



## **SITE PLAN ENFORCEMENT**

**A study by the  
Planning and Land Use Committee,  
Montgomery County Civic Federation**

**August 30, 2005**

*Founded in 1925, the Montgomery County Civic Federation is comprised of neighborhood citizen associations, homeowner associations and regional civic groups from throughout the county. The Federation represents the citizens' voice in government proceedings on issues which have countywide impact. The mission of MCCF is to improve the quality of life in Montgomery County. For a listing of MCCF activities, visit their website--[www.montgomerycivic.org](http://www.montgomerycivic.org).*

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## **Introduction**

The issue of inadequacy of Site Plan enforcement by entities of the county government is one that has troubled individual member organizations of the Montgomery County Civic Federation (MCCF) for many years. In June 2005, the issue finally received widespread attention when it was revealed that multiple Site Plan violations had occurred in the Clarksburg Town Center project. These breaches involve violation of the height and setback standards for hundreds of townhouses, as well as other requirements of the Site Plan as approved by the Planning Board--location of buildings, construction of the road system, and the provision of amenities to which the developer had agreed. We owe a debt of gratitude to the Clarksburg Town Center Advisory Committee and the Clarksburg Civic Association for focusing the attention of the Planning Board, County Council, the media and the public on a problem that many had known existed for years.

In response to an email sent out by the MCCF Planning and Land Use Committee in late July 2005, citizens from across the county submitted instances of suspected Site Plan violations for projects in their communities. The Committee then set about researching the Plans involved, in an attempt to verify whether citizens' suspicions were justified or not. The list of citizen-verified Site Plan violations included in this study is just that--no claim is being made that it is a complete list of such violations or, conversely, that it is just "the tip of the iceberg." In order to ascertain that, one would need to investigate all Site Plan projects under construction or recently completed within a certain number of years, and verify whether or not those projects had adhered to the requirements and provisions approved by the Planning Board. The Committee felt that the idea of undertaking such a comprehensive study had merit, but that it might be more easily accomplished by county employees than by the MCCF.

The investigation of Site Plans for this study was a labor intensive job done by citizen volunteers. Researching of approved Site Plans required a visit to Park and Planning in Silver Spring to view hard copy or microfiche files, since the Planning Board's online database contains staff recommended Plans, but not the Board-approved versions. We found some Plans that had received multiple amendments after approval. Some were minor amendments allowed by staff, for which little documentation may exist. Others were major amendments requiring a public hearing and Board approval, and resulting in better documentation. Copying of files can be costly. Also, environmental provisions of Site Plans, concerning "tree save" during construction and any replanting requirements, are noted on blueprint sized plans filed in a separate office at Park and Planning from the Site Plan. Purchase of full sized copies of these Forest Conservation Plans is also costly.

In order to ascertain whether stormwater management and sediment control requirements of Site Plans were complied with on a project, researchers had to contact staff in the Department of Permitting Services (DPS). Knowing the Stormwater Management Plan number hastened this research. To determine whether affordable housing requirements of a Site Plan have been met, one needed to research the specifics of the Moderately Priced Dwelling Unit (MPDU) Agreement granted for the project by the Department of Housing and Community Affairs. Most of the research conducted could not be accomplished online, and required traveling to the various offices of county government to speak with staff and view files. When attempting to ask questions of county staff over the telephone, messages often had to be left. This sometimes resulted in a full day's setback in an investigation, awaiting a return call to answer an otherwise simple query.

The list of verified Site Plan violations included in this study illustrates the several types of violations that have occurred: building standards; affordable housing provisions; environmental provisions; and, requirements pertaining to on- or off-site conditions or amenities. No attempt was made to rank Site Plan provisions in any order of importance. Seemingly minor provisions, such as the preservation of a mature tree on a site, could be as important to one community as the height of a proposed building is to another. Persons living near proposed Site Plan projects and the impacted neighborhood citizens associations often spend months negotiating for certain provisions to be included in approved Plans. And so, it was decided that no order or ranking would be imposed on the listing of Site Plan violations. Instead, the list of verified Site Plan violations contained in this study appears in the order in which the projects were brought to the attention of the Committee, and does not indicate any ranking by importance, severity or any other qualifier.

This MCCF study is not intended as a criticism of growth, or as a condemnation of the development community in general or any individual development company. Such accusations would not be useful in that they would draw attention from the purpose of this effort, which is to examine county enforcement of development standards in Site Plan projects and suggest improvements. One of the conclusions reached in the course of this study was that Planning and DPS staff functions as enablers in the development approval and implementation process. Rather than working with community representatives and developers as a three part team to insure that proposed projects fulfill the vision set forth in an area's master plan, county staff instead aggressively strives to facilitate developers' projects, delaying community involvement until quite late in the process. At the point at which communities now respond to proposed projects, residents are often treated as a nuisance by developers and county planners, instead of as equal partners in community building. And, the recent accelerated pace of development in the county has resulted in insufficient county staffing levels to adequately handle investigation and enforcement of Site Plans, leaving staffers in the development approval and oversight areas even less available to respond appropriately to citizen inquiries than previously.

The MCCF undertook this informal study in order to give citizens a better understanding of the nature and scope of the problems associated with Site Plan enforcement. We make suggestions for improving investigation and enforcement in an attempt to help restore some degree of citizen confidence in the county government's ability to regulate development and administer the zoning ordinance and associated laws contained in the County Code. But, we realize that restoration of citizen confidence is dependent on the response of the various entities of county government to the problems that have been exposed. The first indicator of the responsiveness of the county government to this issue will be how thoroughly they research the adherence to approved Site Plans in the Clarksburg Town Center project and the several other Clarksburg area developments.

As it has over the course of its eighty year history, the Montgomery County Civic Federation again stands ready to assist the county government in improving its functioning.

- Jim Humphrey  
Chair, MCCF Planning and Land Use Committee

## Site Plan Violations - listing and details

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### **Clarksburg Town Center, Clarksburg - Site Plan No. 8-02014**

*This case involves multiple violations of the approved Site Plan for this proposed new subdivision, which is located adjacent to the historic town center of Clarksburg. The violations relate to maximum allowed height, minimum required setbacks, and requirements regarding the provision of on- and off-site amenities.*

On July 7, 2005, the Planning Board unanimously ruled that 433 townhouses had been built taller than the 35 foot maximum allowed height. They also ruled that one multi-family condominium building had been built taller than the 45 foot maximum allowed height. And, the Board concluded that approximately 102 townhouses had been built too close to residential streets, thus violating the minimum required setback as established in the approved Site Plan. The Planning Board had scheduled another hearing for July 28 to discuss possible sanctions and the levying of fines, but this hearing was postponed until September 22.

In addition, the approved Site Plan called for a greenspace mews to be created, with pedestrian walkways connecting the new planned town center project with the existing historic Clarksburg town center. The citizens comprising the Clarksburg Town Center Advisory Committee (CTCAC) discovered that inadequate land area remains on which to create the required greenspace mews, and an earthen berm has been created which has the effect of disconnecting the new town center project from the historic town center. The approved Site Plan also called for an extension of "O" Street to be built between the project and the Methodist Church that is a visual focal point in historic Clarksburg. No such road was built. Instead, townhomes have now been constructed on the land that was intended for the right-of-way of the proposed "O" Street extension. It was also discovered that some internal roads in the development were not laid out according to the

agreed upon Plan, and the siting of certain structures is not in adherence with the agreed upon Plan. The Planning Board has agreed to schedule another public hearing so that CTCAC members can detail their findings regarding these additional Site Plan violations.

**Goodwill Site (aka Bethesda Crest), Bethesda - Site Plan No. 8-03005**

*This case involves the violation of the Site Plan provision requiring compliance with Chapter 22A of the Montgomery County Code, Forest Conservation. Although the project is still under construction, the case also involves violation of Chapter 25A of the County Code, the Moderately Priced Dwelling Unit law, requiring that MPDUs be built along with or before the market rate units in a project. There is also a suspicion on the part of the neighbors who live near this development that the townhouse units which have already been built exceed the height allowed in the approved Site Plan. Adherence to the agreed upon minimum required setback from adjacent property has also been questioned.*

The Goodwill site is located on the west side of Rockville Pike in Bethesda, in the next block north of the National Institutes of Health. The Site Plan for this residential townhouse project was approved by the Planning Board on April 10, 2003, requiring among other things compliance with Chapter 22A of the County Code, the Forest Conservation law. Prior to the Site Plan approval, a Forest Conservation Plan for the project had been approved and then revised on March 18, 2003 by the environmental planners at Park and Planning. The revised FCP required that an existing stand of trees in the center of the site be retained as well as another stand in the northwest corner of the site adjacent to Corsica Drive. Multiple trees in each stand qualify as "specimen" trees of significant age, deduced by measurement of the diameter of the trunk of the tree at chest height. However, several of the trees in the northwest corner of the site that were designated in the FCP to be retained have since been removed.

The approved Site Plan also notes the maximum allowed height as 30.5 feet for the market rate townhouses, and 31.5 feet for the MPDU townhouses. Although some units are still under construction, and **work has not yet begun on the MPDUs**, neighbors living near the site suspected that the units which have already been completed exceed the allowable height limit. The developer has asserted that the height that was agreed upon with Planning staff was 35 feet for units on the perimeter of the project nearest adjacent properties, and 40 feet for the units on the interior of the site. The developer has asked for a Site Plan Amendment to correct the allowable heights, reinforcing the suspicion of neighbors near the site that the built units are taller than allowed. Additionally, a 40 foot setback along the southern property line was a condition of approval for the Site Plan. However, neighbors have measured the actual setback at 29 feet from the southern property line to the building line of the nearest townhouse units,

which are not yet under construction. The developer responded that the setback noted on the approved Plan was a "typographical error," and has requested that the Planning Board consider a Site Plan Amendment to change the approved minimum setback requirement.

Rose Krasnow, head of Development Review at Park and Planning, has informed the adjacent citizens association that someone will be sent to the site in the next two weeks or so to measure the height of the finished units. Krasnow also said that the Planning Board will schedule a hearing for sometime in October to focus on the alleged violations.

### **Edgemoor III, Bethesda - Site Plan No. 8-99036**

*This case involves the violation of the Site Plan provision requiring compliance with Chapter 25A of the Montgomery County Code, Housing, Moderately Priced (aka the Moderately Priced Dwelling Unit Program, or MPDU, law).*

On April 12, 2000, the Site Plan Enforcement Agreement was signed by the developer for the Edgemoor III, a highrise condominium building in Bethesda. Along with other conditions, the Agreement required the developer to comply with Chapter 25A of the County Code. On April 19, 2000, the MPDU Coordinator for the Department of Housing and Community Affairs (DHCA), informed the Planning Department of his approval for the MPDUs in this project to be provided offsite from the highrise building, in a separate 3-story building to be constructed by the developer. The formal MPDU Agreement was executed on November 14, 2001. The project was then sold by this first developer to a second development company, with all requirements of the Site Plan Enforcement Agreement transferring with the purchase.

Following issuance of the Building Permit by the Department of Permitting Services (DPS) on November 21, 2001, construction was begun on the Edgemoor III highrise building and continued over the next year. Yet, no work was done on the separate MPDU building, not even clearing and grading of the lot. This was a violation of the MPDU Agreement provision that stated "construction of the MPDUs should be phased so that the MPDUs are provided during the construction of the highrise building." It was therefore also a violation of the Site Plan Agreement, and of the County Code Section 25A-5(i)(1) which requires that project construction be sequenced so that the "MPDUs are built along with or before other dwelling units." On December 8, 2003, DPS issued the final Use and Occupancy Permit for the last of the 54 total units that had been constructed and sold in the highrise condo building--yet work had still not begun on the promised MPDU building. In Section 25A-5(i)(4) of the County Code, the MPDU law states that "the last building built must not contain only MPDUs." And, the last building built in this project would have been the offsite building planned to contain 12 MPDUs, had the developer ever built the offsite MPDU building.

Separate and apart from the Site Plan violation issue, one month after the last Occupancy Permit was issued by DPS for the market rate units in the Edgemoor III highrise building, the Director DHCA approved a second MPDU Agreement on January 7, 2004 in clear violation of the MPDU law. This second MPDU Agreement allowed the developer to provide land only in lieu of units. This was a violation of Section 25A-5(e)(2)(C) of the County Code, which states that "if the applicant can feasibly build significantly more MPDUs at another site, the Director must not approve any other alternative under subsection (e)(1)" (i.e.; conveyance of land only). And, the developer had already agreed to provide 12 MPDUs, significantly more than the number required of the Edgemoor project, on an offsite parcel one block from the highrise building. [NOTE: The president of the development company involved in this case claims that Director DHCA contacted them by memo in November 2002, asking that they hold off on construction of the MPDUs since provision of "land only" might be preferred by the county. However, by November 2002 the developer had already been in violation of the MPDU law for the year following commencement of construction on the highrise building.]

Even the second MPDU Agreement executed on January 7, 2004 was violated by the developer. On page 3, it called for the offsite property (located at 4917 Hampden Lane, Bethesda) to be "transferred to the County not later than February 29, 2004." The Maryland State Department of Assessments and Taxation database shows that the property was transferred to Montgomery County on April 1, 2004. This issue is still pending. On January 20, 2005, the Planning Board approved Site Plan 8-00023A that would allow the Housing Opportunities Commission to construct a building containing 12 affordable units on the offsite parcel. Board approval followed testimony from the Civic Federation claiming that the developer was still financially responsible for construction of a 12-unit MPDU building on this site. Since the Planning Board's approval of the HOC project, the Office of the County Executive and DHCA has proposed a land swap, exchanging County ownership of 4917 Hampden Lane for a similar sized parcel located at 4913 Hampden Lane. To the best of our knowledge, this land swap is still pending.

### **Residences at Rosedale, Bethesda - Site Plan No. 8-99036**

*This case involves violation of provisions noted as "neighborhood protection measures" in the approved Site Plan. In addition, there is an irregularity concerning the height of one of the two buildings in this project.*

Approved by the Planning Board on November 8, 2001, the Site Plan for this project contains 9 provisions that nearby homeowners in the adjacent East Bethesda Citizens Association area sought to have included. These are referred to as "neighborhood protection measures." The violation of three of these measures was apparent during

a visit to the development, which consists of two highrise mixed use retail/residential buildings on the east side of Wisconsin Avenue in Bethesda--one north and one south of Rosedale Avenue.

Item 2b required that the alley intersection with Rosedale Avenue and Maple Avenue "include channelization to direct traffic flow towards Wisconsin Avenue only--channelization to include plant materials or other acceptable device to increase the definition of the direction." No such channelization exists at the mouth of the alley on the north side of Rosedale Avenue. And, the slight curve at the mouth of the 2-lane wide alley on the south side of Rosedale Avenue and at Maple Avenue does little if nothing to prevent vehicles exiting this development from turning east and driving into the adjacent neighborhood which sought protection from such traffic. Item 2h notes that "pedestrian crosswalks across the alley shall be brick...to enhance pedestrian crossings." However, the entire apron at the mouth of the alley on Maple Avenue is of brick, resulting in no clear definition of the pedestrian crosswalk. And, Item 2f states that "the balconies of the proposed (apartment) units shall be screened via landlord controls and a knee wall or enclosed railings." However, the finished balconies all have a combination of open railing and small solid panels that screen only a minimal portion of each balcony.

In addition, there exists an irregularity with regard to the height of the building on the south side of Rosedale Avenue in this project. The approved Plan contains a statement that "the Planning Board finds the Site Plan is consistent with the approved development plan or a project plan for the optional method of development if required." The Planning Board approved a *project plan* for this development on May 24, 2001 (Project Plan No. 9-01004), noting in Condition No. 2 that "the height of the building on the southern lot shall not exceed 78 feet in height." However, on the Site Plan drawing approved on September 17, 2002, the height of the building on the southern lot is approved at 82.5 feet. We realize that the issue of allowable height for this project is not a case of Site Plan violation, since the added height of the building on the southern lot was allowed on an approved Site Plan drawing. Instead, this is a case of an inconsistent action on the part of the Planning Board.

**King's Crossing (aka Vistas at Woodcliffe Park), Germantown - Site Plan No. 8-96011**

*This case involves the violation of the Site Plan provision requiring compliance with Chapter 25A of the Montgomery County Code, Housing, Moderately Priced (aka the Moderately Priced Dwelling Unit Program, or MPDU, law).*

The Site Plan for King's Crossing was approved by the Planning Board in 1996. The market rate units in this development were built in several phases by multiple home construction firms. The 102 affordable housing units that the developer agreed to provide

were to be constructed on a 5 acre site near the subdivision's community center and pool. All market rate units are now constructed and most, if not all, are sold and occupied. The land use attorney for the developer has admitted that none of the 102 affordable housing units has been provided, claiming that the MPDU Office granted permission to construct them last since members of the homeowners association have raised objections to MPDU townhouses in their community, preferring senior affordable housing units instead.

This failure to provide the affordable housing units in a development in which all of the market rate units have been completed constitutes a Site Plan violation of the provision requiring compliance with County Code Chapter 25A, the MPDU law. Section 25A-5(i) of that law requires construction be sequenced so that "MPDUs are built along with or before other dwelling units" and "the last building built must not contain only MPDUs" (regardless of any agreement with the MPDU Office to the contrary, since the MPDU Office has no authority to allow a developer to violate the County Code). If the affordable housing units are ever provided in the *Vistas* community, as it is now known, they will clustered in the last building(s) to be built that were approved in the applicable Site Plan.

**Leisure World, WSSC Site (aka Regency at Leisure World), Norbeck - Site Plan No. 8-01015**

*This case involves the violation of the Site Plan provision requiring compliance with Chapter 25A of the Montgomery County Code, Housing, Moderately Priced (aka the Moderately Priced Dwelling Unit Program, or MPDU, law). It also involves the violation of a Development Plan Agreement approved by the County Council, allowing the rezoning of the property and imposing a specific MPDU requirement on the developer.*

This site is located on the east side of Georgia Avenue, south of the entrance to Leisure World. The approved Site Plan allowed construction of 74 market rate detached homes and 11 MPDU townhouses. At present, all 74 market rate homes have been built. But, construction has not begun on any of the 11 MPDU townhouses, in violation of the Site Plan Agreement requiring compliance with Chapter 25A of the County Code, the MPDU law. Section 25A-5(i) of the law requires that "MPDUs are built along with or before other dwelling units" and "the last building built must not contain only MPDUs."

Rezoning of this property into the Private Retirement Community (PRC) Zone was done in Development Plan Amendment G-782, approved by the County Council on August 1, 2000. This approval required the developer to provide 20% MPDUs, or a total of 17, "either on site or within Leisure World." The Planning Board approval of the Site Plan for the Regency subdivision, on June 7, 2001, allowed construction of 11 MPDUs on site, requiring the developer to provide the other 6 MPDUs "within Leisure World." These 6 MPDUs have not been provided either, constituting a violation of the Development Plan.

**Layhill Village (aka Nicholson property), Layhill - Site Plan No. 8-02029**

*This case involves the violation of the Site Plan provision requiring compliance with Chapter 22A of the Montgomery County Code, Forest Conservation. It is also an instance in which a majority of the market rate single-family detached dwelling units are either under construction or have been completed, but construction has not yet begun on the 6 affordable housing units required of this project.*

This project is located on the east side of Layhill Road (MD 182), 200 feet north of Queensguard Road. The blueprint sized Forest Conservation Plan for the Layhill Village project shows the layout of the proposed home sites. In addition, it delineates a Limit of Disturbance (LOD) line beyond which construction activity must not take place, in order to minimize damage in the Critical Root Zone of existing trees located either on the project site or on adjacent properties. This plan also shows which trees on the project site must be retained, which should be retained if possible, and which trees may be removed.

One particular tree, a large specimen tree, is marked on Lot 14 of the Forest Conservation Plan (approved September 4, 2003), with the following text noting the trunk diameter and type of tree, as well as its condition and requirements to be met prior to removal: " 34" Catalpa (diseased) retain unless certified arborist documents failing health of tree." The tree has been cut down. But, no letter was received on file at Park and Planning from a certified arborist documenting the failing health of the tree, and no approval to remove the tree was granted to the developer by the Environmental Planning staff. Therefore, the cutting down of this large, old specimen tree was done in violation of the Forest Conservation Plan provision of the approved Site Plan for this project.

With regard to affordable housing in this project, 16 of the 24 planned market rate single-family detached homes are either built and occupied, have been completed but are not yet occupied, or are currently under construction. But, the affordable housing units in the project are not being "built along with or before other dwelling units," since no construction activity is underway on any of the 6 affordable units required of this project. This is especially troubling in this case, since project approval was granted to the developer, even though the planning area in which this project is located was in moratorium at the time, solely because the project was to include affordable housing.

**Old Georgetown Village, Edson Lane parcel, Bethesda - Site Plan No. 8-78040**

*This case involves an alleged **post facto** violation by the county government of a provision of an approved Site Plan and of the Development Plan for rezoning that was approved by the County Council.*

The Old Georgetown Village project was built in the late 1970s. As a requirement of the Council-approved Development Plan needed for rezoning and the Planning Board

approved Site plan for this project, the developer was required to deed ownership of a 1.75 acre parcel of land next to the Old Georgetown Village project area (Map GQ61 Parcel P336) to the county Board of Education. This land was dedicated for use as part of the adjacent county public school property, currently Tilden Middle School. Ownership of the land--now referred to as the "Edson Lane parcel"--was transferred by the developer to the county Board of Education on February 28, 1980.

In the Housing Montgomery report issued in February 2003, the Office of the County Executive announced plans to dispose of this property for use in creating an affordable housing project. In March 2005, one of the nearby property owners filed suit in Circuit Court to stop this disposition, claiming that the parcel was deeded over solely for use as part of the adjacent school. After the filing of the Circuit Court challenge, the Board of Education transferred ownership to Montgomery County on May 20, 2005. Any declaration by the MCCF Committee of a Site Plan violation in this case was thought to be presumptuous since the court will now decide if this parcel was, in fact, strictly dedicated for school use only. This is clearly not a case involving a developer's lack of compliance with a Site Plan requirement. But, it was determined that this case was worthy of inclusion in the study, since the issue demonstrates the possible uncertainty of future disposition when such an off-site amenity is a requirement of a Planning Board approved Site Plan.

## **Suggestions for Improving Site Plan Investigation and Enforcement**

The Committee suggestions for improving the investigation and enforcement of Site Plan provisions are purposefully simplistic. Improvement of the process requires a simplified approach to enforcing the applicable county laws and regulations, as well as improved coordination and communications between the various units of government involved. We believe that better coordination and communication would occur if representatives from Park and Planning, the Department of Permitting Services, and the Department of Housing and Community Affairs MPDU Office were physically brought together in a single Office of Site Plan Investigation and Enforcement (OSPIE). An added advantage of this approach is that there would be a single office for citizens to contact, should they have a question or complaint about compliance regarding a Site Plan project in their area.

Following Planning Board approval of a given Site Plan, the staff of the OSPIE would then follow an established check list, enabling them to verify whether all Plan requirements for that project were being met according to the sequencing and deadline dates imposed. One of the main tools available to this new unit to insure Site Plan adherence would be control over the issuance of the various permits for a project. At each step of development, OSPIE would approve DPS issuance of the needed permits only after all of the necessary requirements or triggers had been met.

Consolidation and coordination of effort through an Office of Site Plan Investigation and Enforcement would be enhanced by requiring that an OSPIE contact person be designated by the development company for each Site Plan project in the county. This Office would most likely need to be established legislatively, and so the authority for such a unit to issue Stop Work Orders should be included in any such legislation. As the final leverage to insure compliance with an approved Site Plan, OSPIE could withhold approval for the issuance of Use and Occupancy Permits for a project until it is confirmed that all requirements have been met--building standards such as height and setback, stormwater management facilities, reforestation, MPDUs, roads and sidewalks built to the satisfaction of the Department of Public Works and Transportation, provision of on-site and off-site amenities, etc.

During research for this study, it became obvious to the Committee that citizens are the informal, unpaid development enforcement staff in the county. Their task would be made much easier if approved Site Plans were made available online. Separate text-only and graphics files should be posted for each Plan, to facilitate easier downloading.

## Related Topics

### **Moderately Priced Dwelling Unit law - Chapter 25A, County Code**

With county elected officials repeatedly asserting the need for affordable housing for the county's police, fire fighters and teachers, it was surprising to discover how many developers of Site Plan projects have not complied with the requirements of the MPDU law. On November 30, 2004, a majority of Councilmembers granted developers a lengthy list of relaxed building standards, to spur the inclusion of MPDUs in residential projects. We urge these same Councilmembers to now step forward and insist that developers keep their end of the bargain, and that Chapter 25A of the County Code is strictly enforced. This should require only minimal enforcement capability to assure that:

- MPDUs are provided on-site in all projects 20 units or larger in size, or off-site if deemed absolutely necessary--buyouts should be eliminated;
- whether built on-site or off-site, MPDUs are built along with or before the market rate units--as required by law;
- if MPDUs are provided off-site through purchase of existing dwelling units, those units are provided to the MPDU Program before DPS issues any Use and Occupancy Permit for market rate units in the project;
- if an approved alternative agreement allows a developer to provide land to the MPDU Program in lieu of units, the land is transferred to DHCA prior to the DPS issuing the building permit for the market rate project--as currently required by law; and,
- if a developer fails to comply with the requirements of an MPDU Agreement for a project, DPS does not issue any building permits to that developer for any other projects in the county until the MPDU Agreement is fulfilled--as set forth in law.

Although the issue is not directly related to Site Plan enforcement, the Committee is also concerned that a high percentage of MPDU sale units are being converted into rental units. At the present time, when MPDU sale units are created they remain under MPDU Program control for 30 years. If the unit is sold during the 30 years, it must be sold to a qualified buyer approved by the MPDU Program and the control period restarts. Many of the 4,000 applicants on the MPDU waiting list are hoping that MPDU sale units will be created or come up for resale. However, virtually all MPDUs that are resold within the control period are bought by the Housing Opportunities Commission and converted to rentals. A primary purpose of offering MPDU sale units is so that moderate income first-time homebuyers will have an opportunity to build equity through the purchase of their own home. After a number of years, it is hoped that these homebuyers will opt to cash out the equity they have accumulated in the MPDU sale unit, and "move up" to purchasing a home outside the Program. We suggest that the stock of MPDU sale units be increased, and that an effort be made to retain "for sale" units under Program control.

Another affordable housing concern that arose during research on this study, though not directly related to Site Plan enforcement, is that MPDUs are almost always provided as different unit types than market rate units--a violation of the spirit if not the letter of the MPDU law. In single-family detached home subdivisions, MPDU townhouses are being provided. And, in townhouse developments, MPDU apartments are being provided in multi-family buildings. It was the intent of the original 1974 law that MPDUs be similar to market rate units, except offered at a reduced price. Over the years, developers have convinced county elected officials that this would jeopardize the financial feasibility of their projects, and banks would not provide the needed capital. And so, the law has been repeatedly weakened to the point where MPDUs are rarely, if ever, similar to the market rate units with regard to type, size, or quality of materials used.

In addition, clustering of MPDUs within communities has become an all-too-common occurrence. The spirit and intent of the original law was that MPDUs would be integrated among the market rate units in each project where required. A disturbing example of MPDU clustering occurred at the Willows of Potomac and the adjacent Potomac Glen project. In these two subdivisions, nearly all of the required MPDUs and other low-income housing, both townhomes and garden apartment buildings, were located so as to shield the market rate homes from the truck noise, vibrations, and dust generated by operations at the adjacent Rockville Quarry and F.O. Day asphalt plant. Clustering, combined with provision of MPDUs of inferior size and quality to market rate units, results in a form of social stigma being placed on MPDU households. We should seek to correct this situation as soon as possible. Financially disadvantaged persons who seek and receive government assistance should not be made to feel like second-class citizens by the very program that was established to help them.

### **Forest Conservation law - Chapter 22A, County Code**

The Forest Conservation law was created in law to give planners a tool to help in the preservation and restoration of forested areas in each of the county's planning areas. The benefits are several, including a reduction in energy costs to residents of areas with significant tree canopy coverage, cleaner air, and erosion prevention and improvement of water quality in the county's many watershed areas. Application of this law in Site Plan projects currently consists of a Forest Conservation Plan (FCP) being approved by Park and Planning's environmental planning staff for each project. The FCP notes which trees must be retained on a site and which trees may be removed for a project. The Plan also defines a Limit of Disturbance (LOD) line beyond which construction activity may not occur, in order to protect the Critical Root Zone of trees marked for retention. And, the Plan establishes requirements for replanting of trees, either on-site or off-site within the same planning area, to compensate for any loss of forest allowed for development purposes.

At present, on-site investigation occurs prior to clearing and grading of a site to check whether trees designated for retention are clearly marked, the LOD is located properly and clearly marked, and all required protective measures have been installed such as mats to protect the roots of certain specified trees marked for retention. The only other on-site visit by an environmental planning investigator occurs when the project is complete, in order to check that retention and protection of any specified trees and any required reforestation has occurred, as set forth in the approved FCP.

We believe that one additional on-site visit by an environmental planning investigator is advisable, following the clearing and grading of a site and before any construction occurs. At this time, the investigator could check to see that all trees marked for retention have been spared during clearing, that the LOD is still clearly marked, and that any tree protection devices are still in place. Should it be discovered at this time that trees have been improperly removed, the Site Plan could be revisited and the size of the area required for on-site reforestation could be increased to compensate for the unapproved forest loss, which might result in a reduction in the number of housing units allowed in the project. This potential loss of units and, therefore, profit would constitute a significant economic incentive for compliance with the county's Forest Conservation law.

### **Major and Minor Site Plan Amendments**

A Minor Site Plan Amendment is currently defined in Section 59-D-2.6 of the County Code as one "that does not entail matters that are fundamental determinations assigned to the Planning Board." The fundamental determinations that are assigned to the Board are detailed in Section 59-D-3.4 as follows:

- (1) the site plan is consistent with an approved development plan or a project plan for the optional method of development, if required;
- (2) the site plan meets all of the requirements of the zone in which it is located and is consistent with an urban renewal plan approved under Chapter 56;
- (3) the locations of the buildings and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient;
- (4) each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development; and
- (5) the site plan meets all applicable requirements of Chapter 22A regarding forest conservation and Chapter 19 regarding water resource protection.

[NOTE: The Committee suggests that number 5 in the above listing be amended to add the following language--"and Chapter 25A regarding affordable housing."]

The law currently notes that "a minor amendment may be approved, in writing, by the Planning Board staff," but a Major Site Plan Amendment is defined as one which requires action by the Planning Board. The Committee believes that the distinction between

Major and Minor Site Plan Amendments should be struck from the law, and that any and all Site Plan Amendments should require a public hearing and approval by a majority vote of the members of the Planning Board. Pressure would then exist to insure that Planning staff, developers and citizens exhibit utmost care in seeing that all provisions they deem necessary are included in any Site Plan sent before the Board for public hearing and approval, since any later amendment would require an additional public hearing and consideration by the Board. Such a revision in the law and the process for amending Site Plans will help insure that citizens are aware of, and provided an opportunity for input on, any requested amendment.

### **Staging Sequence for Site Plan Projects**

The primary Committee concern with the staging sequence for construction of Site Plan projects is for the public health and safety. To illustrate our concern, we point to the Avalon at Decoverly Phase 2 project (Site Plan No. 8-05002) off Key West Avenue in Rockville, a development planned to include 196 dwelling units in six multi-family buildings. The staging sequence for this project allows issuance of buildings permits for five of the buildings, following which all sidewalks and recreation amenities must be provided prior to issuance of the building permit for the sixth and final building. The Plan also provides that only 70% of the units may be occupied prior to the provision of all sidewalks and recreation amenities. Strict adherence to this staging sequence would allow approximately 130 units to be occupied in the midst of a construction site. This would be an undesirable, unhealthful and possibly dangerous living environment for the residents of these units, while construction is ongoing. Careful attention should be paid to the potential for risk to public health and safety when establishing a required staging sequence for the construction of a Site Plan project.