



MEMORANDUM

DATE: April 24, 2006
TO: Montgomery County Planning Board
VIA: Faroll Hamer, Acting Director *for FH*

FROM: Rose Krasnow, Chief, Development Review Division *RK*
 Michael Ma, Supervisor, Development Review Division
 Margaret K. Rifkin RLA AICP CNU, Coordinator
 Community-Based Planning Division

REVIEW TYPE: Initial Hearing Regarding Alleged Violations
REVIEW BASIS: Division 59-D-3 of the Montgomery County Zoning Ordinance & Section 50-41 of Montgomery County Subdivision Regulations

PROJECT NUMBER: Site Plans 820030020 (Formerly 8-03002) and 82003020A (Formerly 8-03002A)

PROJECT NAME: Clarksburg Village
ZONES: R-200/TDR3 (with MPDUs)
 R-200 (with MPDUs)

LOCATION: Southwest Quadrant of the Intersection of Stringtown Road and Piedmont Road
MASTER PLAN RESPONDENT HEARING DATE: Clarksburg Master Plan
 Elm Street Development
 May 4, 2006

I. Purpose of This Report and Public Hearing.

This staff report is provided to afford notice to the applicant, and relevant information to the Planning Board, regarding the nature and extent of the potential violations discovered by staff with respect to the development project identified above. The Planning Board will hold a public hearing on May 4, 2006, at which time both the applicant and general public will have an opportunity to respond to the information provided in this report, and also to provide any additional information that may be relevant to a Planning Board decision on those alleged violations.

This staff report does not express the recommendations of the Planning Staff, and the Planning Board is not expected to make a decision at the May 4 hearing. Rather, the purpose of this report is simply to identify the nature of potential violations that pertain to the project. Based upon the information provided by the applicant and relevant public comment in response to this report, the Planning Staff will develop specific recommendations in support of a Planning Board decision to be considered at a later date.

Following the issuance of this staff report, the applicant may wish to consider and enter into any number of “stipulations of fact” with Planning Staff. The proposed stipulations may serve to identify certain matters of fact that are not contested by the applicant – and therefore deemed resolved for the purpose of the Planning Board’s decision on the merits – as opposed to any other facts relating to the project that remain open to dispute.

In addition, the applicant may wish to consider and propose appropriate features of a Plan of Compliance that would resolve or improve any of the potential violations described in this report. Indeed, the applicant in this case filed on May 5, 2005, a proposed site plan amendment that includes changes that, if approved by the Planning Board, might eliminate or ameliorate the adverse impact of one or more of the potential violations described below.

II. Procedural Posture.

Section 50-41 of the Montgomery County Code authorizes the Planning Board to issue a citation to notify a person “believed to be in violation of a Planning Board action,” and provides that the “citation may require the payment of a civil fine or penalty for the alleged violation.” If the Planning Board decides to cite a responsible party for any such violation and impose a civil fine or penalty, that (cited) party may elect to stand trial before the District Court of Maryland for Montgomery County to contest the citation once issued.

Accordingly, the Planning Staff considers the ultimate question now before the Planning Board as follows:

Does the Planning Board find a reasonable basis to believe that the applicant has violated any Planning Board Action; and, if so, does the Planning Board desire to require the applicant to pay a civil fine or penalty for such violation?

By following the procedure outlined above, the Planning Staff intends to develop adequate information to enable the Planning Board to answer this question in the near future.

Even if, and notwithstanding whether, the Planning Board decides to require the payment of a civil fine or penalty, if the Planning Board determines that the applicant has not complied with the applicable site plan requirements, Section 59-D-3.6 of the Montgomery County Code authorizes the Planning Board to revoke a site plan, approve a plan of compliance to achieve corrective action, or impose monetary penalties according to the provisions of Section 50-41. This staff report does not consider the possibilities of site plan revocation or a possible plan of compliance. The Planning Staff will make these issues available for Planning Board consideration in the ordinary course and at a later date.

III. Source(s) of Violation Allegations.

The potential violations discussed in this staff report derive from several sources. First, concerns about a proposed “trellis” to connect one or more dwelling units were raised by a contract purchaser as early as last summer.

Second, as the Board is aware, Montgomery County Council Resolution No. 15-1125 (July 26, 2005) called for staff to conduct a quality control audit intended to evaluate the status of each site plan approved by the Planning Board on or after January 1, 2003. This project fell within the scope of the audit. Staff discovered a number of the potential violations discussed in this staff report based upon the work undertaken in connection with that audit.

Finally, the Civic Federation’s Site Plan Enforcement Addendum, dated January 23, 2006, noted that they had become aware that staff had uncovered potential violations, causing the Civic Fed to formally request a violations hearing on this project.

As of the date of this staff report, the Planning Staff is not aware of any violation that has been alleged but not investigated for the purpose of presenting this report.

IV. Background: General Description of the Development Project.

A. Overview. Clarksburg Village is a 771-acre, large-scale development that was proposed for a mix of uses in three different phases. The Planning Board’s Preliminary Plan opinion, which was amended twice, ultimately approved 2,654 dwelling units, 20,000 square feet of office/retail, and 5,000 square feet of daycare. The plan also called for two school sites, parks, greenways, trails, and recreational facilities.

B. Site Vicinity/Description. Clarksburg Village is located in Clarksburg, Maryland. It is bounded to the north by Stringtown Road, which separates it from Clarksburg Town Center. The eastern portion of the site is bounded by a stream, beyond which is Greenway Village (a.k.a. Arora Hills). The Clarksburg Greenway bounds the western edge of the site, beyond which is Frederick Road (MD 355). The southern boundary of Clarksburg Village is Ridge Road.

The first Phase is the northern half of the site closest to Stringtown Road and Clarksburg Town Center. The second Phase is to the south. The third phase is the village center, which consists of several blocks of mixed-use development next to Greenway Village/Arora Hills, along Newcut Road.

Note: The potential violations described in the balance of this report relate to Phase I only.

V. Plan Approvals.

Preliminary Plan

The Planning Board approved the Preliminary Plan 1-01030 and Special Protection Area Water Quality for Clarksburg Village for all phases on July 30, 2001. The Plan was subsequently amended twice in January 2003 and December 2004 to incorporate additional land and units into the development. The latest amendment authorized development of 2,654 dwelling units, 20,000 square feet of office/retail and 5,000 square feet of daycare on approximately 770 acres.

Infrastructure Plan

The Planning Board approved Site Plan 8-02038 for Clarksburg Village Infrastructure Plan for all phases in July 2003. The Planning Board approved the overall concept for all phases of the project for roads, stormwater management, school sites, parks, the Clarksburg Greenway, recreational facilities, and location and phasing of moderately priced dwelling units.

Phase I Site Plan

The Planning Board approved the Site and Water Quality Plan 8-03002 for Phase 1 of the development on July 31, 2003 for 933 units on 333.87 acres. The signature set of the site plan was approved on August 9, 2004.

The Planning Board opinion for Site Plan 8-03002 approved 933 dwelling units, including 471 one-family detached units, 414 townhomes, inclusive of 44 MPDU townhomes, and 48 multi family units in four buildings, which were all MPDUs.¹

The approved Signature Set for Site Plan 8-03002 showed a different mix of units, including 481 one-family detached units, 360 townhomes/semi-detached units, 44 MPDU townhomes and 48 MPDU multi family units. Although the total number of units remained at 933, in the Signature Set the number of single family detached units increased by 10 and semi-detached units were added as a unit type. This discrepancy is listed below as an alleged violation.

Amended Phase I Site Plan

An amended site plan (8-03002A) was approved by the Planning Board on December 23, 2004, to add 30 acres (for a total of 363.87 acres) near Stringtown Road to Phase I and revise the layout in that area. The amendment approved 997 dwelling units in Phase I. This is an increase of 64 dwelling units over the original site plan approval.²

VI. Development Status

Phase I of Clarksburg Village is under construction and approximately 200 households have bought homes and many have already moved in. According to recent information provided by the applicant on April 1, 2006, 41 units are currently under construction. Construction on approximately 20 additional homes has stopped until outstanding issues are resolved. No new building permits are being issued at this time.

VII. Development Standards for Phase I

Phase I of the development is split zoned: R-200 and R-200/TDR 3. The applicant has chosen to develop the R200 portion of the property under the MPDU optional method of development. The Zoning Ordinance provides different standards for the R200/MPDU and the R200/TDR3 zones. The TDR zone requires that certain standards, such as the lot sizes, building height and setback, be determined and approved by the Planning Board at the time of preliminary plan and site plan. These standards may be modified through approval of site plan amendments.

¹ The remaining MPDUs required for Phase 1 are to be provided "off-site" in Phase 2. Building permits for 231 market rate units in Phase 1 were to be withheld until the building permits were issued for the required MPDUs off-site in Phase 2.

² The applicant presented a proposed signature set for site plan for 8-03002A, but that signature set has not been finalized because staff discovered the alleged violations. Applicant has submitted a "B" amendment to the approved site plan to address these issues. It is awaiting review pending the Board's decision on the alleged violations.

R-200/MPDU Zone

In the R-200/MPDU zone, the following standards under Section C-1.62 of the Zoning Ordinance apply:

59-C-1.622. Density of development. The maximum number of dwelling units per acre of usable area, as defined in section 59-C-1.628(a), is	2.44
59-C-1.623. Setbacks from street (in feet).	
No detached dwelling must be nearer to any public street than:	25 ⁷
59-C-1.624. Yard requirements (in feet). For a side or rear yard that abuts a lot that is not developed under the provisions of this section 59-C-1.6, the setback must be at least equal to that required for the abutting lot, provided that no rear yard is less than	20
59-C-1.625. Lot area and width.	
(a) Minimum net lot area (in sq.ft.):	
(1) For a one-family detached dwelling unit	6,000 ⁷
(2) For each one-family semidetached dwelling unit	3,500
(3) For a townhouse, unless a smaller lot size is approved by the planning board.	1,500
(4) Where an individual lot for each dwelling unit is deemed to be infeasible because of the manner in which individual units are attached to each other the board may approve a site plan depicting more than one dwelling unit on a lot.	
(b) Minimum lot width for a one-family detached dwelling unit at existing or proposed street line (in feet):	25
59-C-1.626. Maximum Building Height (in Feet)	
(a) For a main building. The height must not exceed 3 stories or 40 feet. If the abutting lot is not developed under the provisions of this section 59-C-1.6, the yard abutting that lot must be increased by one foot for each 2 feet of height above 35 feet	
(b) For an accessory building. The height must not exceed 2 stories or 25 feet.	
59-C-1.627. Green area. Green area must be provided for each townhouse or one-family attached dwelling unit erected in the subdivision, at the rate, in square feet per unit, of	2,000

7 For Moderately Priced Dwelling Unit lots designated as such on a site plan, the minimum lot area must not be less than 3,000 square feet and the setback from a public street must not be less than 15 feet. For each one-family detached dwelling unit with a lot area less than 3,500 square feet, 500 square feet of green area must be provided in the subdivision.

R-200/TDR 3 Zone

In the R-200/TDR 3 zone, the following development standards apply:

- a. The second table under Section C-1.395 of the Zoning Ordinance provides standards for 1) minimum percentage of one-family detached units; 2) maximum percentage

and height (in stories) for multiple-family units; and 3) minimum green area as follows:

<i>TDR Density per Acre Shown on Master Plan</i>	<i>Size of Development³</i>	<i>Minimum (Maximum) percentage required¹</i>			<i>Green Area</i>
		<i>One-Family Detached</i>	<i>One-Family Townhouse and Attached</i>	<i>Multiple Family² Four-Story or Less⁴</i>	
3-5	Less than 800 dwelling units	30 ⁶	P	NP	35
3-5	800 dwelling units or more	30 ⁶	P	P(20)	35

6 Development may utilize the R-60/MPDU standards as set forth in Sec. 59-C-1.625(a)(1).

Development may utilize the R-60/MPDU lot size standard for one-family detached units per Footnote #6, but is not required to do so.

- b. Per Section C-1.394(b) of the Zoning Ordinance, the lot sizes and other development standards, including height (in feet) and setback, must be determined at the time of preliminary plan and site plan for conformance with applicable master plan guidelines and in accordance with the purposes and provisions of the PD zone.

VIII. Potential Violations.

1. Discrepancy between Planning Board opinion and Signature Set for Site Plan 8-03002

As noted above in Section V, the 471 single family detached units approved by the Board in its opinion increased by 10 to 481 in the approved Signature Set. Similarly, the total number of townhomes decreased by 10. In addition, the Board approved only townhomes, but the approved signature set calls for townhomes/semi-detached dwellings. In this respect the Signature Set does not conform to the relevant Planning Board opinion.

2. Multiple-Family Units in the R-200/MPDU Zone

Approved Site Plan 8-03002 proposes 48 multiple-family units (MPDUs) in four buildings in the R-200/TDR 3 zoned portion of the development. The zoning lines, however, are incorrectly identified on the approved site plan. Three of the four multiple-family buildings, Buildings 1, 3, and 4, are actually located in the R-200/MPDU zone.³ Multiple-Family Units are not permitted in the R-200/MPDU zone per Section C-1.621.of the Zoning Ordinance.

³ These buildings have not yet been constructed.

3. Lot Size in the R-200/MPDU Zone (Definition of Dwelling Units)

In the R-200/MPDU Zone the minimum lot size for a market-rate one-family detached home is 6000 square feet (59-C-1.625 (a)(1)). The twenty-two (22) lots shown in the table below are less than 6000 square feet.⁴ On the signature set for approved Site Plan 8-03002 each of the lots is shown with a one-family detached home. The lot size can be reduced to 3,500 square feet if the home is a MPDU, or even to 3,000 square feet if it is an MPDU and additional common open space is provided. None of the homes on the lots listed in the Table are MPDUs.

Home Settled = Private Homeowners now owns the house and lot

Lot Closed = Builder now owns the lot

DPS Restricted Start = Construction Not Started

DPS Halted Construction = Construction Started but not finished

Block	Lots (22 total)	Lot Size on Signature Set	Construction Status	Ownership
F	51	5083	Built	Home Settled
G	12	5500	Built	Home Settled
	13	5845	DPS Halted Construction	Lot Closed
	21	4000	DPS Restricted Start Not Built	
	22	5000	DPS Restricted Start Not Built	
	32	4400	DPS Restricted Start Not Built	
	33	4400	DPS Restricted Start Not Built	
	34	5500	DPS Restricted Start Not Built	
	35	5500	DPS Restricted Start Not Built	
	36	5500	DPS Restricted Start Not Built	Lot Closed
H	6	4802	DPS Restricted Start Not Built	
	7	4039	DPS Restricted Start	
	8	4039	DPS Restricted Start	
	9	5145	Under Construction	Lot Closed
K	11	4371	DPS Restricted Start Not Built	
	12	4200	DPS Restricted Start Not Built	
	13	5663	DPS Halted Construction	Lot Closed

⁴ Many of these lots also have setback issues (see Section VIII.4 below).

Block	Lots (22 total)	Lot Size on Signature Set	Construction Status	Ownership
L	11	5960	Not Built	
	12	4200	Not Built	
V	98	5603	Not Built	
	99	5487	Not Built	
	100	5772	Not Built	

The applicant argues that the one-family detached units on lots too small were intended to be one-family semi-detached units. The minimum lot size for one-family semi-detached units in the R200/MPDU zone is 3,500 square feet. Applicant asked certain purchasers to agree to the construction of a trellis between their house and an adjacent house, claiming that this would satisfy the definition of one-family semi-detached. However, the zoning code definition of one-family semi-detached dwelling units states that the units must share a party wall.⁵

4. Building Setback in the R-200/MPDU Zone

Setbacks from the public street are too small for a number of one-family detached units in the R-200/MPDU zone as listed in the following table.⁶ The minimum setback from a public street for a one-family detached home is 25 feet (Section 59-C-1.6).

The only provision for the reduction of this setback in the R200/MPDU zone is for Moderately Priced Dwelling Units (Section 59-C-1.6). The homes in question are not Moderately Priced Dwelling Units. Once the Moderately Priced Dwelling Unit optional method of development is selected, as it is here, all of the requirements from that section apply.

⁵ Section 59-A-2.1 of the Zoning Ordinance provides the following definition for one-family semi-detached units:

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 sides.

⁶ Some of these lots also have lot size issues (see Section VIII.3 above).

Home Settled = Private Homeowner now owns the house and lot
 Lot Closed = Builder now owns the lot
 DPS Restricted Start = Construction Not Started
 DPS Halted Construction = Construction Started but not Finished

Block	Lots (30 total)	Setback from Public Street per signature set	Construction Status	Ownership
F	51	21 feet	Built	Home Settled
G	1	15 feet	Built	Home Settled
	12	15 feet	Built	Home Settled
	13	15 feet	DPS Halted Construction	Lot Closed
	21	21.5 feet	DPS Restricted Start Not Built	
	22	22 feet	DPS Restricted Start Not Built	
	23	20 feet	Built	Home Settled
	26	15 feet	Built	Home Settled
	30	15 feet	DPS Restricted Start Not Built	
	31	20 feet	DPS Restricted Start Not Built	
	32	23 feet	DPS Restricted Start Not Built	
	33	23 feet	DPS Restricted Start Not Built	
	34	15 feet	DPS Restricted Start Not Built	
	35	20 feet	DPS Restricted Start Not Built	
	36	20 feet	DPS Restricted Start Not Built	Lot Closed
	37	15 feet	Built	Home Settled
H	1	15 feet	Built	Home Settled
	6	15 feet	DPS Restricted Start Not Built	
	10	22 feet	Built	Home Settled
	15	18 feet	Built	Home Settled
I	16	15 feet	Built	Home Settled
K	1	15 feet	Not on developer list Not Built	
	10	23 feet	Built	Home Settled
	11	21.5 feet	DPS Restricted Start Not Built	
	12	21.5 feet	DPS Restricted Start Not Built	
	13	21.5 & 15 feet	DPS Halted Construction	Lot Closed
L	1	15 feet	No developer comments Not Built	

Block	Lots (30 total)	Setback from Public Street per signature set	Construction Status	Ownership
	10	18 feet & 20 feet	Built	Home Settled
	11	23 feet	Not Built	
	12	23 feet	Not Built	

5. Lack of Complete Development Standards in the R-200/TDR zone

The approved Signature Set for Site Plan 8-03002 includes a data table that sets front and side yard setbacks (15 feet and 3 feet, respectively) for one-family detached units only,⁷ not for other dwelling types. No other development standards, such as lot size or building height⁸, were provided for detached units or other dwelling types. Some of the units, which were under construction, were stopped by the Department of Permitting Services (DPS) because of failure to provide the minimum 15 foot setback from the street.

6. Forman Boulevard

At the time of Preliminary Plan, the Board approved Forman Boulevard with an 80-foot right-of-way. The approved Site Plan 8-03002, however, provides only 70 feet.

IX. Conclusion

Staff has identified alleged violations of the Planning Board approvals and the zoning ordinance requirements. Based on testimony that the Board will receive at the hearing on May 4, 2006, as well as guidance that the Board provides at that time, staff will offer a recommendation regarding each allegation and will put forth suggestions for a plan of compliance and/or sanctions. Staff's recommendations will be presented to the Board for decision at a future public hearing.

⁷ A note on the signature set states that rear yard setbacks for one-family detached units are as shown on the site plan, but each unit would have to be individually scaled to determine the rear setback.

⁸ The multiple-family units are limited to four stories under the zoning ordinance but the approved signature set does not identify the height in feet for any of the dwelling unit types including multiple-family in the R200/TDR3 zone.