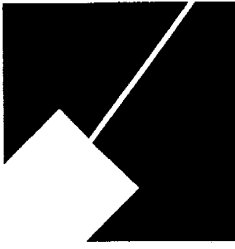


M-NCPPC



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

**MCPB
ITEM # 7
06/08/06**

MEMORANDUM

May 25, 2006

TO: Montgomery County Planning Board

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

FROM: Catherine Conlon, Supervisor 301-495-4542
Development Review Division *CC*

SUBJECT: Request for Third "Interim" Extension to the Validity Period – Preliminary Plan No. 119950420 (formerly 1-95042), Clarksburg Town Center

STAFF RECOMMENDATION: Grant an additional extension of validity period for the Preliminary Plan to October 26, 2006.

BACKGROUND

The subject preliminary plan application was submitted on November 23, 1994 to create a mixed-use development on 267.5 acres of land in the RMX-2 zone located in the northeast quadrant of the intersection of Frederick Road (MD 355) and Stringtown Road in Clarksburg. The preliminary plan was brought before the Planning Board for a public hearing on September 28, 1995 and was approved for a maximum of 1300 dwelling units, 150,000 square feet of retail uses, and 100,000 square feet of commercial office uses. The approval was granted subject to conditions as set forth in the Opinion of the Board mailed on March 26, 1996 (Attachment "A"). Per Condition No. 17, the preliminary plan remained valid for 109-months from the date of the mailing, or March 26, 2005 unless, prior to that date, the applicant either (1) recorded all plats among the land records of Montgomery County or (2) submitted a request to extend the validity period.

On March 24, 2005, the Applicant requested an extension of the Preliminary Plan for a period of two years. The request was discussed by the Planning Board on July 28, 2005 and an interim extension of the plan was granted until October 26, 2005. At that time, it was decided that review and discussion of alleged violations and other significant issues related to the Clarksburg Town Center development needed to be completed prior to the Planning Board's full

consideration of the preliminary plan extension request. For the same reasons, on October 25, 2005 the plan was granted a second interim extension until April 26, 2006.

By letter of April 21, 2006, the Applicant has requested an additional six-month interim extension of the Preliminary Plan until October 26, 2006 (Attachment B). A plan of compliance to address issues related to the Clarksburg Town Center development has now been submitted and is being reviewed by staff. The requested extension would provide Newland Communities and its consultants with sufficient time to seek approval of the plan of compliance, and if obtained, submit project, preliminary and site plan amendments, as well as a new site plan for the retail area, that reflect the new vision.

The Applicant suggests that as part of the preliminary plan amendment, the validity period could be extended for a longer period of time to allow them to complete the new Town Center plans. Staff supports this position. In the meantime, staff recommends granting the currently requested six-month extension request until October 26, 2006.

Attachments

- Attachment A – Planning Board Opinion dated 3/26/06
- Attachment B – Applicant’s Extension Request dated 4/21/06



Date of mailing: March 26, 1996

MONTGOMERY COUNTY PLANNING BOARD
REVISED OPINION

Preliminary Plan No.: #1-95042
Name of Plan: Clarksburg Town Center

Action: Approval, subject to conditions. (Motion by Commissioner Aron; seconded by Commissioner Holmes; with a vote of 5 to 0, Commissioners Aron, Holmes, Hussmann, Baptiste and Richardson voting in favor of the motion).

INTRODUCTION

On September 28, 1995, the Montgomery County Planning Board ("Board") held a public hearing to consider Preliminary Plan 1-95042, an application for subdivision approval in the RMX-2 zone. The proposed uses include residential, retail and commercial development. The Applicants, Piedmont & Clarksburg Associates, proposed to create 834 lots on 267.50 acres of land.

At the hearing, the Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented, the Board finds Preliminary Plan 1-95042 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-95042, subject to the conditions listed at the end of this opinion.

BACKGROUND

The property is located northeast of Maryland Route 355 between Clarksburg Road and Stringtown Road (A-260 on the Master Plan). Piedmont Road crosses through the northern portion of the property. The Applicant proposes construction of 1,300 dwelling units, including townhomes, multi-family and single-family residences. The proposal also includes 150,000 square feet of retail space and 100,000 square feet of office/development space.

The underlying development authority, Project Plan No. 9-94004, was approved by the Planning Board on May 11, 1995, after two prior Planning Board meetings (held on April 6 and 20, 1995). The record for Preliminary Plan 1-95042 specifically includes the records from those prior hearings.

DISCUSSION AND FINDINGS

The Planning Department staff evaluated the transportation effects of the subject application as required by the Subdivision Regulations and as recommended in the Master Plan. First, the Board must determine that public facilities, including roads, will be adequate to support and service the area of the proposed subdivision. Staff evaluated the impact of the proposed development on nearby roads and intersections in accordance with the Local Area Transportation Review Guidelines. Necessary local area transportation review improvements for this project are identified in condition #2 for Project Plan No. 9-94004.

The second level of transportation review was based on the Master Plan recommendation that development districts, or alternative financing mechanisms, be implemented prior to new development, to ensure that road infrastructure be provided to support recommended Master Plan development. The Clarksburg Master Plan specifically addressed the County's fiscal concerns that the timing and sequence of development in the area should be responsive to the fact that capital improvements funding required to support new growth will have to come from a variety of sources, including government sources and private development. As part of the Project Plan discussion, the Board requested staff to conduct an analysis of the Master Plan road network, determine the amount of road infrastructure required, evaluate how the roads would be built, and recommend when they should be built.

The Master Plan anticipated a funding shortfall for the construction of schools, local roads and other community facilities recommended in the Master Plan to serve the expected new growth. In response to this, the Master Plan recommended that development in Clarksburg should occur in stages conditioned upon the ability of private developers to fund a significant portion of the infrastructure improvements or the availability of other new sources of revenues. The Planning Board expressed a desire to address the Master Plan's stated need to comprehensively allocate among developers a responsibility to construct portions of road infrastructure in a fair and equitable manner.

To ensure that the Applicant fund its share of road infrastructure, as best can be determined at this time, staff recommended that the Applicant improve Stringtown Road (A-260), to County standards as a two lane road within the Master Plan Alignment, No. 2. as of August 25, 1995. Staff's assessment was based on the 1993 Fiscal Impact Analysis prepared by the Montgomery County Office of Planning Implementation (OPI), as part of the Clarksburg Master Plan review. The OPI study projected a funding gap of approximately \$89 million for required infrastructure. The Study also projected approximately \$37 million in revenues to be generated by the Construction Excise Tax (CET). Since the CET has been repealed, this loss of

anticipated revenue must be added to the capital gap, with a total estimated funding gap of approximately \$126 million. Staff thus estimated the Applicant's share of this infrastructure to be approximately 10 percent, or \$12.5 million, with no County or State input. The Planning Board concluded that the Stringtown Road improvement, which will be the responsibility of the applicant, represents the current best estimate of the Town Center's share of the Master Plan road infrastructure (as more particularly identified in revised traffic staff memo of 09/26/95.)

Staff noted that if the Council adopts an impact tax or other alternative road infrastructure funding mechanism, then the Applicant's contribution (in the form of improvements to Stringtown Road) will be assessed and, if found lacking, will be augmented by additional tax requirements. The Board determined that the infrastructure schemes proposed by the Master Plan are legislative in nature, will be implemented by the Council, and may or may not grandfather development predating any such legislation. The Board concluded that to anticipate the Council's actions would be presumptive, and premature.

MCDOT has requested that the hiker/biker trail shown in the Clarksburg Master Plan along Stringtown Road (A-260) be constructed along P-5 from Frederick Road (MD 355) to Piedmont Road (A-305), in lieu of the Master Plan Alignment. The developer has agreed to construct the hiker/biker trail along P-5.

Applicant also will be required to dedicate approximately 8 acres of land for a future school site, to be used in the interim as public parkland. At the time the school is developed, if ever, the parkland adjoining the school site will be jointly used as school athletic facilities and public parkland under an easement agreement between The Maryland-National Capital Park and Planning Commission and Montgomery County Public Schools (MCPS). MCPS staff asked that the entire future school site (10-12 acres) be dedicated to MCPS at this time. Under normal circumstances this would be the usual procedure. In this instance, however, staff recommended and the Board agreed that within the Clarksburg Town Center, a planned park/school site provides a more efficient use of land than separate facilities. In addition, if the land ultimately is not needed as a school site, then the land should be retained as public parkland. The Board determined that this joint use, with the recreational facilities remaining under The Maryland-National Capital Park and Planning Commission ownership, would afford the most efficient public use of the land.

Therefore, with all of the evidence heard and all testimony taken, The Planning Board, approved the plan, including (1) waiver of the distance between intersections requirements as contained in Section 50-26 of the Subdivision Regulations and (2) approval of closed street sections subject to MCDOT approval. The approval is subject to the following conditions:

1. Agreement with Planning Board to limit development to a maximum of 1300 dwelling units, 150,000 square feet of retail uses and 100,000 square feet of commercial office uses, subject to the following requirements:
 - (a) Agreement with the Planning Board to provide the necessary roadway improvements as identified in the phasing section of the revised Transportation Planning Division Memorandum dated 09/26/95.
 - (b) The recordation of the subdivision plats for the Clarksburg Town Center project shall be phased over a nine year period. Plats may be recorded in three separate phases with each phase being completed within a thirty-six month period. Applicant to record plats for at least 200 residential units during Phase 1. Applicant must submit a plat recordation schedule for Phases 2 and 3 for Planning Board approval as part of the Phase 1 site plan review.
2. Compliance with Environmental Planning Division approval regarding the requirements of the forest conservation legislation. Applicant must meet all conditions prior to recording of plat or MCDEP issuance of sediment and erosion control permit, as appropriate.
3. The commercial area's stormwater management forebay, sand filter #6 and associated grading that cannot be forested must be located outside of the required stream buffer. The SWM facilities should be designed to promote aesthetics and effectiveness.
4. Agricultural areas within the environmental buffer will be taken out of production and stabilized with a suitable grass cover no later than Spring, 1996.
5. Dedication of the following roads as shown on plan must be provided as follows:
 - (a) Clarksburg Road (MD RT 121) for ultimate 80' right-of-way.
 - (b) Piedmont Road (Master Plan A-305) for ultimate 80' right-of-way.
 - (c) Stringtown Road (Master Plan A-260) for ultimate 120' right-of-way.
6. Dedication of the proposed park/school, as shown on the Applicant's revised preliminary plan drawing, is to be made to M-NCPPC. In order to facilitate the implementation of the combined park/school facilities, the following provisions apply:

- (a) M-NCPPC and the Applicant will enter into an agreement specifying that an exchange of land, identified as areas "B1" and "B2" on the park/school concept drawing set out on Circle Page 49 of the staff report, will occur prior to the execution of the Site Plan, Enforcement Agreement.
- (b) Dedication of the approximately 8 acre area, identified as area "A" on the same park/school concept drawing identified above, will occur either at the time of recordation of the plats for the adjacent phase of the project or at such time as funds for construction of the future elementary school are added to the County CIP, whichever occurs first.
- (c) The Applicant will provide site grading, infield preparation and seeding of the replacement athletic fields on the approximately 8 acres of dedicated land at a time which insures that there will be no disruption in the continued use of the existing athletic fields prior to completion of the replacement athletic fields.
 - (i) In the event that dedication occurs when funds for the proposed school are shown in the CIP, Applicant will complete work on the replacement fields prior to the construction of the proposed school.
 - (ii) In the event that dedication occurs prior to funding for the school being shown in the CIP, then upon construction of Street "F", as shown on the revised preliminary plan, Applicant will commence work on replacement of the baseball field. In addition, if at site plan it is determined that there is sufficient earth material on site to construct both replacement fields, then Applicant will also rough grade and seed the replacement soccer field when construction of Street "F" begins. Area tabulations for the proposed park/school complexes to be submitted for technical staff review at site plan. Final grading plan for the park/school site to be submitted for technical staff approval as part of the site plan application.

7. In accordance with Condition #6 above, Applicant to enter into an agreement with the Planning Board to provide for site grading, infield preparation and seeding of the replacement athletic fields in accordance with Parks Department specifications, as shown on the preliminary plan drawing, and as specified in the Department of Parks' Memorandum dated September 22, 1995. The construction of

the replacement athletic fields must occur as specified in Condition #6.

8. Record plats to reflect delineation of conservation easements over the areas of the 100 year floodplain, stream valley buffer, wetland buffer and tree preservation and/or reforestation and greenway dedications.
9. No clearing, grading, or recording of plats prior to site plan approval.
10. Final number and location of units to be determined at site plan.
11. Access and improvements as required to be approved by MCDOT and MDSHA.
12. Conditions of MCDEP stormwater management approval dated 07/28/95.
13. Final number of MPDU's to be determined at site plan dependent on condition #10 above.
14. Preliminary Plan 1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan No. 9-94004. Each term, condition, and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are, therefore, not automatically severable. Should any term, condition, or requirement associated with the approved plans be invalidated, then the entirety of the approved plan must be remanded to the Planning Board for further consideration. At that time, the Board shall determine if all applicable requirements under State and County law will be met in the absence of such term, condition and requirement, and if some alternative, lawful conditions or plan revisions related to the severed term, condition, or requirement are then required.
15. Other necessary easements.
- (16) The following phasing requirements are conditioned upon issuance of building permits for the subject preliminary plan:
 - (a) The first 44 dwelling units without any off-site road improvements.
 - (b) After the 44th building permit, the developer must start reconstruction of the southbound right turn lane along MD 355 at MD 121 to provide a "free flowing" movement.

- (c) After the 400th building permit, the developer has two options:
- 1) Construction of A-260 from MD 355 to the southern access road of the commercial site (commercial access road between A-260 and P-5) and construction of P-5 across the stream valley into the residential area north of stream valley.
 - 2) Construction of A-260 from MD 355 to the northern access road of the residential development and construction of a northbound right-turn lane along MD 355 at A-260 should be included in this phase.
- (d) After the 800th building permit, the developer must start construction of remaining section of A-260 to A-305, and intersection improvements at MD 355 and MD 121 to construct eastbound & westbound left-turn lanes along MD 121.
- (e) Construction of A-305 from A-260 to MD 121 must begin when the developer starts building any of the residential units on blocks 11, 12, 13, and the northern half of block 10.

17. This preliminary plan will remain valid until March 26, 2005. (9 years and 1 month from the date of mailing which is February 26, 1996). The recordation of plats shall occur in accordance with the phasing identified in Condition 1(b) of this opinion, and as further stipulated in the Planning Board's approval of the phase 1 site plan review. Prior to the expiration of the validity period for each phase, a final record plat for all property delineated in a particular phase must be recorded or a request for an extension must be filed. The first phase of the preliminary plan must be recorded by March 26, 1999 or a request for an extension must be filed.

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

April 21, 2006

Stephen Z. Kaufman
301.961.5156
skaufman@linowes-law.com
Todd D. Brown
301.961.5218
tbrown@linowes-law.com

By Hand Delivery

Hon. Derick Berlage, Chair
and Members of the Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Clarksburg Town Center – Preliminary Plan No. 1-95042
Request for Extension

Dear Mr. Berlage and Members of the Planning Board:

On behalf of Newland Communities, LLC and NNP II Clarksburg, LLC (collectively, “Newland Communities”), the purpose of this letter is to request an interim extension of the Clarksburg Town Center Preliminary Plan validity period until October 26, 2006. This request is filed to provide Newland Communities and its consultants with sufficient time to both complete the plan of compliance process with the Planning Commission and to prepare a plan of completion for the property and associated amendments to the Project Plan, Site Plan and, if necessary, Preliminary Plan approvals for consideration by the Board.

As the Board will recall, on March 24, 2005, the applicant requested a 24-month extension of the Preliminary Plan validity date to provide sufficient time to complete the Clarksburg Town Center development. On July 28, 2005, the Board granted an interim extension of the plan until October 26, 2005. On October 25, 2005, the Board granted a second interim extension until April 26, 2006 (“Attachment 1”). We understand the Board granted these interim extensions to maintain the status quo of the project while the Board considered various site plan compliance issues. More recently, the Board continued its compliance proceedings to provide Newland Communities, CTCAC and the builders with an opportunity to mediate a proposed settlement and plan of completion to be brought before the Board for its consideration. The results of the mediation were reported to the Board on April 6, 2006.

We believe an interim extension of the Preliminary Plan until October 26, 2006 will provide sufficient time for relevant plan amendments to be prepared, filed with the Planning Commission and processed. It is suggested that when the proposed Plan amendments are presented to the Board for consideration, the Board also consider the pending 24-month Preliminary Plan

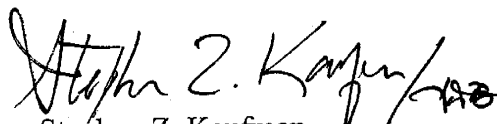
Hon. Derick Berlage, Chairman
and Members of the Montgomery
County Planning Board
April 21, 2006
Page 2

Extension request. In this manner the Board will be able to consider all aspects of the development before determining how best to proceed.

Thank you for your consideration and continued assistance with this matter.

Very truly yours,

LINOWES AND BLOCHER LLP

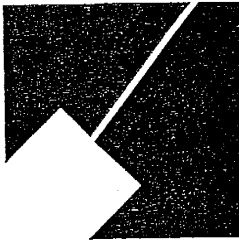

Stephen Z. Kaufman


Todd D. Brown

TDB:cp
Enclosure

cc: Douglas Delano
Martha Guy, Esq.
Sharon Koplan, Esq.
Kurt Fischer, Esq.
Ms. Rose Krasnow
Catherine Conlon
Debra Yerg Daniel, Esq.
Ms. Nanci Porten
Robert Brewer, Esq.
Kevin Kennedy, Esq.
Timothy Dugan, Esq.
Barbara Sears, Esq.
Scott Wallace, Esq.
David Brown, Esq.

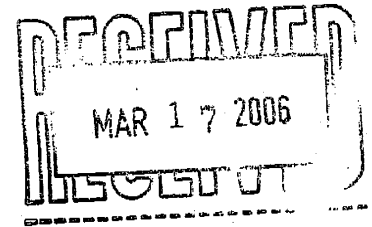
M-NCPPC



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



March 15, 2006

NNPII- Clarksburg L.L.C.
8201 Greensboro Drive, Suite 817,
McLean, VA 22102

Preliminary Plan No. 1-95042E
Request for an extension of the validity date for the **CLARKSBURG TOWN CENTER**

This is to confirm for your records that the Montgomery County Planning Board has considered requests for two extensions to the validity period of the above-mentioned plan at its regularly scheduled meetings of **July 28, 2005 and October 25, 2005**. At the July 28, 2005 meeting, the Planning Board voted 5-0 to grant an extension to **October 26, 2005**. (Commissioner Bryant made the motion; Commissioner Robinson seconded; Chairman Berlage and Commissioners Bryant, Perdue, Robinson and Wellington voted in favor). At the October 25, 2005 meeting, the Planning Board voted 4-0 to grant a second extension to **April 26, 2006**. (Commissioner Perdue made the motion; Commissioner Wellington seconded; Chairman Berlage and Commissioners Perdue, Robinson and Wellington voted in favor, Commissioner Bryant was absent.)

If you have any questions concerning these Planning Board actions, please call me at (301) 495-4542.

Sincerely,

A handwritten signature in black ink that reads "Catherine A. Conlon".

Catherine Conlon, supervisor
Development Review Division

cc: Todd Brown, Linowes & Blocher