

**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760  
301-495-4500, [www.mncppc.org](http://www.mncppc.org)

**Items # 2**  
**MCPB 7/20/06**

**DATE:** July 18, 2006

**TO:** Montgomery County Planning Board

**VIA:** Faroll Hamer, Acting Director

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

**REVIEW TYPE** Amend Corrective Order of May 11, 2006 to Establish Development Standards for 47 Additional Lots and the Pool Facility to Enable Building Permit Review, Pending a Compliance Program

**REVIEW BASIS** Division 59-D-3.6 of the Montgomery County Zoning Ordinance

**PROJECT #** Site Plan 820030020 (Formerly #8-03002)

**PROJECT NAME** Clarksburg Village Phase One

**ZONE** R-200/TDR3 and R-200/MPDU

**LOCATION** Southwest Quadrant of the Intersection of Stringtown Road and Piedmont Road

**MASTER PLAN** Clarksburg Master Plan

**RESPONDENT** Elm Street Development

**HEARING DATE** July 20, 2006

---

**INTRODUCTION**

On May 11, 2006, the Planning Board issued a corrective order that established complete development standards with respect to 83 lots, which allowed the M-NCPPC to resume their review of these building permits.

On June 29, 2006, the Planning Board held a public hearing, conducted a preliminary vote on alleged acts of non-compliance, rejected the proffer that was extended by the applicant, and directed staff to determine an appropriate Compliance Program and/or fines. At the same hearing, the developer requested an amendment to the corrective order of May 11, 2006 to establish development standards for 100 additional dwelling units. At that time, the Planning Board set a July 20, 2006 date for discussion and action on that request.<sup>1</sup>

**STAFF RECOMMENDATION: APPROVAL** of an Amendment to the Corrective Order dated May 11, 2006 to establish development standards for 65 additional units, including 47 one-family detached units and 18 townhouses, and the proposed pool facility on Parcel A of Block P. These lots are identified below.

Block F	Block L	Block M	Block O	Block Q	Block U
35	16, 17, 18, 23, 26, 27, 28	1, 2, 3, 4, 5 21, 23, 24, 25, 26, 27, 28, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 73, 74, 75, 77, 80, 103	1, 2, 3, 4, 5	1, 3, 9	2, 3, 4, 5, 24, 25, 26, 27, 61

Development Standards established for these units are as follows:

**I. R-200 zone with MPDU optional method of development**

Lots 2, 3, 4, and 5 of Block U

- Minimum Lots Area: 6,000 sq. ft.
- Max. Building Height: 40 feet or 3 stories
- Min. Setback from Street: 25 feet
- Min. Side Yard: 4 feet
- Min. Rear Yard: 20 feet

**II. R-200/TDR-3 zone**

43 detached units and 18 townhouses in Blocks F, L, M, O, Q, and U.

One-family Detached Unit

- Minimum Lots Area: 3,500 sq. ft.
- Max. Building Height: 35 feet
- Min. Front Yard: 8 to 15 feet as specified on individual lots
- Min. Side Yard: 3 to 4 feet as specified on individual lots
- Min. Rear Yard: 0 to 20 feet as specified on individual lots

<sup>1</sup> The staff report and attachments from the June 29, 2006 Public Hearing, Items 1 & 2 provide a record of previous actions and analyses and are available on [www.ClarksburgPlanning.org](http://www.ClarksburgPlanning.org).

Townhouse

Minimum Lot Area: 1,400 sq. ft.  
Max. Building Height: 35 feet  
Min. Front Yard: 3 feet  
Min. Side Yard: 0 feet  
Min. Rear Yard: 0 feet

Pool Facility

Parcel A of Block P

Max. Building Height: 35 feet  
Min. Building Setback from:  
    Snowden Farm Parkway: 40 feet  
    Grand Elm Street: 15 feet  
    Turtle Rock Terrace: 15 feet  
    Adjacent residential lots: 60 feet

**DEVELOPER REQUEST**

The developer originally requested that the Corrective Order of May 11, 2006, be amended to establish complete development standards for 100 additional dwelling units and the pool facility. They stated that this number would continue to allow builders to apply for building permits that have been held up due to the lack of such development standards in the previously approved site plan, and would enable builders and contractors to continue to produce homes during the time of year when the weather permits the highest construction productivity. Staff notified the applicant that it would support only the release of 65 building permits for dwelling units, and the release of the permit for the pool/clubhouse facility. The applicant has agreed to accept staff's recommendation.

**STAFF POSITION**

Staff did not support the release of an additional 100 permits for the following reasons. Releasing 65 additional permits, coupled with the release in May of 83 permits, means that Elm Street may proceed with the construction of 148 dwelling units, plus the pool/clubhouse facility. This should be enough to keep various contractors and subcontractors employed while the terms of the Plan of Compliance are resolved. Staff was concerned to learn that since the hearing on June 29<sup>th</sup>, builders (except for Winchester) are apparently continuing to sell homes. This is upsetting, given the uncertainty regarding the ultimate resolution of the violation case. Staff wants to see work continue in the community, but also wants to ensure that the Board's prerogatives are protected. Selling units before this case is resolved appears to put innocent purchasers in jeopardy. Staff does not, in any way, support this practice.

Staff strongly supports releasing the pool/clubhouse facility at this time. Doing so would help ensure that the facility can be completed by the start of the swim season in 2007. This is very important for the residents who already reside in Clarksburg Village.

## **ANALYSIS**

### Proposed Development Standards

#### I. R-200/MPDU Zone

The four, one-family detached dwelling units in the R-200/MPDU zone (Lots 2, 3, 4, and 5 of Block U) show the required 25-foot setback from a public street and all are on lots that are greater than 6000 square feet in size. They are all less than 40 feet, which is the maximum height allowed in the zone. These standards are established by the Zoning Ordinance. Staff, however, recommends additional minimum setback standards be required to better define the building envelop: 4 feet for the side yard and 20 feet for the rear yard.

#### II. R-200/TDR3 Zone

The remaining dwelling units are in the R-200/TDR3 zone and include 43 one-family detached dwelling units and 18 townhouses. The building height and setback standards proposed by the applicant for these units are the same standards that were established through the original Corrective Order for 83 units. The minimum lot size standard, however, was not included in the exhibit submitted by the applicant and should be added.

#### III. The Pool Facility (Parcel A of Block P)

The proposed minimum building setback for the pool facility, as submitted by the applicant, is 10 feet on all sides. This provides little guidance as to the siting of the pool house. Greater setbacks are needed to ensure the compatibility of the proposed facility with surrounding houses and roadways. Staff recommends minimum building setbacks varying from 15 to 60 feet for the four boundaries of the Parcel as listed in the Staff Recommendation section above.

### Justifications for Corrective Order

The first corrective order, which addressed 83 dwelling units, was approved primarily to relieve hardship experienced by innocent third party purchasers who were waiting for those homes. The Planning Board also received testimony from local businesses affected by the construction slow down, and took that into consideration as well. At this time the reasons for approval of development standards for 65 dwelling units and the pool facility are as follows:

1. It is beneficial to the community because it will allow construction to begin on the swimming pool and pool house, which also includes an indoor community space. These amenities have long been anticipated by residents and should not be delayed further. The pool house provides indoor community space that can be used year-round.
2. The locations of the dwelling units will not limit any redesign for the blocks that have been the focus of discussions concerning a compliance program: Blocks G, H, K and L, P, and T.
3. The 65 units were selected for the following reasons:
  - a. They would fill the construction gaps to create complete street blocks.
  - b. These units would line walking routes to the proposed pool and park.
  - c. They include a variety of unit types and sizes.
4. The developer has demonstrated good faith in providing a better proffer. New features of the proffer include:
  - A proposal to reduce the right-of-way on four streets to 27-feet, which eliminates the need for any semidetached or attached homes
  - Adjusting lot lines & eliminating four lots
  - Ball field construction on the park/school site
  - \$100,000 payment to the Homeowners Association (HOA)
  - Additional landscape
  - An office for the HOA staff within the pool house/community room
  - Redesign of Blocks P and T with reduction of 32 units and additional dwelling unit types.

A Comparison of Proffers (Attachment 3) has been provided by the applicant comparing previous two proffers with the current one.

## **SCHEDULE**

It was the applicant's hope that the compliance program and subsequent amendment to the approved Plan for Phase I would be acted upon at the meeting on July 20<sup>th</sup>. Although the applicant has been working with staff to resolve the issues created by the non-compliant units and to improve certain areas of the community, there was not sufficient time to bring this process to a successful conclusion.

Staff needs more time to review various items on the proffer list to determine what are the appropriate items (financial contributions and/or physical improvements) to be required. In addition, the applicant and their consultants need to keep working on their redesign of certain areas of the community. Solutions to the units, which are owned by third parties and do not meet standards, also need to be worked out.

A proposed scheduling order to deal with these ongoing matters is attached (Exhibit G).

## Attachments

1. Proposed Revision to Corrective Order
2. Proposed Proffer Text (July 10, 2006)
3. Comparison of Proffers – from Developer
4. Testimony – including written testimony received at June 29, 2006 public hearing

# **ATTACHMENT**

**1**

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

**Respondent:**

Elm Street Development, Inc.  
Clarksburg Village Investments, Inc.  
6820 Elm Street, Suite 200  
McLean, Virginia 22101

c/o Kevin P. Kennedy, Esq.  
Timothy Dugan, Esq.  
Shulman, Rogers, Gandal, Pordy & Ecker  
11921 Rockville Pike  
Rockville, Maryland 20852

**In the Matter of the  
Clarksburg Village Project**

**Site Plan 820030020  
(Formerly 8-03002)**

**Amendment to Corrective Order**

**I. Explanatory Statements.**

1. This Amendment to Corrective Order (“Amendment Order”) is issued as an amendment to that certain “Corrective Order Issued Based on Stipulations by Respondent,” including its Exhibits A-C, dated May 11, 2006, and executed on the same date, by the Montgomery County Planning Board and the Respondent, Elm Street Development, Inc. (the “Order”). All of the terms and conditions of the Order are incorporated by reference and continue in full force and effect.

2. Respondent: (a) acknowledges that it has received actual notice of this Amendment Order in lieu of, and sufficient to satisfy, the posting and other notice requirements of Montgomery County Code (“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 July 20, 2006, for the purpose of its adoption.

Elm Street Development, Inc., together with its affiliate Clarksburg Village Investments, Inc. (acting jointly and severally, 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:



**I. 65 Dwelling Units in the R-200/TDR 3 Zone and the R-200/MPDU Zone  
and  
The Pool Facility.**

3. Respondent has applied, or intends to apply, with the Montgomery County Department of Permitting Services (MC-DPS) for approval of up to 65 building permits to authorize construction of certain Project dwelling units, including 61 dwelling units located in the R-200/TDR 3 zone and 4 dwelling units located in the R-200/MPDU zone (collectively, the “65 Dwelling Units”).

4. Respondent has applied, or intends to apply, with MC-DPS for approval of a building permit to authorize construction of a certain Project pool facility (the “Pool Facility”). The Pool Facility improvements include, without limitation, a pool clubhouse (the “Pool Clubhouse”).

5. The lot and block description for each of the 65 Dwelling Units and the parcel and block description for the Pool Facility are set forth in Exhibit D of this Amendment Order. Exhibit E depicts the locations of the 65 Dwelling Units and the Pool Facility in relation to the 83 “Subject Dwelling Units” addressed by the Order and those additional lots that will be subject to the Compliance Program.

**II. Findings As To 65 Dwelling Units and the Pool Facility.**

6. 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 65 Dwelling Units and the Pool Facility will achieve the maximum of compatibility and attractiveness within the meaning of “Provision 3,” as such term is defined in the Order:

a. The 65 Dwelling Units, all of which are either one-family detached dwelling units or townhouse dwelling units, and the Pool Clubhouse must be constructed at a height of not more than 35 feet. The point from which height is measured for each dwelling unit and the Pool Clubhouse must be as set forth in Exhibit F of this Amendment Order.

b. The 65 Dwelling Units that are one-family detached dwelling units must be constructed with a minimum lot size of 3,500 square feet.

c. The 65 Dwelling Units that are townhouse dwelling units must be constructed with a minimum lot size of 1,400 square feet.

d. The 65 Dwelling Units and the Pool Facility must be constructed pursuant to the setbacks set forth as “building restriction lines” (BRLs) in Exhibit F of this Amendment Order.

**END OF FACTUAL STIPULATION**

### III. Other Findings and Certain Reservations.

7. The Planning Board finds that, based on its proceedings on May 11, 2006 and June 29, 2006, the Board has found that sufficient evidence of record exists to warrant a reasonable belief that Respondent is in non-compliance with a Planning Board Action, which finding satisfies the requirements of Code Sections 50-41 and 59-D-3.6 for issuance of the Order and this Amendment Order.

8. The Board further finds it necessary and essential to issue this Amendment Order because, otherwise, construction of the 65 Dwelling Units and Pool Clubhouse at heights that are too tall or without compliance with other appropriate development standards, and the construction of the Pool Facility without the approved setbacks, may be incompatible or unattractive within the meaning of Provision 3 and thereby threaten the public health, safety, or welfare.

9. 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 Amendment Order is not intended to prevent the Respondent from doing so; provided, however, that this Amendment Order shall apply to the 65 Dwelling Units and the Pool Facility only and that nothing contained herein, including without limitation the various findings of the Planning 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.

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

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

ORDERED, THAT the Site Plan for this Project is corrected by this Amendment Order with respect to the 65 Dwelling Units and the Pool Facility only; and,

ORDERED, FURTHER, THAT Respondent shall observe and comply strictly with the limitations on height and other development standards set forth in this Amendment Order; and,

ORDERED, FURTHER, THAT Respondent and Staff shall abide by the schedule set forth in the Timetable for Completion of the Compliance Program, attached hereto as Exhibit G (the "Timetable"), and/or any amendments to the Timetable established by the written stipulation of Respondent and Staff.

**SIGNATURE PAGE FOLLOWS**

---

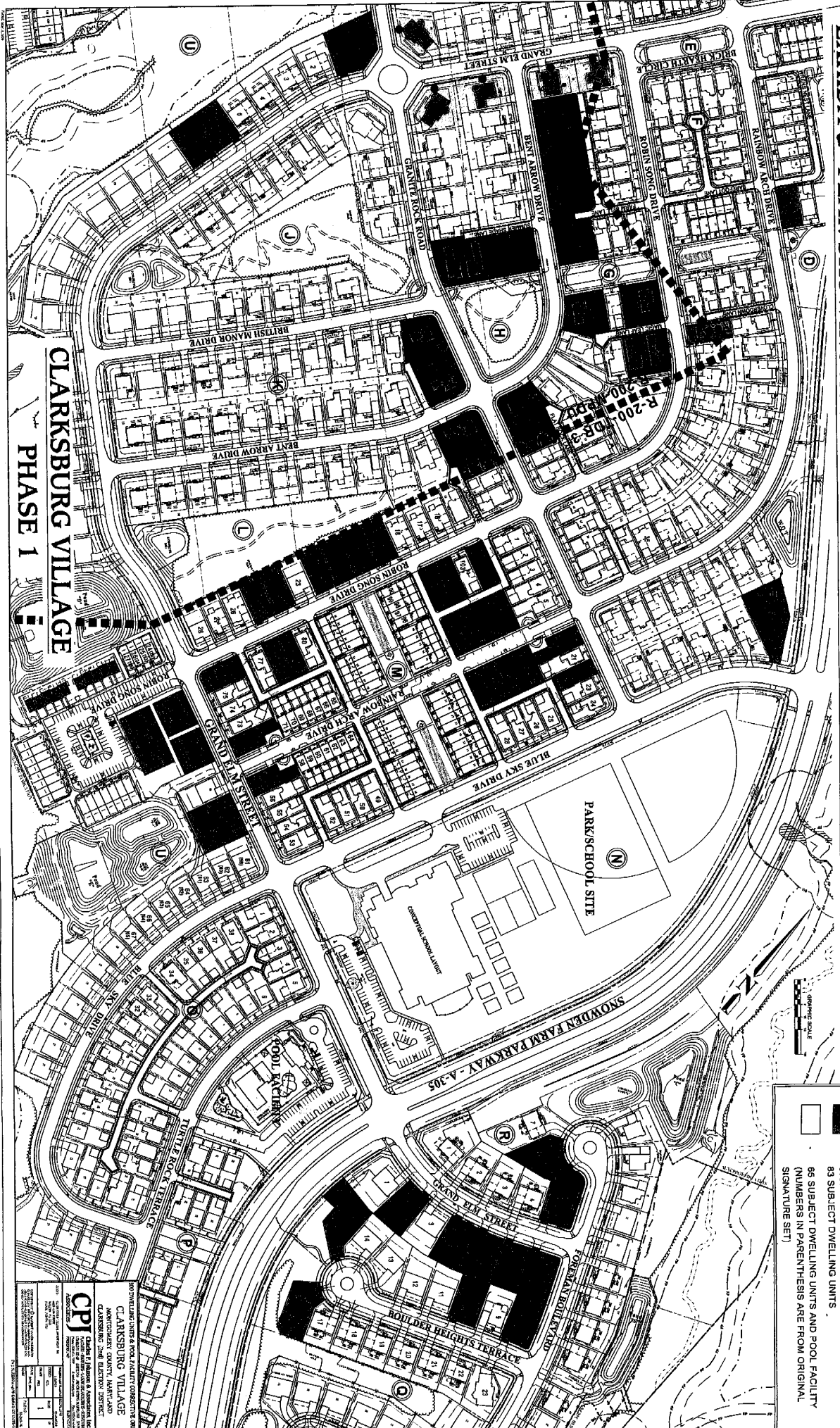
Derick P. Berlage, Chairman  
On behalf of the Montgomery County Planning Board

REVIEWED AND AGREED TO BY RESPONDENT:

---

Timothy Dugan, Esq.  
Shulman, Rogers, Gandal, Pordy & Ecker, P.A.  
On behalf of Respondent

**EXHIBIT E - PLAN SHOWING LOCATIONS OF 65 DWELLING UNITS AND POOL FACILITY**



**CLARKSBURG VILLAGE  
PHASE 1**

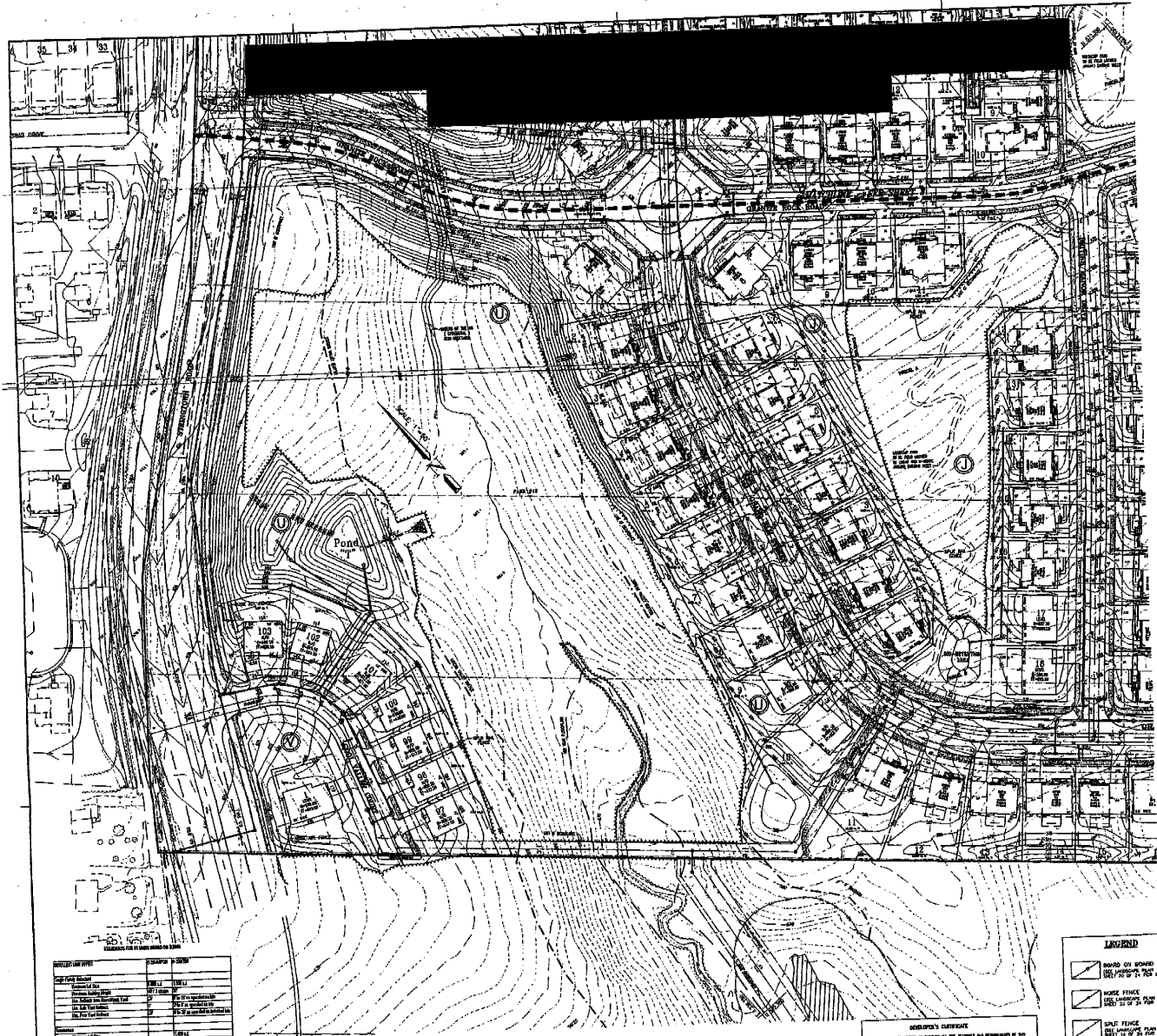
**LEGEND**

- SIGNATURE SET CORRECTION HEARING 6/11/08
- 83 SUBJECT DWELLING UNITS
- 65 SUBJECT DWELLING UNITS AND POOL FACILITY (NUMBERS IN PARENTHESES ARE FROM ORIGINAL SIGNATURE SET)

**CPJ**  
 Clark & Johnson & Associates, Inc.  
 10000 W. 10th Street, Suite 100  
 Denver, CO 80202  
 (303) 751-1000  
 www.clarkandjohnson.com

65 DWELLING UNITS & POOL FACILITY CORRECTIVE SET  
**CLARKSBURG VILLAGE**  
 MONTGOMERY COUNTY, MARYLAND  
 CLARKSBURG TOWN ELECTRIC SYSTEM

DATE	DESCRIPTION	BY	CHKD
6/11/08	65 DWELLING UNITS & POOL FACILITY CORRECTIVE SET	CPJ	CPJ



**EXISTING LOT LINES**

NO.	DESCRIPTION	DATE	BY
1	Original Plat	1911	W. J. ...
2	...	...	...
3	...	...	...
4	...	...	...
5	...	...	...
6	...	...	...
7	...	...	...
8	...	...	...
9	...	...	...
10	...	...	...
11	...	...	...
12	...	...	...
13	...	...	...
14	...	...	...
15	...	...	...
16	...	...	...
17	...	...	...
18	...	...	...
19	...	...	...
20	...	...	...
21	...	...	...
22	...	...	...
23	...	...	...
24	...	...	...
25	...	...	...
26	...	...	...
27	...	...	...
28	...	...	...
29	...	...	...
30	...	...	...
31	...	...	...
32	...	...	...
33	...	...	...
34	...	...	...
35	...	...	...
36	...	...	...
37	...	...	...
38	...	...	...
39	...	...	...
40	...	...	...
41	...	...	...
42	...	...	...
43	...	...	...
44	...	...	...
45	...	...	...
46	...	...	...
47	...	...	...
48	...	...	...
49	...	...	...
50	...	...	...
51	...	...	...
52	...	...	...
53	...	...	...
54	...	...	...
55	...	...	...
56	...	...	...
57	...	...	...
58	...	...	...
59	...	...	...
60	...	...	...
61	...	...	...
62	...	...	...
63	...	...	...
64	...	...	...
65	...	...	...
66	...	...	...
67	...	...	...
68	...	...	...
69	...	...	...
70	...	...	...
71	...	...	...
72	...	...	...
73	...	...	...
74	...	...	...
75	...	...	...
76	...	...	...
77	...	...	...
78	...	...	...
79	...	...	...
80	...	...	...
81	...	...	...
82	...	...	...
83	...	...	...
84	...	...	...
85	...	...	...
86	...	...	...
87	...	...	...
88	...	...	...
89	...	...	...
90	...	...	...
91	...	...	...
92	...	...	...
93	...	...	...
94	...	...	...
95	...	...	...
96	...	...	...
97	...	...	...
98	...	...	...
99	...	...	...
100	...	...	...

**LEGEND**  
 - - - - - INDICATES FORMS OF  
 - - - - - (COLOR MEASUREMENTS)

LOT	BLOCK	LOT AREA	MAX BUILDING HEIGHT	ZONE
1	U	0.598 Sq Ft.	40'	R-200/MSU
2	U	0.598 Sq Ft.	40'	R-200/MSU
3	U	0.598 Sq Ft.	40'	R-200/MSU
4	U	0.598 Sq Ft.	40'	R-200/MSU
5	U	0.598 Sq Ft.	40'	R-200/MSU

# EXHIBIT F

## SHEET 1

**DEVELOPER'S CERTIFICATE**  
 I, the undersigned, hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief, and that I am the owner of the property herein described.  
 Signature: *David J. Flanagan*  
 Name: **DAVID J. FLANAGAN**

**LEGEND**  
 [Symbol] BOARD ON BOARD  
 [Symbol] HOME FENCE  
 [Symbol] SPLIT FENCE

**Exhibit G**  
**To Amendment to Corrective Order**

Timetable for Completion of Compliance Program  
Site Plan No. 820030020 - Clarksburg Village

<b>Task</b>	<b>Due Date</b>
Staff comments to Respondent (on Respondent's proffer as set forth in letter dated July 10, 2006, from Robert R. Harris to Derick Berlage, Esq., Chairman)	August 14, 2006
Respondent's final submittal of compliance program (including all exhibits) in response to Staff comments	August 28, 2006
Staff report and recommendation for compliance program	On or before September 18, 2006
Hearing on compliance program	September 28, 2006

# **ATTACHMENT**

**2**

Robert R. Harris  
301 215 6607  
robert.harris@hklaw.com

July 10, 2006

Via Hand Delivery

Derick Berlage, Esq.  
Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

RECEIVED  
0939  
JUL 10 2006

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Re: Clarksburg Village, Phase 1, Site Plan No. 820030020 and 82003020A

Dear Chairman Berlage and Members of the Planning Board:

As you are aware, we, together with the law firm of Shulman, Rogers, Gandal, Pordy & Ecker, are counsel to Elm Street Development, Inc., and its affiliate, Clarksburg Village Investments, Inc. (together "Elm Street"), the Respondent in this matter. Site Plan compliance issues concerning this project have been the subject of several Planning Board hearings, including, most recently, June 28, 2006. At that meeting, the Planning Board found various disputed aspects of the project to be acts of non-compliance with either the Site Plan approval or the Zoning Ordinance and Elm Street reserved its rights to appeal those findings. The Board then heard testimony from Elm Street with respect to a plan of compliance and potential sanctions but did not make a decision with respect to either such matter. It left the record open for further discussion on July 20, 2006. The Board invited Elm Street to submit a revised compliance program or proffer including possible zoning changes, redesign of unbuilt portions of the project, a Zoning Text Amendment or other possible actions. In terms of a financial penalty, the Board left open the extent to which the corrective measures themselves and any financial commitment to Clarksburg Village might serve the role of potential sanctions.

Elm Street remains committed to correcting any deficiencies at Clarksburg Village. As such, it has explored additional options and is submitting this Proffer in resolution of any alleged non-compliance issues. As discussed in greater detail below, and reflected in the attached plans, Elm Street's objective is to ensure first and foremost that existing homeowners in Clarksburg Village will be in a position to comply with zoning and site plan requirements. With respect to the unbuilt portions of Clarksburg Village, Elm Street also wants to ensure future compliance and to improve the development even where there are no issues of non-compliance. In order to achieve these objectives, the County Council has already processed a Zoning Text Amendment to clarify the setback for corner lots. That ZTA (06-12) is scheduled for final action July 11, 2006 and will address all issues with respect to 5 constructed units. Elm Street also has on file a



Site Plan Amendment (the "B Amendment") to make a variety of design changes. Additionally, subject to Planning Board approval, Elm Street is prepared to make a series of other changes to the development reflected in the Signature Set Site Plan. This includes re-platting existing lots to make them suitable for single-family detached units, rather than single-family attached or semi-detached homes, and resiting unbuilt homes. This will result in the deletion of lots in Blocks G, H and K and the deletion of some planned homes. It will enable existing and future units in those Blocks to conform with lot size and setback requirements as single-family detached units; no trellis or other connection will be required. Pursuant to suggestions from Planning Staff, Elm Street also is presenting a revised plan for Blocks P and T, eliminating approximately 32 units and adding additional product types even where the proposed development would be in full compliance with the Site Plan.. Finally, Elm Street is prepared to spend additional funds on recreation facilities and landscaping and to make a substantial payment to the Clarksburg Village HOA. The changes will result in the loss of units and will impose additional expenses on Elm Street, but they will enable Clarksburg Village to continue in its path to being the desirable community to which its residents have referred.

Elm Street's Proffer is expressly conditioned on the following:

- (1) approval of the terms of the Proffer;
- (2) final resolution of all alleged acts of non-compliance, including the issue of allegedly "premature" record plats and/or DPS building permits before the Phase 1 Signature Set Site Plan was actually signed in August, 2004; and
- (3) the Board's approval on July 20, 2006 of Elm Street's request for a revised Corrective Order which interim measure is required in order to allow release of building permits for the lots specified therein which are not in any way implicated by the Staff's recommended findings of acts of non-compliance or sanctions.

Assuming these conditions are acceptable, then this Proffer also carries with it Respondent's proposed waiver of any right to appeal. In this way, this Proffer is intended to bring closure to all matters of alleged non-compliance in Clarksburg Village Phase 1, so that this important project may be allowed to resume and proceed in earnest for the mutual benefit of all concerned.

### **Proffer**

1. Re-plat lots 31-36, block G eliminating one lot and making the remaining 5 lots over 6,000 square feet. Re-plan the unbuilt homes to be a minimum 25' from a public street.
2. Re-plat and re-plan lots 29 and 30, block G to have the unbuilt home on lot 30 to be a minimum of 25' from a public street.

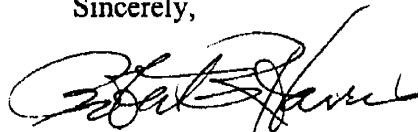
3. Re-plat and re-plan lots 10, 11, 12, 26, and 27, block G and eliminate one lot. Additional land will be added to 26 and 12 (both with existing homes) to get lot 12 to be over 6,000 square feet and to be able to have both homes rebuilt if they ever burn down in a location at least 25' from the existing street.
4. Re-plat lot 13, block G to add a portion of the alley to the lot to increase the lot to 6,000 square feet in size. An easement will be placed on this additional land to allow it to continue to function as an alley.
5. Re-plat and re-plan lots 21 and 22, block G. Both houses will be sited 25' from the street and both lots will be 6,000 square feet in size. An easement will be placed on any additional land from the alley to allow it to continue functioning as an alley.
6. Re-plat and re-plan lots 10, 11, 12, 13 and 14, block L. Lot 10 shall be increased in size to allow the existing home to be rebuilt if it ever burns down in a location at least 25' from the existing street. The future house on lot 11 will be sited a minimum of 25' from the street. Lot 12 will be located to be over 50% into the R-200-TDR zoning and will be developed under TDR standards.
7. Re-plat and re-plan lots 11, 12, and 13, block K and eliminate one lot. Lot 13 will increase to 6,000 square feet and allow for the house to be rebuilt if it ever burns down in a location at least 25' from the existing street. The remaining unbuilt house will be sited 25' from the existing street.
8. Re-plat and re-plan lots 6, 7, 8, 9, block H and eliminate one lot. The unbuilt house on lot 6 will be sited 25' from the street. Lot 9 will be increased in size to 6,000 square feet.
9. Revise the right of way for Foreman Boulevard to be 80 feet in width.
10. Convert all single family attached/semi-detached units in blocks G, H, K and L to single family detached units.
11. Revise the data table to accurately reflect the actual number and types of units.
12. Revise the right of way from 50' (mc-210.02) to 27' 4" (mc-210.03) on Granite Rock Road (station 10+15 to 15+07), British Manor Drive (station 1+03 to 0+00), Bent Arrow Drive (station 10+52 to 5+90), and Robin Song Drive (station 5+90 to 8+11). This right of way revision resolves the set back issue on 8 existing homes.
13. Re-plan the "T" block to remove all multi-family from the R-200 zoned land.

14. In addition to the existing obligation to fine grade and seed fields, construct the two planned ball fields on the park/school site in Section 1. Build a temporary soccer field where the future elementary school will be located.
15. Confirm setback standards and set height standards for the R-200 TDR zoned land.
16. Increase the caliper of all unplanted street trees in Section 1 from 2 ½ - 3" to 3 - 3 ½". Add 100 trees in reforestation area which are a minimum 2" caliper in size. Increase landscaping around pool facility by 25%.
17. Add an office in the clubhouse for the use of the HOA's management staff.
18. Make a \$100,000 contribution to the HOA to be used at the time and discretion of homeowners, not the developer.
19. Re-plan the "P" and "T" blocks as shown on the attached exhibit. Eliminate approximately 32 units from these blocks combined. Add additional product types into these blocks.
20. No fines are to be levied by the Planning Board.

Like all settlement proposals, this one is made without admission by or prejudice to Elm Street's defenses in the event that the Board elects to decline this Proffer and proceeds with its case against Elm Street.

On behalf of our client, we thank you for your and the entire Board's time in considering this matter. We look forward to implementing the plan for Clarksburg Village in the revised manner indicated. We and our clients will be available to discuss this Proffer with you on July 20, 2006.

Sincerely,



Robert R. Harris

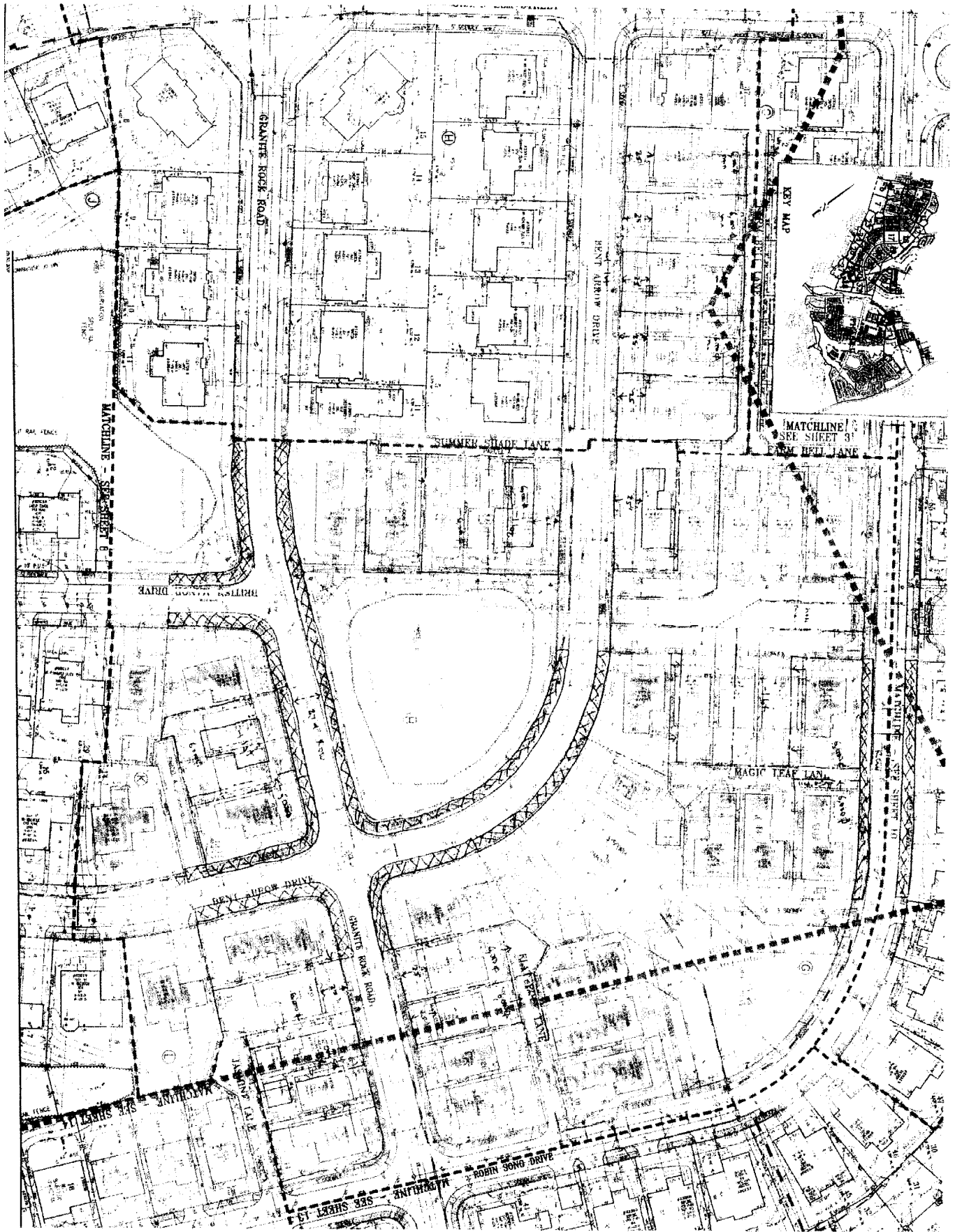
Enclosures

cc: With enclosures:  
Adrian Gardner, Esq. (via fax)  
Debra Daniel, Esq. (via hand delivery)  
Farrol Hamer (via hand delivery)  
Rose Krasnow (via hand delivery)  
Margaret Rifkin (via hand delivery)

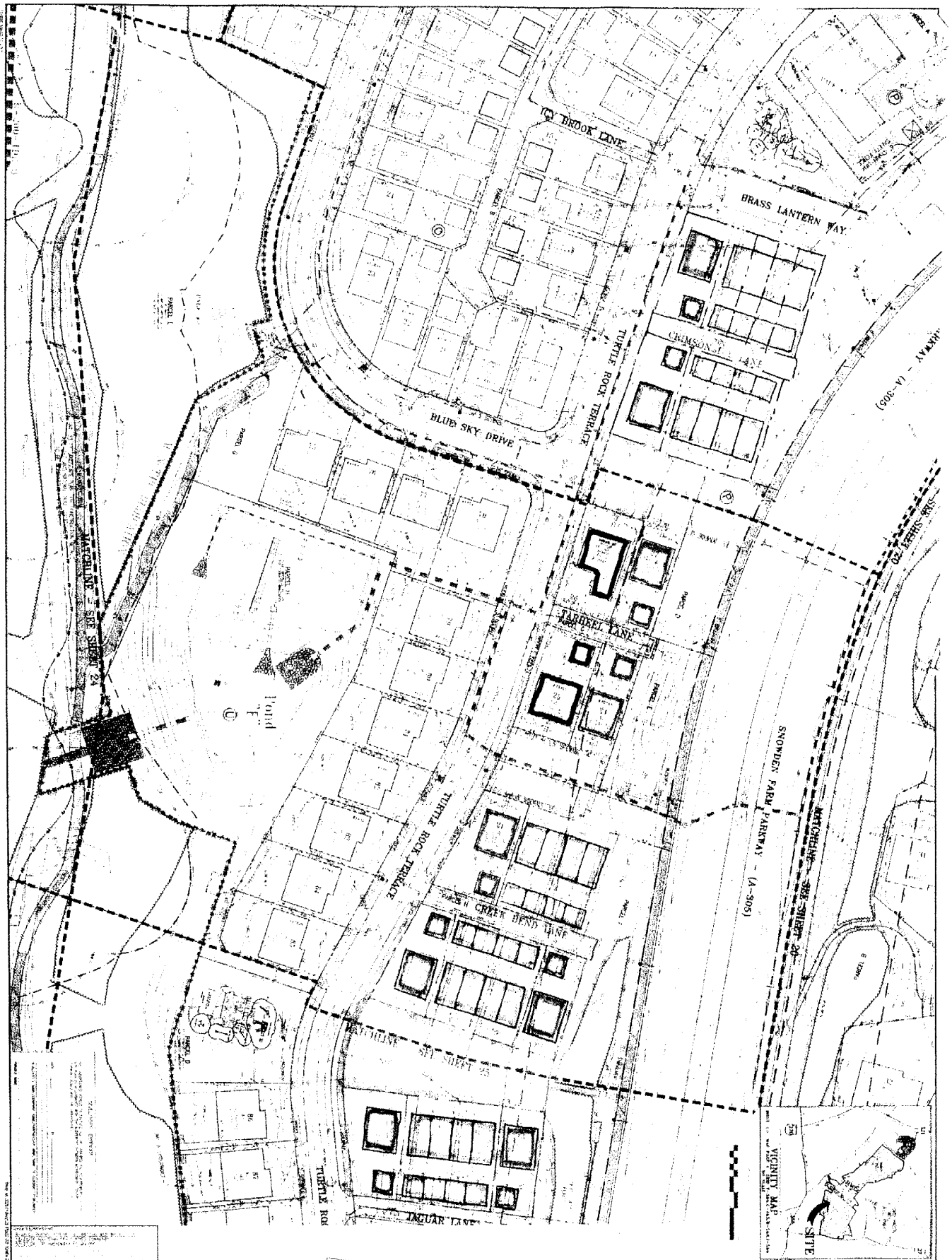
Derick Berlage, Esq.  
July 10, 2006  
Page 5

Michael Ma (via hand delivery)  
Kevin Kennedy, Esq. (via first class mail)  
Timothy Dugan, Esq. (via first class mail)  
David Flanagan (via first class mail)

# 3895022\_v1



PROPOSED REVISIONS TO F, G, H, K, AND L BLOCKS



NO. 1	1	1	1
NO. 2	1	1	1
NO. 3	1	1	1
NO. 4	1	1	1
NO. 5	1	1	1
NO. 6	1	1	1
NO. 7	1	1	1
NO. 8	1	1	1
NO. 9	1	1	1
NO. 10	1	1	1
NO. 11	1	1	1
NO. 12	1	1	1
NO. 13	1	1	1
NO. 14	1	1	1
NO. 15	1	1	1
NO. 16	1	1	1
NO. 17	1	1	1
NO. 18	1	1	1
NO. 19	1	1	1
NO. 20	1	1	1
NO. 21	1	1	1
NO. 22	1	1	1
NO. 23	1	1	1
NO. 24	1	1	1
NO. 25	1	1	1
NO. 26	1	1	1
NO. 27	1	1	1
NO. 28	1	1	1
NO. 29	1	1	1
NO. 30	1	1	1
NO. 31	1	1	1
NO. 32	1	1	1
NO. 33	1	1	1
NO. 34	1	1	1
NO. 35	1	1	1
NO. 36	1	1	1
NO. 37	1	1	1
NO. 38	1	1	1
NO. 39	1	1	1
NO. 40	1	1	1
NO. 41	1	1	1
NO. 42	1	1	1
NO. 43	1	1	1
NO. 44	1	1	1
NO. 45	1	1	1
NO. 46	1	1	1
NO. 47	1	1	1
NO. 48	1	1	1
NO. 49	1	1	1
NO. 50	1	1	1

Site Plan #8-03002B

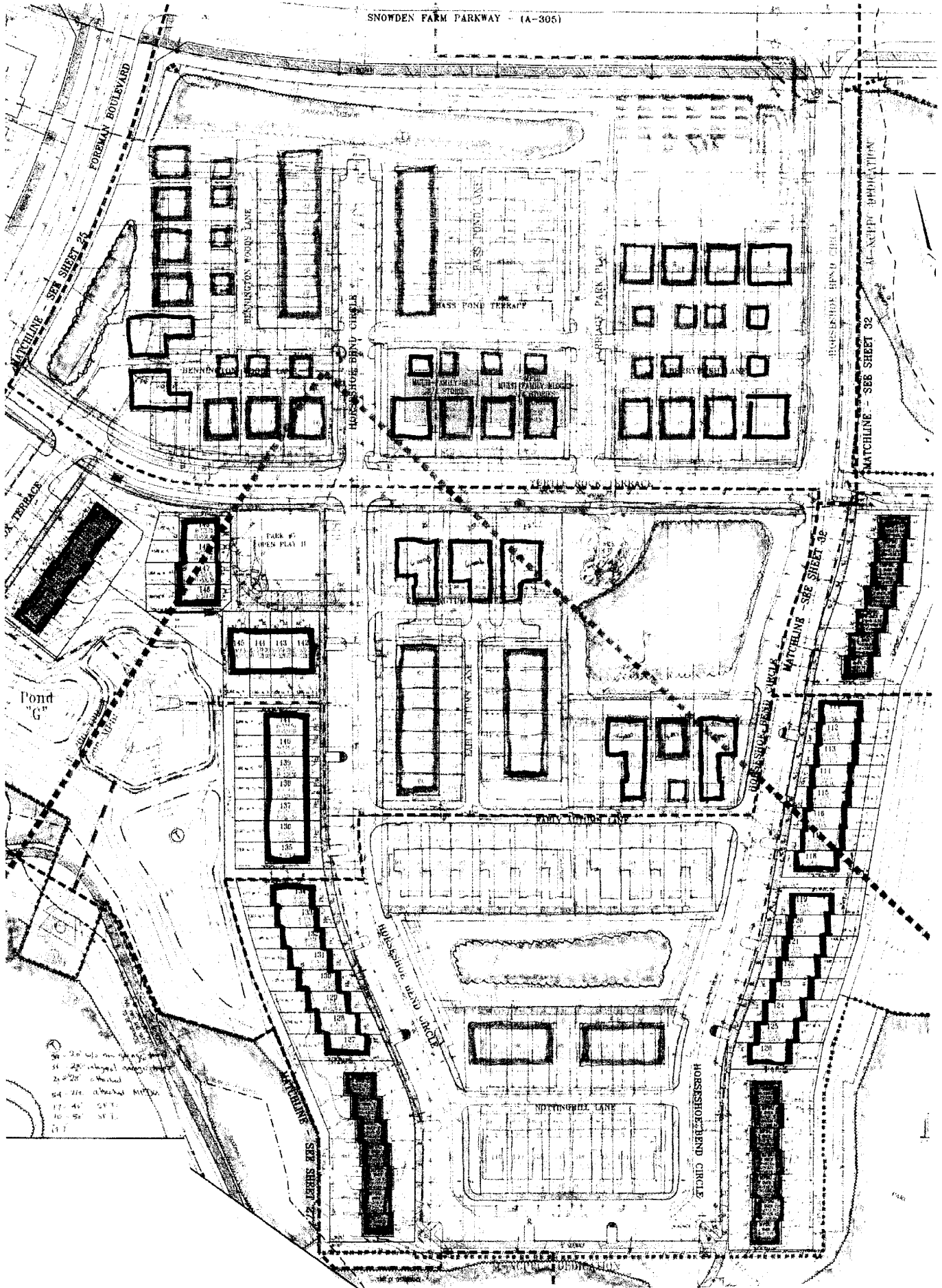
726

AMENDED SITE DEVELOPMENT PLAN - PHASE I  
**CLARKSBURG VILLAGE**  
 CLARKSBURG COUNCIL ELECTION DISTRICT  
 MONTGOMERY COUNTY, MARYLAND



**CPI** Charles F. Johnson & Associates, Inc.  
 ASSOCIATES

PROPOSED REVISIONS TO "P" BLOCK



PROPOSED REVISIONS TO "T" BLOCK

# **ATTACHMENT**

**3**



## Clarksburg Village Comparison of Proffers

<u>Issue</u>	<u>Letter of 6/12/06</u>	<u>6/29/06 Hearing</u>	<u>Letter of 7/10/06</u>
1. Discrepancies on Unit Types Numbers	<ul style="list-style-type: none"> <li>• "B" Amendment</li> </ul>	<ul style="list-style-type: none"> <li>• "B" Amendment</li> <li>• \$13,500 fine</li> </ul>	<ul style="list-style-type: none"> <li>• "B" Amendment</li> </ul>
2. Multi-family in R 200/TDR	<ul style="list-style-type: none"> <li>• "B" Amendment</li> </ul>	<ul style="list-style-type: none"> <li>• "B" Amendment</li> <li>• \$13,500 fine</li> </ul>	<ul style="list-style-type: none"> <li>• "B" Amendment</li> </ul>
3. & 4. Lot Size-Setbacks	<ul style="list-style-type: none"> <li>• "B" Amendment</li> <li>• \$40,000 fine</li> </ul>	<ul style="list-style-type: none"> <li>• "B" Amendment</li> <li>• \$117,000 fine</li> </ul>	<ul style="list-style-type: none"> <li>• Revised "B" Amendment</li> <li>• Eliminate 4 developed lots</li> <li>• Eliminate need for any attached homes</li> </ul>
5. Foreman Row	<ul style="list-style-type: none"> <li>• "B" Amendment</li> <li>• \$5,000 fine</li> </ul>	<ul style="list-style-type: none"> <li>• "B" Amendment</li> <li>• \$13,500 fine</li> </ul>	<ul style="list-style-type: none"> <li>• "B" Amendment</li> </ul>
Other			<ul style="list-style-type: none"> <li>• Ball fields construction</li> <li>• \$100,000 payment to HOA</li> <li>• Additional landscape</li> <li>• Office for HOA</li> <li>• Redesign of "P" and "T" blocks with reduction of 32 units and additional product types.</li> </ul>

**ATTACHMENT**

**4**

# Holland Knight

Tel 301 654 7800  
Fax 301 656 3978

Holland & Knight LLP  
3 Bethesda Metro Center, Suite 800  
Bethesda, MD 20814  
www.hklaw.com

RECEIVED  
09/12  
JUN 28 2006

Robert R. Harris  
301 215 6607  
robert.harris@hklaw.com

June 28, 2006

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

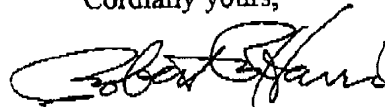
Derick Berlage, Esq.  
Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Clarksburg Village, (Site Plan No. 820030020) – Agenda Items 1 & 2, June 29, 2006

Dear Chairman Berlage:

We (together with Shulman, Rogers, Gandal, Pordy & Ecker) are counsel to Elm Street Development, Inc. and its affiliate, Clarksburg Village Investments, Inc. in this matter. The purpose of this letter is to request additional time at the public hearing tomorrow in order to enable us to present testimony to the Planning Board. Some of the facts, circumstances and four year history of this project can be confusing. Additionally, the matter of alleged violations is extremely important and we want to do our best to ensure that the Planning Board has a full understanding of the matter before it takes action. As it now stands, these two matters are likely to be heard sequentially. We would respectfully request 30 minutes to present our case on Item 1 (the violations hearing) and 20 minutes on Item 2 (the Plan of Compliance).

Cordially yours,



Robert R. Harris

cc: Dave Flanagan  
Kevin Kennedy  
Tim Dugan  
Rose Krasnow

# 3876575\_v1

14011  
2)

2006-0921

**Maryland-National Capital Park and Planning Commission**  
**Clarksburg Village Testimony**

**Peter A. Lyons**

**NVR Inc.**

**June 29, 2006**

My name is Peter Lyons. I am a Vice President of NVR Inc., which builds in Montgomery County under the trade names of Ryan Homes and NV Homes. As a Market Manager, I oversee the Ryan Homes Building Operation in Montgomery County. I came before you approximately eight weeks ago respectfully requesting that you consider releasing a limited number of building permits in Clarksburg Village that were not in violation of any subdivision and/or zoning regulations. You granted this request and as a result we were able to once again start building in Clarksburg Village. I wanted to take this opportunity to sincerely thank you for releasing those permits. I can assure you that it meant a lot to my customers who were looking to move into their new homes and to my subcontractors who were looking to get back to work and avoid laying off any of their employees.

I am here before you once again because we are quickly approaching another impasse. The permits you previously released are quickly being used up and within the next 30 days we once again will not be able to start any new homes in Clarksburg Village. I am therefore here before you requesting that you consider releasing additional permits that are not in violation of any subdivision or zoning regulations so that construction can continue in Clarksburg Village. I can assure you that my subcontractors desperately need the work. As you are well aware, there has been a housing slowdown and work has become increasingly difficult for my subcontractors to find. It is truly a shame that where we have been able to sell some homes, for example: in Clarksburg Village, we are now unable to build them. My subcontractors have once again become the innocent victims in a situation they had nothing to do with.

We never anticipated that it would take this long to resolve the issues in Clarksburg Village. We are now hearing that it is possible that the resolution of the Clarksburg Village matter may get delayed into September and October. This would be extremely damaging to my company and subcontractors. I implore you to find some way to bring resolution to the Clarksburg Village issues before you recess in August. I am sure the last thing you want to come back to after a well deserved recess is a continuing Clarksburg controversy – would not it be best for all concerned to get Clarksburg finally behind us.

In closing, I am respectfully requesting that you release additional permits in Clarksburg Village so that my subcontractors do not have to face the prospect of laying off some of their employees and that you find some way to bring final resolution to all outstanding Clarksburg Village issues before you recess in August. Thank you for your time and consideration.

cCa

1-31-06 /art

2006-0920

Clarksburg Civic Association  
P.O. Box 325  
Clarksburg, Maryland 20871-0325

June 29, 2006

CLARKSBURG VILLAGE VIOLATION HEARING

The Clarksburg Civic Association Executive Committee supports the finding of violations. Fines should be levied against Elm Street Development. We feel that the fines recommended by staff are lenient (10% of the maximum allowed). This is not the first time that this developer has been before you for planning irregularities.

The Clarksburg Village plans can be greatly improved, with a much closer look at the recommendations for new urbanism by the New Urban Congress. This county can fulfill those ideals in a more sympathetic way. At present some basic principles are being ignored, with the result that hybrid development occurs, to the detriment of Clarksburg.

We disagree with a post action ZTA 06-12 to paper over violations of the zoning. CCA does not take issue with the content of this ZTA, it does however take issue with a procedure which uses zoning text amendments to retrofit parts of plans which violated the existing laws at the time those plans were presented.

We have concerns about the disposition of fines. The amount of money which will be returned to the community should not be given to the relevant HOA until that HOA is no longer under the control of the developer. The disposition of fines should not be considered quickly. As this project is more fully developed, opportunities will be more apparent, for example the shopping center,

**MCP-Chairman**

2006-0931

**From:** Greg Fioravanti [gregfioravanti@yahoo.com]  
**Sent:** June 30, 2006 9:10 AM  
**To:** MCP-Chairman  
**Cc:** Kathie Hulley; Tim DeArros; Kim Shiley; Jennifer Russel; Mike Knapp  
**Subject:** Clarksburg Village Ruling

Dear Chairman Berlage:

I was pleased to see that the Planning Board ruled that Clarksburg Village was in violation of zoning laws. I found the developer's arguments that the violations were oversights unconvincing – if they were truly "incompetent" they should not have taken on a project of this scale.

This builder has been before the board before, causing stressful relationships with other communities and we do not want to see that happen in Clarksburg. In fact, while the developer expressed great humility to the Board yesterday, I have been in meetings with the developer where his behavior towards Civic Association members was hostile. Without Park and Planning's oversight, I believe that many of these violations would have moved forward without remedy.

I write today to stress the importance of accountability. I am trying to get a clear picture of the implications of yesterday's ruling, and I believe that the developer has the opportunity to request zoning changes and that this action may be applicable as the Board considers penalty at the next meeting, effectively reducing the amount the developer would be responsible for paying. As I said in my testimony, we look at the development plans as a contract between the community, the county and the developer. To let these actions go unpunished, or to accept a proffer of far less than the value proposed by staff would send the wrong message to the community. I encourage the Board to impose the maximum fine on this developer to send a message that the behavior of this developer is unacceptable.

I look forward to the next board meeting.

Thank you

Greg Fioravanti

Do you Yahoo!?  
Get on board. You're invited to try the new Yahoo! Mail Beta.

07/03/2006