



**MEMORANDUM**

**DATE:** June 9, 2006  
**TO:** Montgomery County Planning Board  
**VIA:** Faroll Hamer *FH*  
Acting Director  
**FROM:** Rose Krasnow, Chief *RK*  
Development Review Division



**REVIEW TYPE:** Consideration of alleged violations with respect to the timely provision of amenities  
Consideration of other deficiencies, specifically the lack of complete development standards  
Consideration of sanctions and plan of compliance

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

**PROJECT NAME:** Greenway Village at Clarksburg – Phases 1 & 2 (82002036A)

**ZONE:** PD-4

**LOCATION:** In the vicinity of the intersection of Skylark and Newcut Roads, west of Ridge Road

**MASTER PLAN:** Clarksburg Master Plan

**APPLICANT:** Clarksburg Skylark LLC

**HEARING DATE:** June 22, 2006

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**INTRODUCTION:**

On June 8, 2006, the Board approved a Corrective Order for Site Plan 820020360, Greenway Village at Clarksburg, Phases 1 and 2. This order set height and other development standards for

32 dwelling units that had not yet received building permits in these two phases. Building permits for the remaining 454 units approved under this site plan had been issued prior to the time these alleged violations had been discovered, and construction is complete on all but a few units. The Board now needs to determine whether the alleged violations did, in fact, occur. The Board must also consider the presence of other deficiencies – in this case – the lack of development standards. In the event that the Board finds violations, it will be necessary to assess fines and/or determine a Plan of Compliance.

**STAFF RECOMMENDATION WITH RESPECT TO ALLEGED VIOLATIONS:**

- 1) Finding that a violation occurred with respect to the failure to provide the bike path along a portion of Skylark Road within the timeframe specified by the site plan.
- 2) Finding that a violation occurred with respect to the applicant moving and narrowing a bike path without receiving prior approval from Park & Planning, although the change was approved by DPWT.
- 3) Finding that no violation occurred with respect to the timely construction of the pool/clubhouse facility.
- 4) Finding that no violation occurred with respect to the failure to establish a full set of development standards.

**STAFF RECOMMENDATION WITH RESPECT TO FINES AND/OR PLAN OF COMPLIANCE:**

- 1) Assess a fine in the amount of \$22,150 for the failure to provide a bike path along a portion of Skylark Road within the timeframe specified by the site plan.
- 2) Assess a fine in the amount of \$7,300 for moving and narrowing a bike path without receiving prior approval.
- 3) Adopt a complete set of Development Standards for Phases I and II.

**ANALYSIS OF THE ISSUES**

Skylark Road Bike Path

Approved plans for Greenway Village include the provision of an 8 foot wide bike path along the south side of Skylark Road that will, among other attributes, allow residents of neighborhoods along the way to reach Ovid Hazen Wells Recreational Park. The Site Plan Enforcement Agreement for the project includes bike paths as part of the project’s local recreational facilities and generally requires that such facilities be completed by the time that 70 percent of the units in a specified phase have closed on title. Furthermore, the Site Plan Enforcement Agreement stated that:

- (b) Applicant must construct all Recreational Facilities, and convey such facilities and related Common Areas within the timeframes contemplated in the Phasing Schedule and in these binding elements. Applicant must arrange for inspections by staff to ensure that all facilities are timely, correctly, and completely constructed, and

(f) The applicant may seek an amendment to any regulatory approval for the purpose of modifying the location and amount of real property comprising the common area and for the purpose of modifying the improvements to be constructed on such common area, including, but not limited to, the right not to construct such improvements, which amendment shall be reviewed by the Planning Board in accordance with applicable law. Such amendment shall be effective only if approved by the Planning Board.

The applicant has completed the majority of the required bikepaths, but has not begun the path along the portion of Skylark Road adjacent to Phases 1 and 2, largely because construction of the path is dependent upon DPWT's schedule for construction of the road, and that portion of the road has not yet been built. The applicant has acknowledged that the project reached the 70 percent occupancy benchmark in August of 2004. The applicant should have, but did not, request an amendment to the site plan to modify the conditions for completion of the bikepath. Instead the applicant continued to apply for, and receive, building permits for Phases 1 and 2.

#### Persimmon Ridge Road Bike Path

Greenway Village's circulation system includes bike paths that will connect the neighborhood to the Clarksburg Greenway and to nearby Ovid Hazen Wells Recreational Park, as well as to other Clarksburg neighborhoods. One such trail connects Ovid Hazen Well Park to Clarksburg Village, using Cherry Branch Drive and Persimmon Ridge Road. A portion of the path along Persimmon Ridge Road was not constructed in the location that was shown on the approved plans, and the width of the path is only 7 feet, not eight feet as required.

This portion of the path passes in front of three occupied homes. The original site plan called for the path to be located in the public utility easement in the front yard of these three homes. However, the relevant plat was recorded, in error, without the easements in this location.

The affected homeowners denied permission to build any part of the bike path on their property. Working with DPWT, the applicant relocated the bikepath in this location into the public right-of-way, but doing so required a one-foot reduction in the width of the bikepath, from eight feet to seven feet. The applicant did not seek an amendment to the original site plan approval until after the work had been completed.

#### The Pool/Clubhouse Facility

In 2005, Amendment A to Site Plan #82002036 sought to relocate the proposed pool house and modify the design to add a 2,000 square foot community center. At the Board hearing on this matter, staff recommended and the Board approved that the condition regarding the delivery of this facility be amended to read as follows:

Prior to 85% occupancy of Phases I and II of the development or June 1, 2006, whichever comes first, the proposed pool house/community center shall be completed and operational.

When this matter was originally brought before the Board on March 30<sup>th</sup>, the community had not yet reached 85% occupancy, nor was it June 1<sup>st</sup>, so staff did not feel that a violation had, in fact, occurred. Clearly, the June 1<sup>st</sup> date has now been reached, so the facility is technically in violation whether or not 85% occupancy has now been reached. However, staff still does not recommend that a violation be found. The applicant had requested an amendment to requesting that the timing for completion of the facility be changed before either of the critical dates had been reached. Furthermore, the developer had sought to obtain the release of both the opinion and the approved signature set for the 2005 amendment for several months but was unable to get them in a timely manner. As a result, the applicant could not get a building permit to start construction on the pool/clubhouse facility, which meant there was no way that it could be completed in the timeframe specified in the pertinent condition. As part of the package of changes being sought in the amendment for Phases I and II, the applicant has requested that the condition be revised to require that the clubhouse/pool facility be completed within nine months of DPS issuance of the building permit for the facility.

#### Other Deviations – Development Standards

The PD Zone, unlike more narrowly drawn Euclidean zones, contains no specific standards for building height or setbacks. Section 59-C-7.11 of the Zoning Ordinance states in part that a primary purpose of the Zone is to:

Provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories.

Section 59-D-3.23 of the Zoning Ordinance generally requires that the contents of a site plan include the “location, height, ground coverage and use of all structures.” Nevertheless, Staff does not believe that the failure to include a data table that clearly set standards for this site plan should be seen as a violation. As part of the Signature Set, the applicant was required to submit drawings that showed graphically what the setbacks and lot size would be for each unit, and the general notes for the preliminary plan specified a height limit of four stories. In light of the flexibility encouraged in the PD zone, staff at the time may have felt that this was sufficient.

Clearly, however, there is now a better understanding that standards for height, setbacks, lot size and so forth are necessary, even in the context of the flexible development allowed in the PD Zone, and should be clearly established in the form of a data table included as part of the Certified Site Plan because they are needed to inform the public as to what a particular development will look like when completed. Such a data table will also make it far easier to determine the proposed development’s compatibility with existing or proposed adjacent development. Finally, these development standards are needed to insure that the overall design objective outlined in the zone’s purpose clause is met.

Staff has worked with the developer to establish a data table for Phases I and II. Phases I and II call for the construction of detached and attached single family units only; there are no two over

two's or multifamily units. It is also important to remember that a large majority of the homes in these two phases have already been built and many are also occupied.

Rather than simply use the tallest existing height to set the standard for any single family detached or attached unit, staff chose instead to look at the typical heights allowed in similar zones and set this as the standard, and then allow certain exceptions based on typography. Again, it is important to stress that the additional height being requested for certain units is not attributable to the applicant's desire to construct taller homes. Rather, based on the County's chosen method of measuring building heights, two identical homes may have different building heights depending on the typography and the point from which it is measured.

A review of homes in Phases I and II reveal that a majority of the single family detached homes that have already been built are between 30 and 35 feet tall. Moreover, 35 feet is a common standard for single family detached homes in zones with smaller lot sizes. However, Staff believes it is appropriate to allow, for specified units only, a maximum building height of 40 feet for one-family detached dwelling units in order to take into account measuring requirements, grading, and topographic variations. 14 units (of 328 total) in Phases 1 and 2 will have heights that fall between 35 and 40 feet.

The County's existing residential townhouse zones require maximum building heights of 35 feet (40 feet when MPDUs are required). A review of recently approved building permits for Greenway Village indicates that the majority of the one-family attached houses in Phases 1 and II are less than 40 feet, but a few fall between 40 and 45 feet, again as the result of topography and point of measurement. 12 units (of 158 total) in Phases 1 and 2 will have heights that fall between 40 feet and 45 feet.

The applicant has provided a detailed drawing that shows the range of heights for all residences in the Greenway Village community. Staff recommends that this drawing be made part of the Certified Site Plan, and that it be used to determine those dwelling units that may exceed 35 feet in height for one-family detached dwelling units and 40 feet in height for one-family attached dwelling units in Phases 1 and 2.

|            |  |  |  |
|------------|--|--|--|
| structures |  |  |  |
|------------|--|--|--|

A table providing a complete set of Development Standards for Phases 1 and 2 of Greenway Village is attached to this report.

**FINDINGS**

Staff finds that a violation occurred with respect to the provision of a portion of the bikepath along Persimmon Ridge Road. Because the path is narrower than specified in the site plan, and its location has also changed slightly, this constitutes a physical violation that is difficult to cure. standards established by the Board are physical violations that are difficult to cure. The issue could have been avoided if the record plat had been done correctly. In addition, had the applicant sought to amend the site plan prior to relocating the path, this violation could easily have been prevented.

Staff finds a violation with respect to the failure to construct the bike path along Skylark Road within the timeframes specified in the Site Plan Enforcement Agreement. This represents a phasing or process violation and is curable because Artery can certainly be expected to complete this bike path. Nevertheless, the Applicant was at fault when it continued to pull building permits after the 70% occupancy limit had been reached and without taking the necessary steps to amend the phasing plan.

The issues surround the pool/clubhouse facility also relate to phasing. In this case, the applicant recognized that given the inability to obtain a building permit due to circumstances beyond the applicant’s control (i.e. Park & Planning delays in completing the Opinion and the Signature Set Review), it was necessary to submit an amendment to change the condition relating to the timing for completion of this facility. The amendment was submitted in a timely manner, so staff does not find that the developer should be found in violation with respect to the pool/clubhouse.

Finally, staff finds that the failure to include a data table delineating a full set of development standards was indicative of the practice at that time. Rather than find a violation, staff recommends that a complete set of standards be set as part of this action, and be adopted as part of the Site Plan Amendment for Phases I and II.

**SANCTIONS/PLAN OF COMPLIANCE**

With respect to the failure to complete the bikepath along Skylark Road in a timely manner, staff recommends that a fine of \$22,150 be assessed. This fine was calculated as follows:

70% occupancy in Phase 1 occurred on August 1, 2004 and an amendment was filed on October 17, 2005 for a total of 443 days. Assessing a fine of \$50 per day would result in a total fine of \$22,150.

With respect to the bike path on Persimmon Ridge Road, staff recommends that a fine of \$7,300 be assessed. This fine was calculated as follows:

The Park and Planning Inspector first noted this deficiency in his inspection log on November 4, 2005. The hearing regarding this violation was originally scheduled for

March 30, 2006, for a total elapsed time of 146 days. Assessing a fine of \$50 per day would result in a total fine of \$ 7,300.

The applicant should be required to pay these monies within 7 days of the date of this hearing. Twenty-five percent of the monies should be kept by MNCPPC to help defray the costs of this investigation. Staff should be instructed to work with the applicant to determine a way to use the remainder of the penalty toward the betterment of Greenway Village.

In addition, a complete set of development standards should be established as presented in this report.

The recommended development standards for building heights in phases 1 and 2 are as follows:

| <b>Development Standard</b> | <b>Approved with Site Plan 8200240360</b> | <b>Signature Set "General Notes"</b> | <b>Proposed for Approval with Site Plan 82002036A</b>                                                   |
|-----------------------------|-------------------------------------------|--------------------------------------|---------------------------------------------------------------------------------------------------------|
| <b>Building Height</b>      |                                           |                                      |                                                                                                         |
| One-family Detached         | None                                      | No reference                         | 35 feet, except for 14 houses indicated on Height and Setback Exhibit, which may not exceed 40 feet     |
| One-family Attached         | None                                      | No reference                         | 40 feet, except for 12 houses indicated on the Height and Setback Exhibit, which may not exceed 45 feet |

Staff also believes that two additional development standards should be added to those proposed by the Applicant. Staff recommends addition of a standard for separating end units of single-family attached dwelling units. An 8-foot distance reflects the separation between existing "sticks" of attached units. Staff also proposes setbacks from the street for accessory buildings, so that homeowners are discouraged from building sheds and other structures in the front of their homes.

The recommended additional standards are as follows:

| <b>Development Standard</b>                                           | <b>Approved with Site Plan 8200240360</b> | <b>Signature Set "General Notes"</b> | <b>Proposed for Approval with Site Plan 82004036A</b> |
|-----------------------------------------------------------------------|-------------------------------------------|--------------------------------------|-------------------------------------------------------|
| <b>Distance between adjacent end units of main buildings</b>          |                                           |                                      |                                                       |
| One-family Attached                                                   | None                                      | No reference                         | 8 feet                                                |
| <b>Setbacks for Accessory Buildings</b>                               |                                           |                                      |                                                       |
| From the public street line                                           |                                           |                                      |                                                       |
| One-family Detached                                                   | None                                      | No reference                         | 60 feet                                               |
| One-family Detached lot where adjacent house does not front on street | None                                      | No reference                         | 5 feet                                                |
| From rear and side lot lines                                          |                                           |                                      |                                                       |
| Detached garage                                                       | None                                      | No reference                         | 0 feet                                                |
| All other structures                                                  | None                                      | No reference                         | 5 feet                                                |



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The issues surround the pool/clubhouse facility also relate to phasing. In this case, the applicant recognized that given the inability to obtain a building permit due to circumstances beyond the applicant's control (i.e. Park & Planning delays in completing the Opinion and the Signature Set Review), it was necessary to submit an amendment to change the condition relating to the timing for completion of this facility. The amendment was submitted in a timely manner, so staff does not find that the developer should be found in violation with respect to the pool/clubhouse.

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| One-family Attached                                                   | None                                      | No reference                         | 8 feet                                                |
| <b>Setbacks for Accessory Buildings</b>                               |                                           |                                      |                                                       |
| From the public street line                                           |                                           |                                      |                                                       |
| One-family Detached                                                   | None                                      | No reference                         | 60 feet                                               |
| One-family Detached lot where adjacent house does not front on street | None                                      | No reference                         | 5 feet                                                |
| From rear and side lot lines                                          |                                           |                                      |                                                       |
| Detached garage                                                       | None                                      | No reference                         | 0 feet                                                |
| All other structures                                                  | None                                      | No reference                         | 5 feet                                                |

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In addition, a complete set of development standards should be established as presented in this report.

## Development Data Table

| Development Standard                                                         | Approved with Site Plan 820020360           | Signature Set "General Notes" | Proposed for Approval with Site Plan 82002036A |
|------------------------------------------------------------------------------|---------------------------------------------|-------------------------------|------------------------------------------------|
| <b>Zone</b>                                                                  | PD-4                                        | PD-4                          | PD-4                                           |
| <b>Minimum Area of Development</b>                                           | None                                        | 164 acres                     | 164 acres                                      |
| <b>Dwelling Units (at 4 units to the acre)</b>                               | 486                                         | 486                           | 486                                            |
| One-family Detached                                                          | 328                                         | 328                           | 328                                            |
| One-family Attached                                                          | 158<br>including MPDUs                      | 158<br>including MPDUs        | 158<br>including MPDUs                         |
| <b>MPDUs</b>                                                                 | 49 (10 percent)<br>12.5% for entire project | 49<br>(10 percent)            | 49<br>(10 percent)                             |
| <b>Minimum Lot Area (square feet)</b>                                        |                                             |                               |                                                |
| One-family Detached                                                          | None                                        | Varies                        | 3,700                                          |
| One-family Attached                                                          | None                                        | No reference                  | 1,500                                          |
| Attached MPDU                                                                | None                                        | No reference                  | 1,150                                          |
| <b>Minimum Lot Width at Front Building Line</b>                              | None                                        | No reference                  | 18 feet                                        |
| <b>Setback from Public Street</b>                                            |                                             |                               |                                                |
| One-family Detached                                                          | None                                        | 15 feet                       | 15 feet                                        |
| One-family Detached on corner lot when adjacent lot does not front on street | None                                        | No reference                  | 5 feet                                         |
| One-family Attached                                                          | None                                        | No reference                  | 5 feet                                         |

| <b>Development Standard</b>           | <b>Approved with Site Plan 820040220</b> | <b>Signature Set "General Notes"</b> | <b>Proposed for Approval with Site Plan 82004022A</b> |
|---------------------------------------|------------------------------------------|--------------------------------------|-------------------------------------------------------|
| <b>Rear Yard</b>                      |                                          |                                      |                                                       |
| One-family Detached with front garage | None                                     | As shown on site plan                | 20 feet                                               |
| One-family Detached with rear garage  | None                                     | As shown on site plan                | 0 feet                                                |
| One-family Attached with rear garage  | None                                     | No reference                         | 0 feet                                                |
| 2-over-2 units                        | None                                     | No reference                         | 0 feet                                                |
| <b>Side Yard</b>                      |                                          |                                      |                                                       |
| One-family Detached with front garage | None                                     | 4 feet                               | 4 feet                                                |
| One-family Detached with rear garage  | None                                     | 3 feet                               | 3 feet                                                |
| One-family Attached                   | None                                     | No reference                         | 0 feet                                                |
| 2-over-2 units                        | None                                     | No reference                         | 0 feet                                                |
| <b>Lot Coverage</b>                   |                                          |                                      |                                                       |
| One-family Detached                   | None                                     | No reference                         | 60 percent                                            |
| One-family Attached                   | None                                     | No reference                         | 75 percent                                            |