

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

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**MCPB
Item #18
5/11/06**

MEMORANDUM

DATE: May 10, 2006
TO: Montgomery County Planning Board
VIA: Faroll Hamer, Acting Director

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

SUBJECT Options for Planning Board Action Regarding Recommendations to
DPS for 83 Building Permits

**REVIEW
BASIS** Division 59-D-3 of the Montgomery County Zoning Ordinance &
Section 50-41 of Montgomery County Subdivision Regulations

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

**PROJECT
NAME** Clarksburg Village (Phase I)

ZONES R-200/TDR3 (with MPDUs)
R-200 (with MPDUs)

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

**MASTER PLAN
RESPONDENT
HEARING
DATE** Clarksburg Master Plan
Clarksburg Village Investments, Inc.
May 4, 2006 (Completed)

I. Purpose of This Report.

This staff report is provided to follow up on the public hearing convened by the Board on May 4, 2006 (“Initial Hearing”) to begin the process for evaluating the violations alleged in the project (“Clarksburg Village”) referenced above.

II. Background.

The Board will recall that, among other things and despite a number of apparent deficiencies in the site plan approvals for Clarksburg Village, a number of third-party purchasers offered evidence of the disruption occasioned by the fact that building permits were not being approved for homes they expected to occupy soon. The Respondent requested the Planning Board address the building permits for 83 dwelling units. Eighty of these units are in the R-200/TDR 3 (with MPDUs) zone where the Planning Board establishes most of the development standards. The remaining three dwelling units are in the R-200/MPDU zone, where the development standards are established in the Zoning Ordinance.

The Respondent indicated that the 80 dwelling units in the R-200/TDR 3 (with MPDUs) zone proposed in the development do not appear to involve potential violations relating to the permissible type of dwelling unit, the dedication of a public right-of-way, or a substantive concern over the height, setback, or lot size proposed for development. Rather, these 80 units are distinguishable from the other potential violations because the site plan approvals simply fail to establish all of the appropriate development standards that ordinarily control what a builder is allowed to construct. All of these dwelling units are situated in the R-200/TDR3 zone, in which the Zoning Ordinance does not establish most of the relevant standards.

In Staff’s view, a lack of binding development standards does not square with the requirements of the Montgomery County Zoning Ordinance. Without development standards, the Board cannot assure that a project achieves the intent of the relevant master plan and zone. Such standards are not provided for each dwelling unit in the approved site plan for Clarksburg Village, including the 80 units referenced by the Respondent. Staff believes that the Board should correct this omission to provide an adequate basis upon which Staff can find whether the building permits submitted by the Respondent are consistent with an approved site plan.

At the same time, after reviewing the appropriate information submitted by the Respondent, Staff is satisfied that an additional three dwelling units identified by the Respondent and located in the R-200/MPDU zone comply with underlying standards that apply generally to that zone. For this reason, Staff intends to recommend that DPS approve those permits notwithstanding how the Board decides to proceed with the other 80.

III. Staff Recommendation.

Subsequent to the Initial Hearing, Staff has consulted with the Respondent and its counsel. As discussed at the Initial Hearing, there are three options to correct any deficiencies apparent with respect to the Clarksburg Village site plan approvals:

1. First, the Respondent is entitled to propose a “site plan amendment.”
2. Second, after finding a reason to believe that a violation of any Planning Board Action exists, the Board may impose a plan of compliance.
3. Finally, after finding a reason to believe that a violation has occurred, the Board may issue a corrective order to address specific deficiencies in the signature set.

Both a site plan amendment and a plan of compliance would require the Board to engage in an intensive deliberative process, including particular notice and hearing requirements. A corrective order, on the other hand, offers a more time-efficient mechanism through which the Board may address the most pressing concerns raised at the Initial Hearing. As such, Staff recommends that the Planning Board pursue the issuance of a corrective order with respect to the 83 aforementioned dwelling units.

If for any reason the Board does not agree with the Staff recommendation expressed above, Staff stands ready to assist the Respondent as quickly as possible to proceed with either of the other two options as discussed.