



Items 13+14
MCPB 03-30-06

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Chairman, Montgomery County Planning Board

MEMORANDUM

DATE: March 17, 2006

TO: Montgomery County Planning Board

VIA: Faroll Hamer
Acting Director

FROM: Rose Krasnow, Chief *RK*
Development Review Division

REVIEW TYPE: Consideration of alleged violations with respect to the timely provision of amenities; Consideration of sanctions and plan of compliance

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

PROJECT NAME: Greenway Village at Clarksburg – Phases 1 & 2 (82002036A)

ZONE: PD-4

LOCATION: In the vicinity of the intersection of Skylark and Newcut Roads, west of Ridge Road

MASTER PLAN: Clarksburg Master Plan

APPLICANT: Clarksburg Skylark LLC

HEARING DATE: March 30, 2006



STAFF RECOMMENDATION: Finding that the bike path along a portion of Skylark Road was not completed within the timeframe specified by the site plan but that no violation should be found due to circumstances over which the Applicant had no control. Finding that applicant moved and narrowed a bike path without receiving prior approval from Park & Planning, although the change was approved by DPWT. With respect to both of these alleged violations, Staff recommends that no violation be found. In order to stress the importance of bringing such issues to the Board's attention in a more timely manner, however, however, staff recommends that the Board assess a fine of \$20,000 and direct staff to work with the applicant to develop a way to use these monies for the benefit of the community.

Defining the Issues

Failure to Complete a Bike Path in a Timely Manner

The Preliminary Plan for Greenway Village called for the construction of a five foot sidewalk along Skylark Road. At some undetermined point, this requirement was revised to become an 8 foot wide bike path. Condition #4 in the first site plan (#8-02036) stated:

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

Other bike paths set forth in the site plans included:

- i. From Skylark Road along the east side of Persimmon Ridge Road and intersecting with the trail along Cherry Branch Drive.
- ii. Along the south side of Cherry Branch Drive from Persimmon Ridge Road to the southeast corner of Lot 20 at the stormwater pond area, said trail to connect with the trail alignment through Clarksburg Village to Midcounty Highway hiker/biker trail system.
- iii. From Persimmon Ridge Road trail, east through Park 1A and 1B to Birch Mead Road.
- iv. From Cypress Spring Road to the Clarksburg Greenway trail that runs along the east side of Little Seneca Tributary, said trail to include a hiker/biker trail bridge across Little Seneca Tributary.

The Site Plan Enforcement Agreement for Phases I and II stated under Section 1-(b)- 2 the following:

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

1. Sidewalks
2. Pedestrian pathways and bikeways
3. Parking lot and perimeter landscaping
4. Recreation facilities
5. Landscaping
6. Final topping of roads and parking lots in eareas with completed residential units.

Furthermore, the Site Plan Enforcement Agreement stated that:

(b) Applicant must construct all Recreational Facilities, and convey such facilities and related Common Areas within the timeframes contemplated in the Phasing Schedule and in these binding elements. Applicant must arrange for inspections by staff to ensure that all facilities are timely, correctly, and completely constructed., and

(f) The applicant may seek an amendment to any regulatory approval for the purpose of modifying the location and amount of real property comprising the common area and for the purpose of modifying the improvements to be constructed on such common area, including, but not limited to, the right not to construct such improvements, which amendment shall be reviewed by the Planning Board in accordance with applicable law. Such amendment shall be effective only if approved by the Planning Board.

The applicant completed the majority of the required bike paths in a timely manner, with the exception of the path on the south side of Skylark Road adjacent to Phases 1 and 2. Skylark is a major road project that has now been completed from Aurora Hills Drive to Ridge Road (Rt. 27) adjacent to Phases 3, 4 and 5. However, construction of Skylark west of Aurora Hills Drive has not yet occurred, so it has not been possible for the applicant to construct the bike path.

In October of 2005, the applicant submitted a bond to cover the 1245 feet of uncompleted bike path along Skylark Road in the area bordering Phase I of the project, perhaps in recognition of the fact that the date required for completion of all the bikeways in Phase I had already passed. Staff has no way of knowing when a development or a portion of a development reaches 70% occupancy. The developer, on the other hand, knew full well when that occupancy level was achieved but continued to pull building permits, construct, and go to settlement on additional units. At this point in time, the applicant states that 115 of the 116 units in Phase I have gone to closing. Again, staff believes that the developer should have taken steps at a much earlier stage to seek an amendment of the Phasing Schedule in view of the fact although the construction schedule for Skylark was beyond the applicant's control, amending the phasing schedule was not.

Failure to Construct a Bike Path per the Approved Plan

As part of the amendment package submitted to Park and Planning for Phases 1 and 2, the applicant asked for permission to move a small section of the bike path that runs along Persimmon Ridge Road and to narrow that same section from 8 feet to 7 feet. Review by staff revealed that the original plans called for the bike path to be located on the private property of three houses on Persimmon Ridge. However, this fact was not shown or noted when the record plat was approved. As a result, the homeowners actually refused to give the applicant permission to build the path in the location required by the site plan. The applicant worked with DPWT to relocate the bike path to the public right-of-way, but that required narrowing the path in this location by a foot. Construction of the path was completed before any amendment was sought from Park and Planning.

The Pool/Clubhouse Facility

Amendment A to Site Plan #82002036 sought to relocate the proposed pool house and modify the design to add a 2,000 square foot community center. At the Board hearing on this matter, staff recommended and the Board approved that the condition regarding the delivery of this facility be amended to read as follows:

Prior to 85% occupancy of Phases I and II of the development or June 1, 2006, whichever comes first, the proposed pool house/community center shall be completed and operational.

Based on numbers provided by the developer, the community has not yet reached 85% occupancy; it is currently 76% occupied. Although the community has voiced great concern about the delay in providing the clubhouse/pool facility, the applicant is not in violation of this condition at the current time. Furthermore, as part of the package of changes being sought for

Phases I and II, the applicant has requested that the condition be revised to require that the clubhouse/pool facility be completed within nine months of the issuance of the building permit for the facility.

FINDINGS

As staff and the Board continue to review a number of alleged violations that have come to light in recent months, it has been helpful to delineate them by type. Projects that violate development standards established by the Board are physical violations that are difficult to cure. The failure to construct the bike path as shown in the site plan is such a physical violation, although the issue could have been avoided if the record plat had reflected the location shown on the plan. In its effort to complete the bike path, the applicant chose to build a narrower path in a slightly different location and received permission from DPWT. Had the applicant sought to amend the site plan prior to relocating the path, this violation could easily have been prevented.

The failure to construct the bike path along Skylark Road within the timeframes specified in the Site Plan Enforcement Agreement represents a phasing or process violation. Such process violations do not often result in situations that cannot be cured; Artery can certainly be expected to complete the bike path along Skylark. Nevertheless, the Applicant was at fault when it continued to pull building permits after the 70% occupancy limit had been reached and without taking the necessary steps to amend the phasing plan. This approach worked to the applicant's advantage, but it is important for the development community to recognize that there will be a price to pay in such instances.

SANCTIONS/PLAN OF COMPLIANCE

Given the many extenuating circumstances involved in this matter, staff does not believe that a violation or violations need be found. However, staff suggests that fines would be appropriate. With respect to moving and narrowing the bike path before seeking an amendment, staff recommends a fine of \$10,000. With respect to the failure to provide all of the recreational amenities in a timely manner, staff again recommends a fine of \$10,000. The Board should then direct staff to work with the applicant to determine the best way to use these monies for the benefit of the Greenway Village community.