to achieve the "seamless transition" goal --the parameters for an acceptable connection detail were discussed; that email (sent to Rich Weaver, Wynn Witthans, and Angela Brown, Development Review, M-NCPPC) reads in pertinent part:

> As a follow up to our meeting of December 16th [2003] I just want to confirm exactly the design details that you were looking for in order for the units to be considered "attached units" versus "detached units." As I understand it you are looking for an overhead arbor that is attached to the 2 buildings and is also anchored to either brick or stone piers/columns that also serve as fence/gate post. I'm just trying to make sure that the architects design these in such a manner that Park and Planning will have no problems in issuing the permits for these as detached [(sic)]. If you could just e-mail me back your confirmation of my details or your requested revisions to my details I would appreciate it so I can pass the information on to the architects. Thanks. (Emphasis added.)

Accordingly, Craftmark's building permit application forms indicated that they were intended for single family homes. The forms make no distinction between detached or attached homes. Because the connection detail had not as-yet been approved through M-NCPPC staff, the intention was always that the permit files would be modified thereafter to incorporate the approved connection detail, and to then obtain permission to install the connection. The Site Plan signature set excerpt (**Exhibit 4**) shows in plan view a generic, to be determined, connection structure, which plan we believe was part of each of the building permit applications.

Throughout the period since the generic connection between these as-planned and approved homes was approved by Staff and schematically depicted in the Site Plan signature set, CPJ (for us) and our affected Builders have been attempting to obtain approval for the specific connection detail for these already site plan approved homes. Indeed, as recently as May 13, 2005 we were still corresponding with M-NCPPC Staff about that design detail approval. *See* **Exhibit 6**. (May 13, 2005 email from Wynn Witthans (Development Review, M-NCPPC) to Michael Ma (Development Review,

M-NCPPC) and Les Powell (CPJ) referring to the "structure that makes the SFD [single family detached] [into] attached units in the R-200.")

Should all of this have been finally worked out with Staff as part of our initial submissions for review and approval by the Board in July 2003? With "20:20 hindsight," and in the wake of the Clarksburg Town Center dispute, the answer is at least debatable. If it recurred in today's changed environment, that clearly would be our approach. However, it was certainly discussed and worked out with M-NCPPC Staff -- precisely as we understood was the proper procedure at the time. All of us wanted to make the break between R-200/TDR-3 and R-200/MPDU as subtle as possible and the "Dwelling Unit, one-family attached" alternative was the best way to achieve that. It is schematically shown as part of the Site Plan signature set, and the lot sizes and proposed house footprints from the original submissions remain unchanged. Hopefully, the intervening changes in how things are handled now will not be held against Elm Street, its Builders or their customers who either own, or wish to purchase these architecturally consistent and compatible homes going forward.

Because the specific connection detail for those site plan approved homes had only been conceptually approved by Staff, each of Craftmark's settled home buyers granted it permission to install the original Trellis Connection concept and each signed an acknowledgement permitting their builder to install that, or whatever similar connection detail M-NCPPC requires, post- settlement, as follows:

> The connection will most likely be in the form of some type of trellis possibly incorporating masonry piers which will be secured to both homes. A *conceptual* sketch is attached for your reference. Final construction details are being developed and a copy will be provided to you as soon as they are approved by MNCPPC. These structures do not affect the construction of the homes or their locations on the lots. Installation of the structures may occur after your settlement on the Property. Purchaser agrees to provide any required access to the Property. Construction, inspection and approval of the structures by Montgomery County will be the responsibility of the Seller. The Seller will also restore any areas of the Property disturbed during construction. (Emphasis in original.)

The acknowledgement form and the conceptual (original Trellis Connection) sketch are attached as **Exhibit 7**.

While we understand you and DPS may now prefer the attachment detail at **Exhibit 1-A**, **Exhibit 1-B** is arguably more analogous to the concept sketch that the Craftmark home buyers reviewed and signed with their other contract documents. To

assuage your and Robert Hubbard's comments and concerns, we have also added a roof over top of the earlier discussed trellis design (*See* **Exhibit 1-B**), for connecting to each of the (to be) attached homes. Thus, we would appreciate the option to have our Builders offer that as well -- as needed, to accommodate any strong customer preference for the Revised Trellis Connection. Please note that the settled homes -- Lot 16G and Lot 17G -- were earlier listed among the to-be-attached homes in the December 21, 2005 letter counter-signed by DPS. The home Lot 16G, located in the R-200 MPDU area, satisfies the development standards for a single family detached home. It is not necessary that it be attached to the home and lot on Lot 17G, located in the R-200 TDR 3 area. Consequently, the two are not among the 8 settled homes for which we request approval of the Shed Connection or the Revised Trellis Connection. For any yet-to-be-started homes, which do not connect to one of the 8 settled homes, both we and our Builders would defer to your decision as to which specific design detail will be required.

I would greatly appreciate your communicating to me that each of the two connections at **Exhibits 1-A and 1-B** have been approved by M-NCPPC and, **most importantly, that they will render these 28 as-built, under construction, and/or as-planned homes totally compliant, both with the Site Plan signature set and otherwise**. Please also include your preference for how and in what priority you would like to see those approved options presented to the affected Builder customers. Thereafter, our Builders would proceed to obtain DPS permits and build those approved details, both for the previously constructed and occupied houses and as part of their newly started and/or resumed house construction on the remaining Lots going forward.

Thank you for your thoughtful consideration of these matters and I look forward to receiving your favorable response.

Sincerely,

Elm Street Development, Inc.

By: David Flanagan, President

Enclosures

cc: Ms. Rose Krasnow
Ms. Margaret Rifkin
Mr. Robert Hubbard
Ms. Susan Scala-Demby
Malcolm "Mac" Spicer, Esq.
Kevin P. Kennedy, Esq.
Timothy Dugan, Esq.

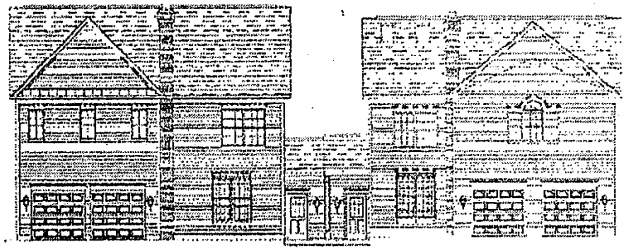
List of Exhibits

Exhibit No.	Description
1. (A)	Double Shed Connection Detail
(B)	Trellis Connection Detail
2.	List of Lots with Attached Dwelling Units
3.	December 21, 2005 letter for Craftmark Homes, countersigned by Robert Hubbard, Chief of DPS, allowing the builders' homes to continue to be constructed and allowing the connection details to be finally resolved thereafter; and December 27, 2005 letter and January 6, 2006 letter for Michael Harris Homes, countersigned by Robert Hubbard, Chief of DPS, allowing the builders' homes to continue to be constructed and allowing the connection details to be finally resolved thereafter.
4.	Site Plan Signature Set Excerpt
5.	February 5, 2004 email between CPJ and M-NCPPC describing the December 16, 2003 meeting concerning the connection details
6.	May 13, 2005 email from Wynn Witthans (Development Review, M-NCPPC) to Michael Ma (Development Review, M-NCPPC) and Les Powell (CPJ) referring to the "structure that makes the SFD [single family detached] [into] attached units in the R-200."
7.	Acknowledgement form and conceptual sketch signed by each of the Craftmark home buyers
8.	February 1, 2006 DPS letter to M-NCPPC about the dwelling unit single family attached

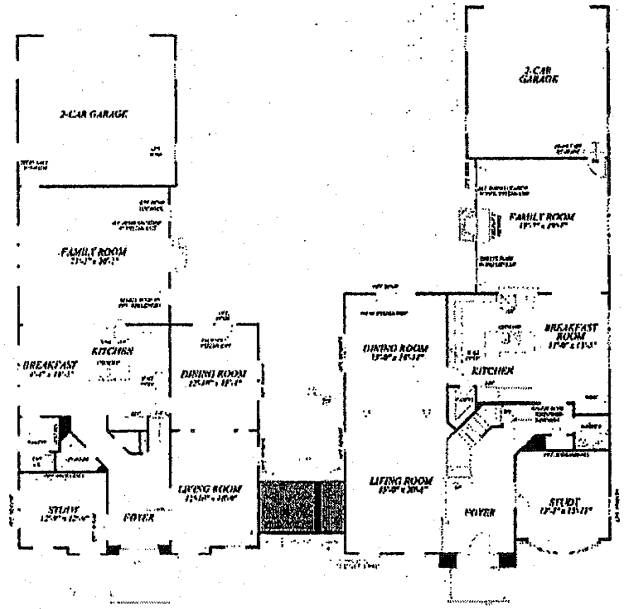
ELM STREET DEVELOPMENT

EXHIBIT 1-A
Double Shed Connection Detail

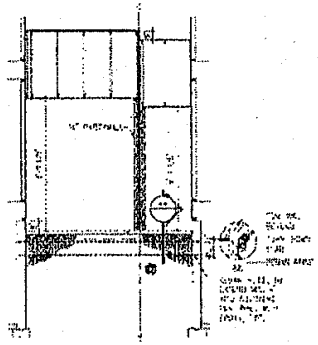
FRONT ELEVATION



REAR ELEVATION



FLOOR PLAN



SECTION @ LOTS #9 & #10

EXISTING SITE, FRONT with proposed addition

EXISTING SITE, REAR

EXISTING SITE, FRONT

PINNACLE DESIGN & CONSULTING

CLARKSBURG VILLAGE, Lots 9-10
CRAFTMARK HOMES

03/31/06

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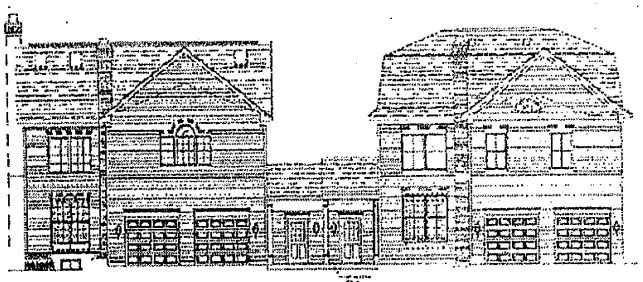
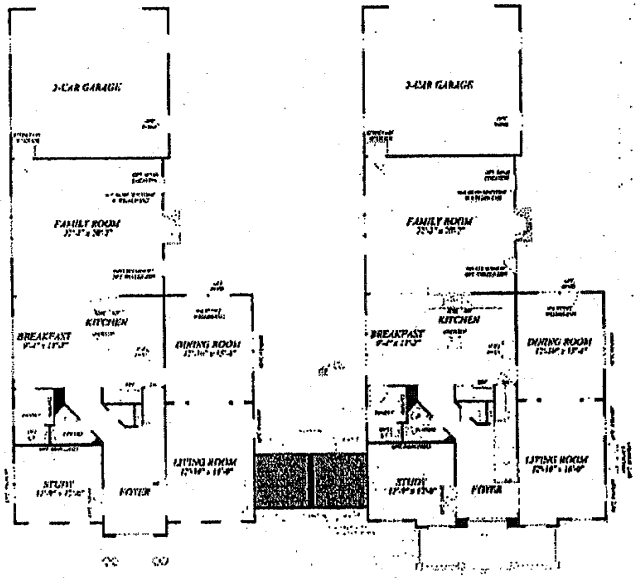
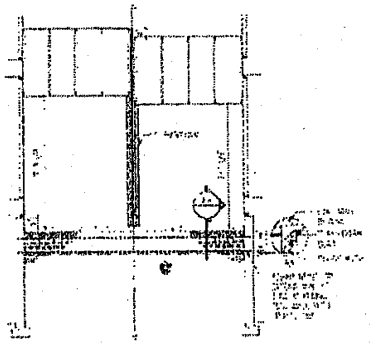
FRONT ELEVATION



REAR ELEVATION



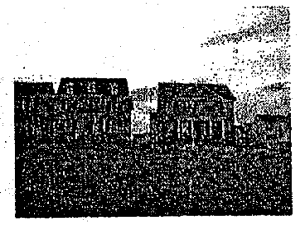
FLOOR PLAN



SECTION @ LOTS #13 & #14

EXISTING SITE, FRONT with proposed addition

EXISTING SITE, REAR



EXISTING SITE, FRONT

PINNACLE DESIGN & CONSULTING

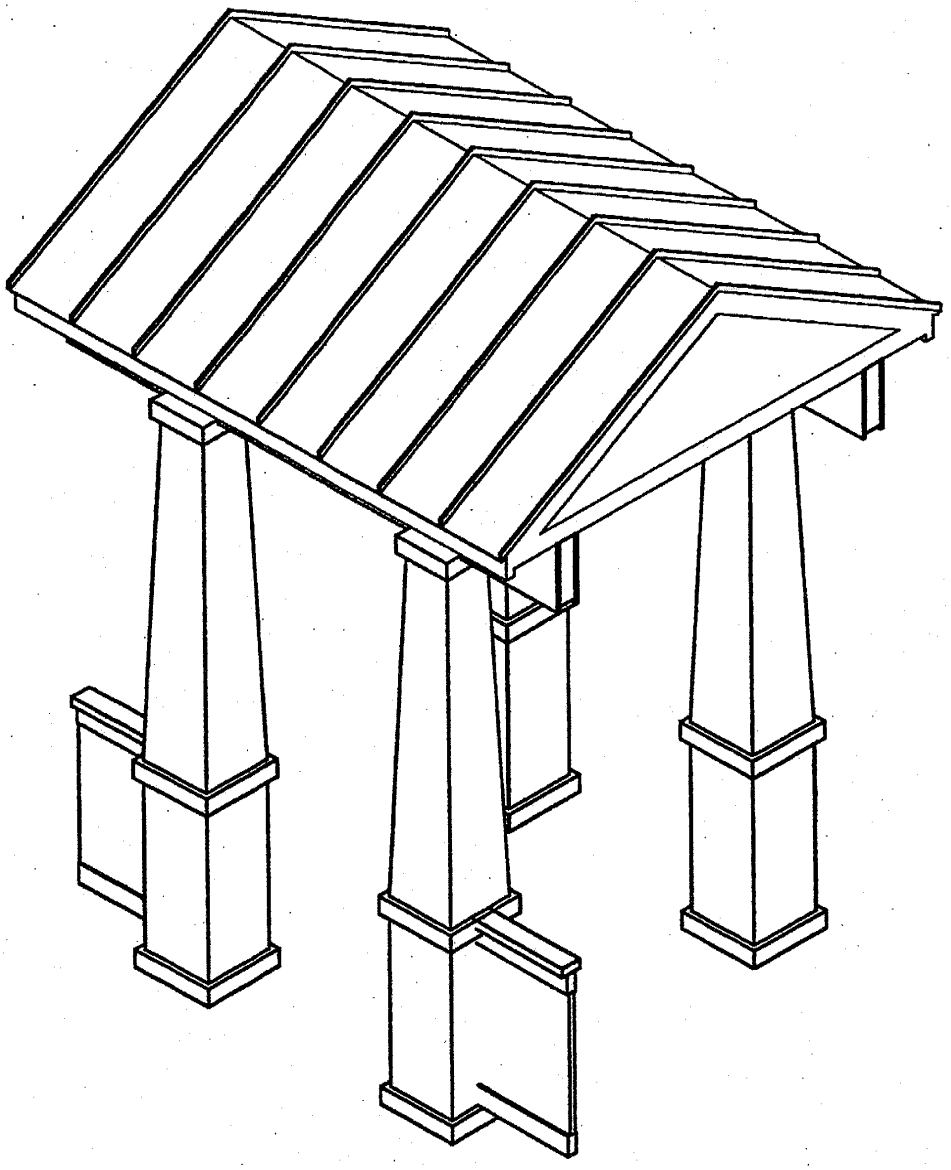
CLARKSBURG VILLAGE, Lots13-14
CRAFTMARK HOMES

03/31/06

14

ELM STREET DEVELOPMENT

EXHIBIT 1-B
Trellis Connection Detail



ELM STREET DEVELOPMENT

EXHIBIT 2
List of Lots with Attached Dwelling Units

EXHIBIT 2
LIST OF LOTS WITH ATTACHED DWELLING UNITS
Status
as of April 12, 2006

As-Planned/Built for/by
CRAFTMARK HOMES

	Lot	Block	Status	Under Contract With Customer?
1.	22	G	Standstill/Not started	None
2.	30	G		
3.	31	G		
4.	34	G		
5.	35	G		
6.	36	G		
7.	13	K	Construction still stopped	No
8.	12	G	Settled	N/A
9.	26	G	Settled	
10.	13	G	Construction still stopped	Yes
11.	9	H	Under construction	No
12.	14	G	Settled	N/A
13.	15	G	Settled	
14.	23	G	Settled	
15.	10	H	Settled	
16.	10	K	Settled	
17.	10	L	Settled	

As-Planned for
MICHAEL HARRIS HOMES

	Lot	Block	Status	Under Contract With Customer?
18.	32	G	Standstill/Not started	None
19.	33	G		
20.	21	G		
21.	11	K		
22.	12	K		
23.	6	H		
24.	7	H		
25.	8	H		
26.	29	G		
27.	11	G		
28.	27	G		

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ELM STREET DEVELOPMENT

EXHIBIT 3

December 21, 2005 letter for Craftmark Homes, countersigned by Robert Hubbard, Chief of DPS, allowing the builders' homes to continue to be constructed and allowing the connection details to be finally resolved thereafter;

and

December 27, 2005 letter and January 6, 2006 letter for Michael Harris Homes, countersigned by Robert Hubbard, Chief of DPS, allowing the builders' homes to continue to be constructed and allowing the connection details to be finally resolved thereafter.

SHULMAN ROGERS GANDAL PORDY & ECKER, P.A.

Lawrence A. Shulman
Donald R. Rogers
Karl L. Ecker†
David A. Pordy+
David D. Freishtat
Martin P. Schaffer
Christopher C. Roberts
Jeffrey A. Shane
Edward M. Hanson, Jr.
David M. Kochanski
James M. Ecfauver †
Robert B. Canter
Daniel S. Krakower
Kevin P. Kennedy
Alan B. Sternstein
Nancy P. Regelin
Samuel M. Spiritus+
Martin Levine

Worthington H. Talcott, Jr.+
Fred S. Sommer
Morton A. Faller
Alan S. Tilles
James M. Hoffman
Michael V. Nakamura
Jay M. Eisenberg+
Douglas K. Hirsch
Ross D. Cooper
Gleim C. Erickson
Karl J. Protil, Jr.+
Timothy Dugan*
Kim Viti Fiorentino
Sean P. Sherman+
Gregory D. Grant+
Jacob S. Frenkel*
Rebecca Oshowsky

Michael J. Frochlich
William C. Davis, III
Patrick M. Martyn
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Christine M. Sorge
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December 21, 2005

By Email and Messenger
Mr. Robert Hubbard, Director
Montgomery County Department of Permitting Services ("DPS")
255 Rockville Pike, Second Floor
Rockville, Maryland 20850

Re: Craftmark Homes
Clarksburg Village
Stand Still Letter

Dear Mr. Hubbard:

We represent Craftmark Homes, Inc. ("Craftmark"), one of the builders of the "dwelling unit, one-family attached" homes in the Clarksburg Village project (the "Project").

We are confirming that DPS has determined that as reflected by the intention of the approved Site Plan, all of the nineteen (19) units listed on the enclosed Exhibit 1 as "attached" fall within the Zoning Ordinance definition for "Dwelling unit, one-family attached" (hereinafter referred to as the "Units"), as intended by the developer and M-NCPPC. The interpretation by DPS is limited to the facts and circumstances of the Project. The interpretation is not to be considered applicable County-wide. We further understand that DPS must approve the details for the connection that will attach the two Units together.[1] (Such connection(s) is/are hereinafter referred to as the "Connection(s).")

[1] Craftmark finds the currently-proposed Connection detail acceptable, and similarly anticipates that a revised Connection detail (acceptable to DPS) will be acceptable. Nonetheless, at this juncture, we note, respectfully, that Craftmark must preserve its rights to appeal a revised Connection detail that it found to be unacceptable.

As an act of good faith (without prejudice)[2] and in return for DPS rescinding the Stop Work Orders attached as Exhibit 2,[3] Craftmark agrees to forbear in its start of construction of those six (6) Units, not yet started, and identified as follows: 22G, 30G, 31G, 34G, 35G, and 36G. Construction, however, will be allowed to commence as soon as DPS approves the Connection.

Craftmark will continue with the construction of other Units already started. Accordingly, it is reasonable to expect that as upcoming inspections are requested, DPS will schedule them, including without limitation, final inspections. Provided that the inspections are satisfactory, Craftmark can expect that any such Units may be completed, settled and occupied. The eight (8) Units under construction that will continue, as they meet the above definition for Unit, are: 12G, 13G, 14G, 17G, 9H, 10K, 13K and 10L.

Those five (5) Units that have settled: 26G, 15G, 16G, 23G, and 10H, also meet the above definition for Unit.

We note that Craftmark is still awaiting re-confirmation from M-NCPPC that the setbacks for Lot 13G are appropriate, as shown on the Site Plan Signature Set. Other similarly situated lots have already been reconfirmed. Craftmark will await the reconfirmation before proceeding.

DPS will work with Craftmark to determine the acceptable form for issuing building permits for the Connections. DPS recognizes that the timing of such installations must necessarily follow the completion of both of the to-be-attached Units, so that the Connection can be installed properly. Provided that the inspections are otherwise acceptable, where one of two Units is ready for final inspection, settlement and occupancy, before the other Unit is similarly ready, DPS will issue final inspections and otherwise allow settlement and occupancy.

Lot 8G is the sixth unit that is subject to a Stop Work Order. It was not planned to be attached because it is located within the R-200 TDR 3 zoned area, with only a small portion located within the R-200 MPDU area. DPS will defer to the M-NCPPC's re-confirmation that the R-200 TDR3 development standards apply. M-NCPPC must so inform DPS. In the interim, again, as an act of good faith (without prejudice) and in return for DPS rescinding the Stop Work Order, Craftmark agrees to forbear in its commencement of construction of Lot 8G. Following M-NCPPC's expected re-confirmation and notice to DPS, construction will be allowed to commence. Of course, if M-NCPPC does not so re-confirm, Craftmark will continue to "stand still" until the matter is resolved.

We understand that you have delegated authority to the Zoning Compliance Chief, Ms. Susan Scala-Demby, to authorize the rescission of the Stop Work Orders, in your absence.

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[2] Notwithstanding anything herein to the contrary, our client reserves all of its legal and equitable rights arising from the matters described herein.

[3] Please also see the discussion below about the Stop Work Order for Lot 8G.

We would appreciate either Ms. Scala-Demby or you signing where indicated below (and faxing a signed copy to Tim Dugan's attention) to indicate your agreement and to confirm that the Stop Work Orders have been rescinded.

We truly appreciate your thoughtful consideration of the matters. Please call with any comments, questions and instructions. We look forward to hearing from you.

Very truly yours,

SHULMAN, ROGERS, GANDAL,
PORDY & ECKER, P.A.

By: _____
Timothy Dugan

By: _____ (TD)
Kevin P. Kennedy
Co-counsel for Craftmark Homes, Inc.

AGREED:

_____

Montgomery County Department of Permitting Services

Enclosures

cc: Ms. Susan Scala-Demby, Chief Zoning Compliance
Malcolm Spicer, Esq., Zoning Compliance
Craftmark Homes, Inc.

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EXHIBIT 1
LIST OF DWELLING UNITS

	Lot	Block	Status	Notation
DWELLING UNIT ONE-FAMILY ATTACHED				
1.	22	G	Standstill, Rescind SWO	Not started
2.	30	G	Standstill	Not started
3.	31	G	Standstill	Not started
4.	34	G	Standstill, Rescind SWO	Not started
5.	35	G	Standstill, Rescind SWO	Not started
6.	36	G	Standstill, Rescind SWO	Not started
7.	13	K	Continue construction, Rescind SWO	
8.	12	G	Continue construction	
9.	26	G	Settled	
10.	13	G	Continue construction	Following setback confirmation from M-NCPPC
11.	14	G	Continue construction	
12.	15	G	Settled	
13.	16	G	Settled	
14.	17	G	Continue construction	
15.	23	G	Settled	
16.	9	H	Continue construction	
17.	10	H	Settled	
18.	10	K	Continue construction	
19.	10	L	Continue construction	
DWELLING UNIT IN R-200 TDR3 ZONE				
1.	8	G	Rescind SWO	R-200 TDR3 standards to be re-confirmed with M-NCPPC before commencing construction

EXHIBIT 2
COPIES OF
STOP WORK ORDERS