

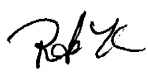


MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

June 6, 2008

MEMORANDUM

TO: The Board

FROM: Rose Krasnow, Chief 
Development Review Division
(301) 495-4591

SUBJECT: Distribution of Fines/Maple Ridge

Recommendation: Agree to disburse the total amount of the fines collected in the Maple Ridge violation case (\$276,750) to the HOA per their request received April 14, 2008.

Background

On October 16, 2003, the Board approved Site Plan #820030410, HD-Maple Ridge LLC Applicant, for a 59 unit townhouse development, including eight MPDUs. This project, which is now known as Seaton Square, is located between Lockwood Drive and Columbia Pike, approximately 1,500 feet west of New Hampshire Avenue. It is zoned RT-8 and is part of the White Oak & Vicinity Master Plan. The builder of the project was Ryan Homes.

On the evening of February 23, 2006, the Board held a violation hearing with respect to the Maple Ridge project. In response to the problems uncovered in Clarksburg, the County Council had instructed DPS and MNCPPC to conduct a site plan audit of all projects that had been approved in the two years prior to the discovery of the Clarksburg violations to determine whether similar violations had occurred elsewhere in the county. The agencies were told to check for compliance with respect to height, setbacks, landscape & lighting, and the provision of amenities. Three possible violations were found with respect to the Maple Ridge project:

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

A stop work order was filed on November 4, 2005.

The staff report (See Attachment 1) for the hearing discussed the circumstances relating to each of the alleged violations. With respect to the setback violation, DPS had examined the language

contained in the site plan more closely and realized that the rear setback should have been measured from the adjoining lot, not from the property line. Since all the units in question backed onto HOA-owned land, which is not buildable and does not constitute a lot, staff concluded that the setback standard had not been violated. The Board agreed with staff's recommendation.

With respect to the failure to provide recreational amenities in a timely manner, staff reported that the applicant had made a timely request to substitute another brand of equipment for the playground equipment called for in the site plan but did not get a timely response from MNCPPC, so no equipment was installed. Although the Board was concerned that the applicant did not stop pulling building permits even though the equipment was not in place as required, it was finally agreed that there were mitigating circumstances, so a violation was not found.

The height issue proved the most difficult to resolve. The height called for in the approved site plan was clearly thirty-five feet, and this was also the maximum height allowed in the zone. At the time of the audit, 51 of the 59 units had already been completed and conveyed to third party owners. All 51 of these units were found to be too tall, by as little as 4 inches to as much as 3.5 feet. The builder, however, challenged the method used by DPS to measure height, arguing that it should be measured from the average grade in front of each unit, not from the street. After considerable discussion, DPS agreed and took new measurements. As a result, only 45 units were found to be too tall, and none of these exceeded 36 ½ feet in height. The builder took immediate steps to bring the unfinished units into compliance by changing the roof structure, but this option wasn't available for the units already occupied. The decision of the Board, on a 4-1 vote, was to accept a proffer from the respondent, Ryan Homes, to pay a fine of \$276,500. As part of the agreement between the parties, no finding of violation was made. (See Attachment 2 – Planning Board Resolution)

At the time of the hearing, there was some discussion as to how these funds should be spent. In its original recommendation, staff had proposed that some of the money be spent for additional landscaping, some could be directed toward a community improvement, either on or off-site, and the rest could be paid into the HOA's capital reserve fund. The actual fine assessed, however, was three times larger than the fine originally proposed by staff. Members of the Board agreed that the money should go toward improving the Maple Ridge community but asked staff to bring back specific recommendations at a later date.

On November 29, 2007, MNCPPC received a letter from Craig Zaller, the attorney for the Maple Ridge Townhouse Homeowners Association, requesting that the funds be sent to the HOA. Mr. Zaller was informed that the Association needed to submit a letter stating how it proposed to use the funds, so that the Board could make a decision as to whether the proposed uses were acceptable. This letter was received on April 14, 2008 (See Attachment 3).

As outlined in the letter, the Association plans to spend \$50,000 to \$65,000 on additional landscaping. \$40,000 will be spent to install gates, and another \$45,000 to \$50,000 will go toward the construction of perimeter fencing. An additional \$25,000 - \$30,000 would be directed toward maintenance of storm water management systems and the like. The remainder would be placed in the Association's reserve account to be used for large capital repairs and improvements.

Staff supports the use of the funds as outlined by the Association and recommends that the Board approve payment of the \$276,750 fine to the HOA.

Attachment 1: Staff report dated 2/10/06

Attachment 2: Resolution of Board's Action dated May 25, 2007

Attachment 3: Request for Distribution of Fine from Craig Zaller, Attorney for Maple Ridge

Item # 2
MCPB 02-10-06

MEMORANDUM

DATE: February 10, 2006

TO: Montgomery County Planning Board

VIA: Faroll Hamer
Acting Director

FROM: Rose Krasnow, Chief
Development Review Division

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

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

CASE #: 820030410 (formerly 8-03041)

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

DEVELOPMENT: 59 townhouses including 8 MPDUs

ZONE: RT-8

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

MASTER PLAN: White Oak & Vicinity

APPLICANT: HD-Maple Ridge LLC

HEARING DATE: February 23, 2006



STAFF RECOMMENDATION: Finding that no violations have occurred with respect to alleged setback violations, finding that no violation has occurred with respect to the timely provision of required recreation facilities, finding of violation because the height of the dwelling units exceeds the maximum building height allowed in the RT-8 zone and specified in the site plan. The Stop Work Order will be removed subject to the following conditions:

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

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

BACKGROUND

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

HD Maple Ridge, LLC is the applicant/developer of this development and is responsible for installation of the required recreation facilities. Ryan Homes is the builder of the townhouses, and is responsible for the height and setbacks of the units.

Stop Work Order

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

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

Based on the above findings, M-NCPPC staff issued a Stop Work Order (Attachment 1) on November 4, 2005, which stops all construction activities except for those required and authorized to correct violations or ordered by permitting agencies. A Planning Board hearing was scheduled for December 15, 2005, to review the order.

ITEMS TO BE REVIEWED BY THE PLANNING BOARD

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

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

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

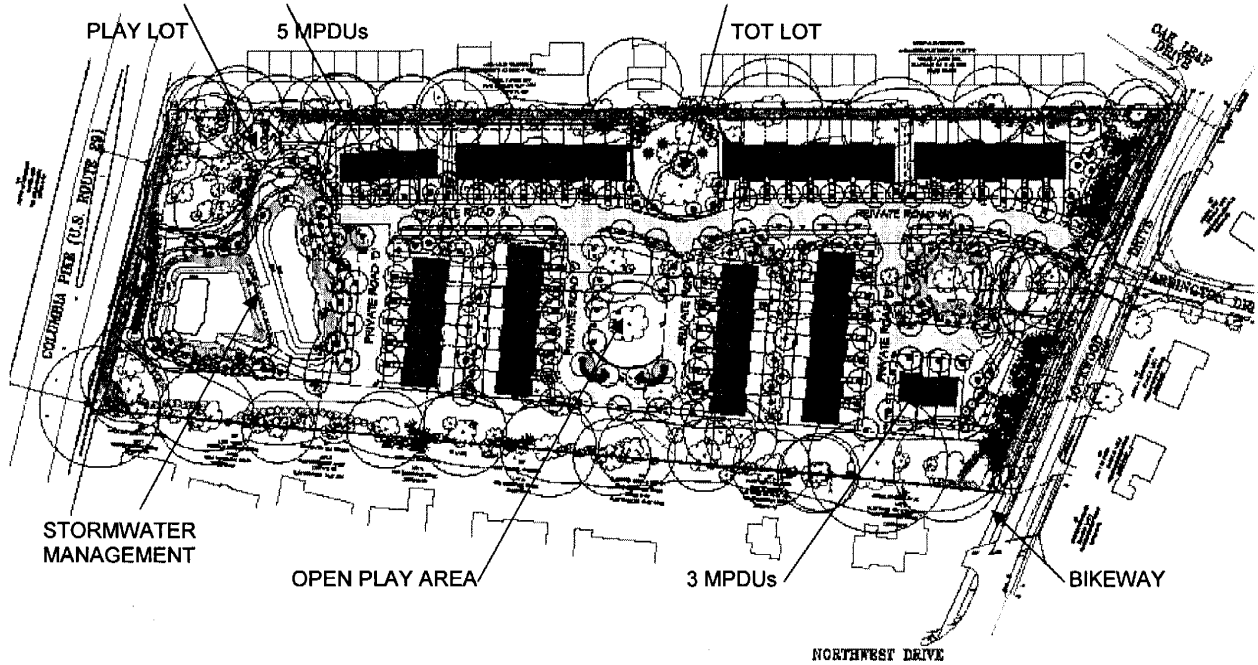
PROJECT DESCRIPTION: Site Vicinity

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

PROJECT DESCRIPTION: Proposal

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

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



ANALYSIS:

Building Height Requirement

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

Approved Site Plan

The 'Site Data' table shown on the approved Site Plan 8-03041 specifies 35 feet as "Building Height Allowed" and "Building Height Proposed and approved". A copy of the table is shown below. A copy of the Planning Board Opinion (Attachment 4) and a copy of the approved Site Plan (Attachment 5) are attached.

PROJECT DATA TABLE (RT-8 Zone)

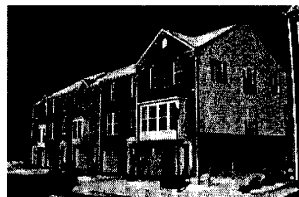
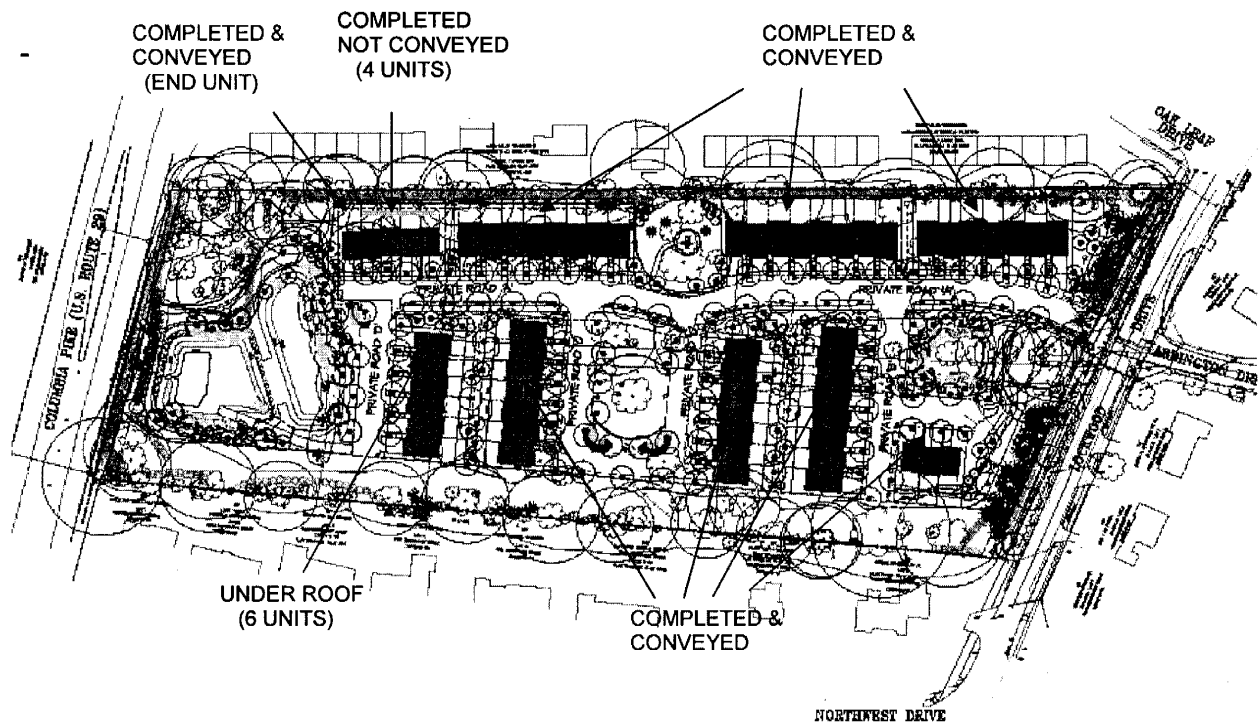
Development Standard	Permitted/ Required	Proposed and Approved
Min. Tract Area (s.f.):	20,000	354,578
Density of Development (d.u./ac.)	8	7.25
Number of Dwelling Units*	64	59
MPDUs	8 (12.5%)	8
Building Setbacks (ft.)		
from detached homes	30	52
from the street	25	25
from adjoining lots		
rear	20	20
side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

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

* development including moderately priced dwelling units

PROJECT DESCRIPTION: Development Status

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



BUILDING HEIGHT MEASUREMENT

The development provides private streets throughout the site to serve individual townhouses. DPS staff measured the building height from the street in accordance with the definition of “Height of building” in the Zoning Ordinance. Section 59-A-2.1. (Definitions) of the Zoning Ordinance defines the “height of building” as follows:

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

Based on the Inspection Results (Attachment 6) prepared by DPS staff Susan Scala-Demby, dated December 2, 2005, which showed heights ranging from 35.3 feet to 38.5 feet, staff found that all of the 59 townhouses in the Maple Ridge development were not in conformance with the 35-foot maximum building height requirement as established in Section 59-C-1.733 of the Zoning Ordinance and are in violation of the proposed and approved building height (35 feet) specified on the approved Site Plan 820030410 (formerly 8-03041). Although the heights of the MPDUs are lower than that of the market rate units, the DPS measurements indicated that they still exceeded the 35 foot height limit.

Builder’s Position on Building Height

The builder, Ryan Homes, argued that the height of the townhouse units should be measured from the average grade in front of each unit instead of from the street. The builder suggested to DPS that the ‘street’ in the definition of ‘Height of building’ refers to ‘public streets’. Since the subject townhouses front on private streets and are located more than 35 feet from public streets (Lockwood Drive and Columbia Pike), Ryan Homes believed that the height should be measured from the average grade in front of each unit. Based on this measurement method, all of the eight MPDUs would fall below the 35 foot height limit, and the tallest of the market rate units would be 36 feet, 5 inches. However, at the time the initial staff report was written for a hearing scheduled for December 15, 2005, DPS staff had not changed their interpretation of the building height measurement method.

EVENTS SINCE DECEMBER 15TH, 2005

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

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

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

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

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

SANCTIONS

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

(c) Imposition of Civil Fines and Penalties.

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

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

Violations, penalties, and enforcement.

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

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

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

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

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

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

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

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

PLAN OF COMPLIANCE

Staff Recommendation

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

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

ATTACHMENTS:

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



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MAY 25 2007
MCPB No. 07-65
Site Plan No. 820030410
Maple Ridge Townhomes
Hearing Date: February 23, 2006

PLANNING BOARD RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board" or "Board") is required to review site plan applications; and

WHEREAS, pursuant to Montgomery County Code § 50-41 and § 59-D-3.6, the Planning Board has the authority to enforce the terms of approval of site plans; and

WHEREAS, on February 23, 2006, the Planning Board held a hearing to consider allegations of setback violations, building height violations, and failure to provide recreation facilities in a timely manner in violation of the terms of approval for Site Plan No. 820030410 ("Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence and approved a settlement agreement with NVR, Inc. t/a Ryan Homes ("Respondent") on the motion of Commissioner Perdue, seconded by Commissioner Robinson, with Chairman Berlage and Commissioners Bryant, Perdue and Robinson voting in favor and Commissioner Wellington voting against.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapters 50 and 59, the Montgomery County Planning Board APPROVES the following terms of settlement agreed to by the Respondent in connection with the alleged violations for Site Plan No. 820030410:

1. Respondent shall remit the amount of \$276,750 to the Planning Board within 30 days of the adoption of this Resolution; and
2. Respondent waives its right to appeal the Planning Board decision as set forth in this Resolution; and

APPROVED AS TO LEGAL SUFFICIENCY

Dyd 5/10/07

MONTGOMERY COUNTY LEGAL DEPARTMENT

8787 Georgia Avenue, Silver Spring, Maryland 20910 Director's Office: 301.495.4500 Fax: 301.495.1310

www.MontgomeryPlanning.org

BE IT FURTHER RESOLVED that the Planning Board will abide by the following terms as agreed to at the Hearing:

1. The Planning Board makes no finding of violation against the Respondent Ryan Homes or the developer, HD-Maple Ridge LLC ("Developer");
2. The Planning Board will take no further action against the homeowners, the Respondent, or the Developer, with respect to issues identified in the staff report dated February 10, 2006, pertaining to Site Plan No. 820030410 (formerly 8-03041) Maple Ridge Townhomes (a.k.a. Seaton Square) ("Maple Ridge Staff Report"); and
3. The Planning Board will send a letter to all homeowners, including Respondent's customers, stating that no further action will be taken by the Planning Board of The Maryland-National Capital Park and Planning Commission with respect to the height of the units identified in the Maple Ridge Staff Report.

BE IT FURTHER RESOLVED, that the date of this written resolution is MAY 25 2007 (which is the date that this resolution is mailed to all parties of record).

* * * * *

CERTIFICATION

At its regular meeting, held on Thursday, May 17, 2007, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ADOPTED the above Resolution, on motion of Commissioner Robinson, seconded by Commissioner Bryant, with Commissioners Hanson, Perdue, Bryant, Robinson, and Wellington present and voting in favor. This

MCPB No. 07-65
Site Plan No. 820030410
Maple Ridge Townhomes
Hearing Date: February 23, 2006
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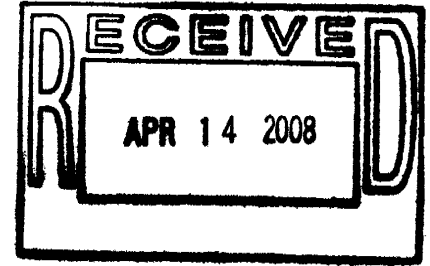
Resolution constitutes the final decision of the Planning Board, and memorializes the Board's findings of fact and conclusions of law for Site Plan No. 820030410, Maple Ridge Townhomes.



Royce Hanson, Chairman
Montgomery County Planning Board



February 19, 2008



Rose Krasnow, Division Chief
Montgomery County Planning Department
8787 Georgia Ave.
Silver Spring, MD 20910

RE: Maple Ridge Homeowners Association, Inc. –
Request for \$276,750.00 Fine Paid by Ryan Homes, Inc.

Dear Ms. Krasnow,

As you know, this firm represents the Maple Ridge Homeowners Association, Inc. (the "Association"). As discussed, I am writing to follow up with you concerning my November 29, 2007 letter to you regarding the above-referenced matter. For your convenience, I have enclosed a copy of my prior letter for your reference. It is my understanding from you that Ryan Homes was, in fact, fined \$276,750.00 by your agency, and that Ryan has remitted payment in full for that fine. It is my further understanding that the Montgomery County Planning Board will require an explanation of what my client will do with those monies before the Montgomery County Planning Board will authorize the release of those funds to the Association.

I have spoken with my client in that regard; and, as set forth in my prior letter to you, the Association would use these funds to remedy a number of problems within the Association's common areas to enhance the overall appearance of the community. Specifically, the Association is soliciting bids right now for significant improvements in landscaping in and around the area where the now dead "Maple Tree" was located. As you may be aware, that tree, around which the Association was constructed, was a focal point for the community and its loss has severely altered the character and aesthetic appeal of the Association. The Association is looking into replacing this loss and improving the landscaping to other common areas as well including the entranceway and storm water management systems. The Association estimates that said landscaping costs will be in the nature of \$50,000.00 - \$65,000.00.

In addition, the Association is bidding the installation of gates around the community to minimize the potential for the future occurrence of criminal misconduct like that which the Association's residents have recently experienced. The Association estimates that this security project will cost the Association approximately \$40,000.00.



Rose Krasnow
February 19, 2008
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Other measures planned to curb or prevent the escalating crime problem in the area includes the installation of lighting throughout the wooded areas within the Association which is estimated at \$45,000.00 - \$50,000.00, and the construction of two perimeter fences, one on the north property line to circumvent the problems which have arisen from the crumbling infrastructure of the neighboring property and the other on the west property line bordering Route 29. The construction of these fences would both add to the security of the Association and be harmonious with the architectural design established by the developer and approved by the County. The estimated costs are between \$75,000.00-\$80,000.00 for the north fence and \$38,000.-\$45,000.00 for the fence bordering the west property line. Secondary to the visibility and accessibility of the fence along Route 29 it will be designed to be graffiti proof and of a similar design to that present in the front of the Association bordering Lockwood Drive. The Association is also in the process of installing speed bumps on their roads which will cost approximately \$5,000.00.

In addition to the aforementioned capital improvements, the Association, as you know, has ongoing obligations to maintain its common area property. Those obligations require the Association to spend money for maintenance of its roads and parking areas, curbs and gutters, sidewalks, fencing and lighting, a tot lot, storm water management systems, and the like. In that regard, the Association is expected to expend nearly \$25,000.00 - \$30,000.00 in the near future for items such as storm drain cleaning, seeding and aerating, the pruning of trees and the like. In addition, and most importantly, the Association is obligated to maintain and repair features of the community with a long-term life expectancy, such as the storm water management systems and its roads and gutters. Although short-term expenses may be minimal, the long-term replacement costs for those items will be enormous. Therefore, all monies that are not spent on the issues noted above will be placed in the Association's reserve account, to be withdrawn, as needed, to make large capital repairs and improvements.

To illustrate the enormity of expense that the Association is likely to incur over the lifetime of its capital improvements and its present inability to finance those expenditures, I have enclosed a copy of the Replacement Reserve Report for the Association, which was drafted by the firm of Miller+Dodson Associates, which specializes in drafting reserve reports for communities such as Maple Ridge. The enclosed Report sets forth all of the items for which the Association is responsible, the estimated useful life for each item, and the estimated cost to repair or replace each item, as the case may be. You will also note from the Report that the Association's reserves are



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significantly under-funded, so, if major repairs were necessary earlier than expected, my client would be without the funds to make those repairs in a timely manner. With the monies that you collected from Ryan Homes in hand, my client could adequately fund the reserves needed to finance its future maintenance obligations.

As I have explained hereinabove and in my prior letter to you, the Association will be using a significant portion of the requested funds to immediately address some issues that will greatly improve the residents' quality of life in the community. The remaining monies will be deposited into the Association's reserve account, and will be available to address costly maintenance issues or long-term capital improvements, repairs or replacements as they arise.

On behalf of the Board of Directors of the Association, I thank you for your assistance with and attention to this matter. I look forward to receiving a check from the Planning Board, in equal amount to the fine collected from Ryan Homes. In that regard, please see that the check is made payable to my client, and send it to my attention at the address noted on this letter.

Finally, on another note, I look forward to also receiving the letter that we discussed regarding the height limitation issue. I look forward to hearing from you very soon. Meanwhile, should you have any additional questions please feel free to contact me.

Sincerely,



Craig B. Zaller

Enclosures

cc: Board of Directors (w/out Encl.)
Management (w/out Encl.)