



MEMORANDUM

DATE: May 26, 2006
 TO: Montgomery County Planning Board
 VIA: Michael Ma, Supervisor
 Rose Krasnow, Chief *RK*
 Development Review Division
 FROM: Frederick Vernon Boyd *FVB*
 Community-Based Planning Division
 (301) 495-4654



SUBJECT: **Corrective Order Addressing 32 Dwelling Units**
 CASE #: **820020360**
 PROJECT NAME: Greenway Village at Clarksburg – Phases 1 and 2
 REVIEW BASIS: Division 59-D-3 of Montgomery County Zoning Ordinance &
 Section 50-41 of Montgomery County Subdivision Regulations
 ZONE: PD-4
 LOCATION: In the vicinity of the intersection of Skylark and Newcut Roads,
 west of Ridge Road
 MASTER PLAN: Clarksburg Master Plan
 RESPONDENT: Clarksburg Skylark, LLC
 FILING DATE: July 15, 2005
 HEARING DATE: June 8, 2006

STAFF RECOMMENDATION: Approve the attached Corrective Order establishing development standards for 32 dwelling units located in Phases 1 and 2 of Greenway Village at Clarksburg

I. Purpose of Report

This report provides the Planning Board with information to support a proposed Corrective Order that will provide planning staff with a basis for reviewing and recommending the release of building permits for the construction of 32 dwelling units located within Phases 1 and 2 of the Greenway Village project. The Department of Permitting Services (DPS) currently is holding these permits.

II. Background: General Project Description

Greenway Village at Clarksburg is a 374-acre neighborhood just east of the Clarksburg Town Center. It is bounded roughly by Skylark Road and the Ovid Hazen Wells Recreational Park to the north and Ridge Road to the east. Immediately to the south and southwest is Clarksburg Village, a residential neighborhood. The area is best characterized as an emerging suburban residential district. Greenway Village and Clarksburg Village lie on land that previously had been farmed and are part of what the Clarksburg Master Plan describes as the Newcut Road Neighborhood.

The community is developing in five phases. Phases 1 and 2, which the proposed Corrective Order addresses, are largely complete. They total 164 acres and lie generally west of Little Seneca Creek, south of Skylark Road, and north of Clarksburg Village. Phases 3, 4 and 5 are unbuilt. This portion of the community totals about 210 acres and lies east of Little Seneca Creek, south of Skylark Road, and west of Ridge Road.

III. Relevant Plan Approvals

Preliminary Plan 120020330 and Preliminary Plan 12002033A

In 2002, the Planning Board approved a Preliminary Plan for the project and a subsequent amendment. The Preliminary Plan limited development on the property to 1,330 dwelling units in a total of five phases, 89,000 square feet of retail space, and 2,000 square feet of community space.

Site Plan 820020360

Also in 2002, the Planning Board approved a Site Plan for Phases 1 and 2 of the Greenway Village Project. The two phases contain 486 dwelling units on 164 acres, including 328 one-family detached houses and 158 one-family attached houses. Forty-nine of the one-family attached houses are Moderately Priced Dwelling Units.

IV. Development Status

Phases 1 and 2, as noted above, are largely complete. Only 32 units remain to be built. DPS is holding the building permits for these units. Twenty-nine of the units are under

contract. Construction on dwelling units in Phases 3, 4, and 5 has not yet begun. The Respondent has recorded no plats for these phases.

V. Development Standards

The Planned Development (PD) Zone, unlike more narrowly drawn Euclidean zones, contains no specific standards for building height or setbacks. The Zoning Ordinance, at Section 59-C-7.11, states 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.”

VI. Potential Violations

On March 30, 2006, the Planning Board held an Initial Hearing in which it considered allegations that the Respondent failed to comply with conditions of the approved Site Plan regarding the timely provision of required amenities. The first alleged violation involved the failure to construct a bike path along Skylark Road as part of Phase 1 of the Project. The Site Plan Enforcement Agreement (SPEA) for the Project includes bike paths as part of the Project’s local recreational facilities and generally requires that such facilities be completed and conveyed to a homeowners’ association when 70 percent of the units in a specified phase have closed on title. The Respondent did not seek a site plan amendment until more than 90 percent of the dwelling units in Phase 1 had closed.

The second alleged violation involves the relocation and narrowing of a bike path along Persimmon Ridge Road. The Site Plan required that a portion of the bike path be located within a public improvement easement across the fronts of three lots. The Respondent did not record the easement on the relevant record plat.

VII. Other Deficiencies

The original Site Plan opinion did not include extensive development standards. A data table, called “Greenway Village General Notes,” accompanies the Site Plan signature set and provides minimum lot size and setback standards for one-family detached dwelling units only. The “General Notes” data table makes no reference to building heights. The data table accompanying the original Preliminary Plan, however, refers to a maximum building height of four stories.

The Zoning Ordinance does not require the Planning Board to make specific determinations regarding building heights or setbacks as part of its review of a site plan.

The Ordinance does require that submitted plans include information on building heights. In this case, the Respondent did not submit, planning staff did not recommend, and the Planning Board did not set height and setback standards as part of a development data table to be included in the original Site Plan opinion.

VIII. Available Actions

The Planning Board will discuss the potential violations and other deficiencies in a hearing scheduled for June 22, 2006. It may conclude at that time that the Respondent has failed to comply with the conditions of Site Plan 820020360. The Board can choose to impose fines, require a Plan of Compliance, or order some other corrective action.

The Board must also determine an appropriate action or set of actions to correct the absence of complete development standards in the data table for the Site Plan signature set. The Respondent has proposed a series of amendments to the site plans for Greenway Village. The proposal, among other things, creates a full set of development standards for all phases of the project.

Planning staff recognizes, however, that a significant amount of time is needed to prepare and review formal opinions and certified site plans following approval and that there is some urgency attached to the 32 dwelling units for which DPS is holding building permits. This urgency is particularly acute for the 29 units with contracts. Some of the buyers of these units already have waited months for their homes to be built. For that reason, it is appropriate for the Planning Board to consider a more efficient mechanism that will provide planning staff with a basis upon which to review the building permits for the 32 units in question.

A Corrective Order that sets standards for those 32 dwelling units provides such a mechanism. In a similar case, the Planning Board already has implemented a Corrective Order for the Clarksburg Village project. Planning staff has reviewed the approved plans for Greenway Village and worked with the Respondent to devise standards that could be applied to the 32 properties, as set forth on the next page:

Maximum Building Heights	
One-family Detached	35 feet*
One-family Attached	40 feet*
Minimum Lot Area	
One-family Detached	4,300 square feet
One-family Attached	1,300 square feet
Setbacks	
All Subject Dwelling Units	Provided as “building restriction lines” (BRLs) in Exhibit C of proposed Corrective Order

* Except where specified; see discussion below.

Two one-family detached units exceed the proposed 35-foot height limit and four one-family attached units exceed the proposed 40-foot height limit. The specific lots are identified in the proposed Corrective Order and the exhibits attached to it.

The added height cannot be attributed to the Respondent’s desire to build taller homes. Instead, it is largely the result of the County’s chosen method of measuring building heights, although topography also influences the measured heights of these particular units. In designated areas (within 35 feet of a public street, for example), the County requires that building heights be measured from the street, not the base of the building. This means that the same type of house may have different measured heights depending on where it is located. The units in question will look no taller than neighboring homes.

Planning staff believes it is appropriate to allow, for six specifically designated lots only, a maximum building height of 40 feet for one-family detached dwelling units and 45 feet for one-family attached dwelling units. This should allow adequate leeway for measuring requirements, grading, and topographic variations on these specific lots.

The development standards in the proposed Corrective Order will be applied to the properties set forth in the table on the following page:

Lot/Block	Housing Type	Maximum Building Height	Lot Size
10B	One-family detached	40'	13,237
8F	One-family detached	40'	11,785
9P	One-family detached	35'	6,048
10P	One-family detached	35'	6,048
40P	One-family attached	40'	1,571
41P	One-family attached	40'	1,372
42P	One-family attached	40	1,499
43P	One-family attached	40'	1,626
44P	One-family attached	45'	1,685
45P	One-family attached	45'	1,593
46P	One-family attached	45'	1,412
47P	One-family attached	45'	1,900
48P	One-family detached	35'	5,801
21Q	One-family detached	35'	8,007
22Q	One-family detached	35'	8,730
1S	One-family attached	40'	3,324
2S	One-family attached	40'	2,227
3S	One-family attached	40	2,227
4S	One-family attached	40'	2,227
5S	One-family attached	40'	2,449
6S	One-family attached	40'	2,449
7S	One-family attached	40'	2,227
8S	One-family attached	40'	2,227
9S	One-family attached	40'	2,227
10S	One-family attached	40'	2,635
13S	One-family detached	35'	4,344
14S	One-family detached	35'	6,846
15S	One-family detached	35'	4,963
16S	One-family detached	35'	5,130
17S	One-family detached	35'	5,251
18S	One-family detached	35'	6,881
19S	One-family detached	35'	4,449

IX. Conclusion

Planning staff and the Respondent have stipulated to a set of facts and development standards in the attached Corrective Order. Planning staff recommends that the Board approve the Corrective Order and establish development standards for the 32 dwelling units described above. Planning staff, in turn, will rely on the development standards in the approved Corrective Order to evaluate and transmit recommendations to DPS concerning building permits for the units at issue.

**Before the Montgomery County Planning Board
of the
Maryland-National Capital Park and Planning Commission**

Respondent:

Clarksburg Skylark, LLC
c/o Artery Clarksburg, LLC
7200 Wisconsin Avenue, Suite 1000
Bethesda, Maryland 20814-4844

c/o Barbara A. Sears, Esq.
Linowes and Blocher LLP
7200 Wisconsin Avenue, Suite 800
Bethesda, Maryland 20814-4842

**In the Matter of the
Greenway Village Project –
Phases 1 and 2**

**Site Plan 820020360
(Formerly 8-02036)**

**Corrective Order
(Issued by Stipulation and Respondent's Consent)**

I. Explanatory Statements

1. This Corrective Order Issued by Stipulation and Respondent's Consent (the "Order") arises pursuant to the authority of the Planning Board as set forth in the Montgomery County Code ("Code") at Section 50-41(i). Code Section 50-41(i) authorizes the Board or its designee to issue a Corrective Order if it reasonably determines that (a) a person is in violation of any element of a Planning Board Action and (b) the public health, safety, or welfare are threatened or may be threatened because of the violation.

2. Clarksburg Skylark, LLC (the "Respondent") (a) acknowledges that it has received actual notice of this Order in lieu of, and sufficient to satisfy, the posting and other notice requirements of Code Section 50-41(i)(3); (b) waives the requirements of posting and other notice otherwise generally applicable under Code Section 50-41(i)(3); and, (c) consents to the proceedings by the Board on June 8, 2006, for the purpose of its adoption.

3. This Order is issued for the mutual convenience of the Respondent and the Board, and for the purpose of promoting the lawful and efficient deliberation by the Planning Board concerning certain violations alleged with respect to the project and site plan captioned above.

The Respondent and the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission (the "Board" or "Planning Board"), do hereby stipulate to the following facts:

II. Certain Factual Matters

4. On February 7, 2002, the Board approved Preliminary Plan No. 1-02033 (the "Preliminary Plan") for the Respondent's Greenway Village project (the "Project").

5. On May 2, 2002, the Respondent applied for Planning Board approval of the above-captioned site plan (the "Site Plan") encompassing only Phases 1 and 2 of the Project.

6. On September 12, 2002, following a public hearing, the Planning Board approved the Respondent's application for approval of the Site Plan.

7. On October 16, 2002, the written opinion was issued to memorialize the Planning Board approval of the Respondent's application (the "Site Plan Opinion"), effective as of its mailing to all parties of record on that date.

8. The Respondent submitted for approval by the Planning Board a site plan signature set (the "Signature Set") for Phases 1 and 2 of the Project. On April 21, 2003, the Respondent signed the Signature Set, and on June 16, 2003, the Board approved the Signature Set through execution by its designee.

9. On June 16, 2003, the Respondent and the Board executed a Site Plan Enforcement Agreement (SPEA) for Phases 1 and 2 of the Project.

III. Skylark Road Bike Path

10. The Site Plan requires the Respondent to construct an eight (8) foot wide bike path along Skylark Road (the "Skylark Road Bike Path"). The entire length of Skylark Road as shown on the Site Plan was included in Phases 1 and 2 of the Site Plan. Condition No. 4(b) of the Site Plan Opinion states as follows:

The cross section for Skylark Road is to be adjusted to include the bike path on the south side of the right-of-way for its entirety through the project.

11. The SPEA at Section 1(b) provides in part as follows:

Applicant will complete the following site plan elements prior to 70% occupancy of approved units in that constructed phase or section.

...

2. Pedestrian pathways and bikeways

12. The Respondent is constructing Skylark Road pursuant to an approved road plan ("Road Plan") developed in conjunction with the Montgomery County Department of Permitting Services (MC-DPS) and the Montgomery County Department of Public Works and Transportation (MC-DPWT).

13. The Respondent represents that, pursuant to the Road Plan phasing schedule required by the County, the construction of Skylark Road was phased in segments with the portion from MD 27 to Walnut Haven Drive required to be completed first. This portion of Skylark Road was completed in December 2005. The Respondent is currently constructing the segment of Skylark Road that borders Phase 2 of the Project and anticipates that this segment, including the accompanying portion of the Skylark Road Bike Path, will be completed by July 1, 2006.

14. In August 2004, Phase 1 of the Project reached the 70 percent occupancy point (the "Phase 1 Benchmark") of the SPEA referenced in Paragraph 11 above.

15. Upon reaching the Phase 1 Benchmark, the Respondent did not request or apply for a Site Plan Amendment to modify the conditions for completion of the Skylark Road Bike Path.

16. After reaching the Phase 1 Benchmark, the Respondent continued to apply for and receive building permits for the construction of dwelling units within Phases 1 and 2 of the Project.

17. In September 2005, Staff informed the Respondent that it had to apply for a Site Plan Amendment to modify the conditions for completion of the Skylark Road Bike Path. On October 17, 2005, the Respondent applied for the required amendment.

18. On October 31, 2005, the Respondent posted a bond with the Planning Board in an amount determined by Planning Board staff ("Staff") to cover the uncompleted portion of the Skylark Road Bike Path adjacent to Phases 1 and 2 of the Project. The Respondent represents that the bond was posted in order to permit the Respondent to continue to receive building permits in Phases 1 and 2.

19. At the initial hearing on the alleged violations of the Site Plan held by the Planning Board on March 30, 2006 (the "Initial Hearing"), the Respondent acknowledged that it had not completed construction of the Skylark Road Bike Path adjacent to the entire length of Skylark Road which borders Phases 1 and 2 of the Project. The Respondent's position is that the Site Plan did not require construction of the Skylark Road Bike Path at the Phase 1 Benchmark.

IV. Persimmon Ridge Road Bike Path

20. The Site Plan requires the Respondent to construct a bike path along Persimmon Ridge Road (the "Persimmon Ridge Road Bike Path").

21. The Site Plan requires that a portion of the Persimmon Ridge Road Bike Path pass through the fronts of three currently occupied dwelling units, identified as Lots 53, 54, and 55 (collectively, the "Subject Lots") located in Phase 1. The Site Plan further requires that this portion of the Persimmon Ridge Road Bike Path be located within a public improvement easement (PIE) passing through the front of each lot.

22. On June 27, 2003, the Respondent recorded Record Plat No. 22616, which depicts the Subject Lots without the necessary PIE for the Persimmon Ridge Road Bike Path, and its Builder subsequently constructed a five (5) foot wide sidewalk in front of the Subject Lots.

23. The Respondent represents that it first discovered in early 2005 that it was required to construct the Persimmon Ridge Road Bike Path through the fronts of the Subject Lots and that Record Plat No. 22616 did not record the necessary PIE on the Subject Lots.

24. The Respondent attempted to obtain the necessary PIE from the owners of the Subject Lots, which the owners refused to grant.

25. After consultation with MC-DPWT and MC-DPS, the Respondent relocated onto the existing public right-of-way the portion of the Persimmon Ridge Road Bike Path intended to pass through the fronts of the Subject Lots.

26. To fit the relocated portion of the Persimmon Ridge Road Bike Path within the public right-of-way, the Respondent, at the request of MC-DPWT, reduced the width of the Bike Path from eight (8) feet to seven (7) feet.

27. In May 2005, Staff informed the Respondent that it had to apply for a Site Plan Amendment addressing the relocation of the Persimmon Ridge Road Bike Path. On July 15, 2005, the Respondent applied for the required amendment.

28. The bond posted by the Respondent on October 31, 2005, referenced above in Paragraph 18, also covers the portion of the Persimmon Ridge Road Bike Path in front of the Subject Lots.

29. On November 4, 2005, the Respondent removed the five (5) foot wide sidewalk and installed the seven (7) foot wide Persimmon Ridge Road Bike Path in front of the Subject Lots after obtaining all MC-DPS approvals and permits.

30. At the Initial Hearing, the Respondent admitted that its Builder inadvertently failed to construct the Persimmon Ridge Road Bike Path at a width of eight (8) feet and through the front of the Subject Lots.

V. Certain Defects in the Site Plan Approval

31. At all times relevant hereto, the Zoning Ordinance at Section 59-C-7.1 of the Code, entitled "P-D zone-Planned development zone," contained the following excerpt ("Provision 1"):

59-C-7.19. Procedure for application and approval.

- (a) Application and development plan approval must be in accordance with the provisions of division 59-D-1.
- (b) Site plans must be submitted and approved in accordance with the provisions of division 59-D-3.

32. At all times relevant hereto, the Zoning Ordinance at Section 59-D-3.23 of the Code contained the following excerpt (“Provision 2”):

A plan of the proposed development including but not limited to the following information unless waived by the planning director at the time of application as being unnecessary because of the limited scope of the proposal ...

- (a) the location, height, ground coverage and use of all structures.

33. At all times relevant hereto, the Zoning Ordinance at Section 59-D-3.4 of the Code contained the following excerpt (“Provision 3”):

Action by Planning Board...

(a) ... The Planning Board must approve, approve subject to modifications, or disapprove [a site plan application]... In reaching its decision the Planning Board must determine whether: ...

(2) the site plan meets all of the requirements of the zone in which it is located... [and]

(4) each structure and use is compatible with the other uses and other site plans and with existing and proposed adjacent development...

(b) The Planning Board shall not approve the site plan if it finds that the development would not achieve the maximum of compatibility, safety, efficiency, and attractiveness; and the fact that a site plan complies with all of the stated general regulations, development standards or other specific requirements of the zone shall not by itself be deemed to create a presumption that the proposed site plan is, in fact, compatible with the surrounding land uses and, in itself, shall not be sufficient to require approval of the site plan.

34. The Site Plan Opinion fails to expressly set maximum height, setback, or lot size standards applicable to Phases 1 and 2 of the Project. The Site Plan Opinion includes all of the findings for a required approval mandated by Code Section 59-D-3.4(a).

35. The drawings comprising the Signature Set depict the footprints and lot sizes for some or all of the dwelling units included in Phases 1 and 2 of the Project.

36. Sheet 1 of the Signature Set contains a data table entitled “Greenway Village General Notes” (the “Data Table”) providing the following “minimum standards” for “single family detached” dwelling units only:

<i>Lot Size:</i>	<i>Varies</i>
<i>Front Yard:</i>	<i>15’</i>
<i>Rear Yard:</i>	<i>As shown on Site Plan</i>
<i>Side Yard:</i>	<i>4’ (lots with front load gar.)</i> <i>3’ (lots with rear load gar.)</i>

37. The Data Table on Sheet 1 of the Signature Set does not provide height standards applicable to Phases 1 and 2 of the Project. The Respondent’s position is that the Code at the time did not expressly require a data table.

38. The Board’s position is that the requirements of Provision 2 apply to the Respondent’s application as to Phases 1 and 2 of the Project; however, (a) the Respondent’s proposed plan of development as to Phases 1 and 2 does not specify “the location, height, ground coverage and use of all structures” and (b) at no time relevant hereto has the Planning Director waived any of the requirements set forth under Provision 2. The Respondent does not concede this position.

39. The Board’s position is that the requirements of Provision 3 apply to the Respondent’s application as to Phases 1 and 2 of the Project; however, the Planning Board did not reach the substantive findings prescribed by Provision 3 because the Respondent did not provide (and Staff had no opportunity to review) the information reasonably required for that purpose in accordance with Provision 1 and Provision 2. The Respondent does not concede this position.

VI. Subject Dwelling Units

40. The Respondent has applied, or intends to apply, with MC-DPS for approval of 32 building permits to authorize construction of certain Project dwelling units located in the PD-4 zone (the “Subject Dwelling Units”).

41. The lot and block description for each of the Subject Dwelling Units is set forth in Exhibit A of this Order. Exhibit B depicts the locations of the Subject Dwelling Units in relation to those additional lots within Phases 1 and 2.

42. Staff has not communicated its recommendation or advice to MC-DPS concerning certain building permits for the Project (including certain permits relating to the Subject Dwelling Units) in reliance on the assessment, reached in good faith, that the Site Plan Opinion and Signature Set do not comport with the applicable provisions of the Zoning Ordinance for the reasons set forth above in this Order. While the Respondent

does not contest Staff's good faith, it does not otherwise concede the correctness or completeness of the above statement.

VII. Other

43. Notwithstanding any matter of fact or law as stipulated and agreed to herein, the Respondent reserves expressly the right to contest (at a later date to be established by the Board) the existence of or liability for any violation under Code Sections 50-41 and/or 59-D-3.6, and does not waive any equitable or legal defense available with respect to the matters set forth herein.

44. Notwithstanding any matter of fact or law as stipulated and agreed to herein, subject, however, to Respondent's legal and equitable defenses reserved in Paragraph 43 above, Respondent acknowledges the provisions of Code Section 50-41(j), and that this Order does not waive the Board's right to pursue any fine or penalty with respect to any violations found or any other legal or equitable remedies available to the Board, whether concerning violations addressed by this Order or any other violations committed by Respondent with regard to the Site Plan.

VIII. Findings as to Subject Dwelling Units

45. Based on the information presented by the Respondent and the recommendation of Staff, the Planning Board finds, as a matter of fact, that the following standards with regard to the Subject Dwelling Units will achieve the maximum of compatibility and attractiveness within the meaning of Provision 3 above:

a. As depicted in Exhibit B attached hereto, the Subject Dwelling Units that are one-family **detached** dwelling units shall be constructed at a height of not more than **35 feet**, except for the Subject Dwelling Units located on the following lots, which shall be constructed at a height of not more than **40 feet** due to topography:

- 1) Lot 10, Block B
- 2) Lot 8, Block F

b. As depicted in Exhibit B attached hereto, the Subject Dwelling Units that are one-family **attached** dwelling units shall be constructed at a height of not more than **40 feet**, except for the Subject Dwelling Units located on the following lots, which shall be constructed at a height of not more than **45 feet** due to topography:

- 1) Lot 44, Block P
- 2) Lot 45, Block P
- 3) Lot 46, Block P
- 4) Lot 47, Block P

c. The Subject Dwelling Units that are one-family **detached** dwelling units shall be constructed on lots with a minimum lot size of **4,300 square feet**.

d. The Subject Dwelling Units that are one-family **attached** dwelling units shall be constructed on lots with a minimum lot size of **1,300 square feet**.

e. The Subject Dwelling Units shall be constructed pursuant to the setbacks provided as “building restriction lines” (BRLs) in Exhibit C attached hereto.

f. The findings as set forth in this Section VIII shall apply to the Subject Dwelling Units only.

END OF FACTUAL STIPULATION

IX. Other Findings and Certain Reservations

46. The Board finds that sufficient evidence of record exists to warrant a reasonable belief that the Respondent is in violation of a Planning Board Action for purposes of Code Section 50-41.

47. The Board further finds it necessary and essential to issue this Order because, otherwise, construction of the Subject Dwelling Units without appropriate development standards, such as height, may be incompatible or unattractive within the meaning of Provision 3 and thereby threaten the public health, safety, or welfare.

48. The Board further finds it desirable to issue this Order as a matter of relief for certain innocent third parties who have contracted to purchase homes included among the Subject Dwelling Units and, thereby, to advance the public health, safety and welfare.

49. The Board further finds that the Respondent may choose to apply for amendments to the Site Plan, with respect to any matter concerning the Site Plan, from time to time, at any time in the future, and that this Order is not intended to prevent the Respondent from doing so; provided, however, that this Order shall apply to the Subject Units only and that nothing contained herein, including without limitation the various findings of the Board, shall operate or be construed to bind, estop, or otherwise impair the Board’s authority to make such findings or determinations required by law, whether or not they differ from those set forth herein or otherwise.

50. Without conceding the estoppel or precedential effect of this Order, the Respondent accepts this Order, consents to its issuance by the Board, and hereby waives any right to appeal this Order.

51. The Board acknowledges that the Respondent has prepared and filed with the Board a Plan of Compliance and Site Plan Amendment Application for Phases 1 and 2, which are currently scheduled for hearing on June 22, 2006, to establish heights and other new development standards with respect to any and all structures within the Project.

NOW, THEREFORE, BY AUTHORITY OF THE MONTGOMERY COUNTY PLANNING BOARD OF THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, IT IS THIS _____ DAY OF JUNE, 2006,

ORDERED, THAT the Site Plan for this Project is corrected by this Order with respect to the Subject Dwelling Units only; and,

ORDERED, FURTHER, THAT the Respondent shall observe and comply strictly with the limitations on height and other development standards for the Subject Dwelling Units set forth in the Exhibits attached hereto; and,

ORDERED, FURTHER, THAT a Plan of Compliance and Site Plan Amendment reasonably satisfactory to Staff be brought before the Planning Board to establish appropriate height and other necessary development standards with respect to any and all structures within Phases 1 and 2 of the Project.

Derick P. Berlage, Chairman
On behalf of the Montgomery County Planning Board

REVIEWED AND AGREED TO BY THE RESPONDENT:

Barbara A. Sears, Esquire
Linowes and Blocher, LLP
On behalf of the Respondent

Exhibit "A"

Lot and Block Description for Each of the Subject Dwelling Units

Lot 10, Block B

Lot 8, Block F

Lot 9, Block P

Lot 10, Block P

Lot 40, Block P

Lot 41, Block P

Lot 42, Block P

Lot 43, Block P

Lot 44, Block P

Lot 45, Block P

Lot 46, Block P

Lot 47, Block P

Lot 48, Block P

Lot 21, Block Q

Lot 22, Block Q

Lot 1, Block S

Lot 2, Block S

Lot 3, Block S

Lot 4, Block S

Lot 5, Block S

Lot 6, Block S

Lot 7, Block S

Lot 8, Block S

Lot 9, Block S

Lot 10, Block S

Lot 13, Block S

Lot 14, Block S

Lot 15, Block S

Lot 16, Block S

Lot 17, Block S

Lot 18, Block S

Lot 19, Block S

GREENWAY VILLAGE PHASES 1 AND 2

SIGNATURE SET CORRECTIVE ORDER ON
32 SUBJECT DWELLING UNITS

BUILDING HEIGHT LEGEND

SFD	- 35' MAX.
[Symbol]	- 40' MAX.
TH	- 40' MAX.
[Symbol]	- 45' MAX.

LOT AND BLOCK LIST OF THE 32 UNITS

LOT	BLOCK
10	B
8	F
9	P
10	P
40	P
41	P
42	P
43	P
44	P
45	P
46	P
47	P
48	P
21	Q
22	Q
1	S
2	S
3	S
4	S
5	S
6	S
7	S
8	S
9	S
10	S
13	S
14	S
15	S
16	S
17	S
18	S
19	S



EXHIBIT 'B'

CPJ Associates Charles P. Johnson & Associates, Inc.
 PLANNERS - ENGINEERS - LANDSCAPE ARCHITECTS - SURVEYORS
 1201 BOSTON ROAD SUITE 300 SILVER SPRING, MARYLAND 20906
 Phone (301) 494-7000 E-mail: cpj@cpj.com Fax (301) 494-9594
 FREDERICK, MD PARRIS, VA

CLIENT: CLARIBRO SKYLARK, L.L.C. 7200 WOODBURN AVENUE, SUITE 200 BETHESDA, MD 20814	DESIGN: RLL DRAFT: MCL	SHEET: 1 OF 1
COPYRIGHT © LATEST DATE HEREON CHARLES P. JOHNSON & ASSOCIATES, INC. ALL RIGHTS RESERVED. UNAUTHORIZED USE OR REPRODUCTION IS PROHIBITED.	DATE: MAY, 2006 SCALE: 1"=120'	FILE NO.: 3-200-08 D

Revised: Plans May 23, 2006