

Attorney Contesting By Right Status Of Proposed Mary's Landing Development

[ADELE UPHAUS](#) - JUNE 17, 2024



Mary's Landing is a 63-townhouse development proposed to take the place of these underused parking lots bordered by Charles Street, Fall Hill Avenue, Hunter Street, and Germania Street. Photos by Adele Uphaus.

Emails have been exchanged with City Attorney.

An attorney hired by a group of Fredericksburg residents is asking the City's planning department to deny approval of the site plan for the proposed Mary's Landing development in the Canal Quarter neighborhood.

"My clients respectfully demand that the City deny the requested approval of the Mary's Landing site plan as being in violation of the [Unified Development Ordinance]/Zoning Ordinance for at least the reasons set forth above," wrote Gifford Hampshire, a lawyer with the Fairfax-based firm Blankenship & Keith, in a June 10 email to city attorney Kelly Lackey.

Mary's Landing is a 63-townhome development proposed on two largely unused parking lots that lie between Charles Street and Fall Hill Avenue across the street from the old Mary Washington Hospital building.

At issue is whether the developer can build at the proposed density of 16 units per acre by right.

“By right” developments can proceed after approval by city staff and are not subject to special use permit requirements or public hearings before the Planning Commission and City Council.

The area is currently zoned as a T4-M Creative Maker district, which permits 8 residential units per acre by right, according to the city’s [Unified Development Ordinance](#).

The developer—and the city—state that because a plat of the property drawn up in 1891 shows 64 separate recorded lots, the landowner has a right to develop on them at the proposed density, even though the lots shown in the site plan do not exactly match the lots on the historic plat.

“In the case of Mary’s Landing, the landowner has 64 buildable lots with a number of by-right options, including attached or detached units,” staff wrote in a [question-and-answer memo](#) dated April 1 and posted to the city’s website. “Another way of stating the significance of the existing lots is that they permit the landowner to develop at the proposed density of 16 residential units per acre by right. This density would otherwise require a special use permit in this zoning district. If the lots did not already exist, the landowner would need a special use permit to develop the project site at the proposed density.”

“Not Legally Correct”

These statements, Hampshire contends in a May 29 letter to Lackey and development administrator Marne Sherman, which the Advance requested from the city under the Freedom of Information Act, are not “legally correct.”

“I have not found any provision in the City zoning ordinance that states the nonconforming undeveloped lots can be built upon in violation of the current zoning ordinance,” Hampshire wrote.

Lackey responded on June 7 by email, contending that that the city’s UDO does allow “vacant nonconforming lots” to be built upon.

“The FAQ letter does contain a blanket generality about ‘recordable’ lots being ‘buildable lots’ that may not always be true; however, the conclusion as to the continued viability of the lots created by the 1891 plat is consistent with the Unified Development Ordinance,” she wrote.

In his June 10 response, Hampshire told Lackey that he had reviewed the UDO and learned more about the project.

“Based on that review and edification, we respectfully state that the code sections you reference do not apply to allow Mary’s Landing to develop in violation of the UDO/Zoning Ordinance,” he wrote.

Hampshire said the lots are not “vacant”—rather, they have two structures and a parking lot built upon them. The two structures, a circa 1930 bungalow and the current Rappahannock EMS building, would be demolished under the proposed site plan.

“Thus, the lots are not ‘vacant’ or ‘undeveloped’ rendering [the UDO] inapplicable for this reason alone,” Hampshire wrote. “I also learned that the existing lots are proposed to be re-subdivided; therefore, they are not going to be ‘used.’ Rather, new lots would be created. It is those new lots that will be ‘used’ not the lots of record per the 1891 plat. The proposed new lots are thus outside the protection of [the UDO].”

Second Site Plan Under Review

The lots in question are owned by two limited liability companies, Mary’s Landing LLC and Medical Arts Building FXBG LLC, both of which list Mark Doherty, the owner of MacDoc Property Management, as the registered agent, according to the Virginia State Corporation Commission.

Both LLCs were created in December of 2023. The first major site plan for Mary’s Landing was submitted to the city on January 8, 2024, four days before the LLC’s purchase of the property, for \$6 million was finalized, according to the city’s Geographic Information System.

The city disapproved the first site plan in February, based on “a number of technical deficiencies that the developer must address” to bring the project into compliance with state and local codes.

Engineering firm Webb & Associates submitted the second major site plan on April 29, and it is under review.

City residents who hired Hampshire have additional concerns about the project, such as how it will affect the aging city sewer system, traffic congestion at the intersection of Fall Hill Avenue and U.S. 1, and enrollment in city schools.

The site plan “does not meet city goals for character, environment, or affordable housing, and provides nothing for already stressed city infrastructure,” said Matt Kelly, a former City Council member and concerned resident. “Mary’s Landing is a ‘cookie-cutter’ townhouse development.”