



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 10 - 07
 Site Plan No. 820070220
 Project Name: Clarksburg Town Center
 Hearing Dates: January 14, 2010

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3.6, the Montgomery County Planning Board is vested with the authority to enforce terms of site plan approval; and

WHEREAS, on July 16, 2009, the Planning Board approved the application of NNPII Clarksburg, LLC ("Applicant") for approval of a site plan for 194,720 square feet of commercial development, which includes up to 69,720 square feet of specialty retail; 1,213 residential units, including 152 MPDUs and a waiver to permit a reduction in the number of parking spaces, and reconfirmation of the previously approved reduction in setbacks from adjacent residentially-zoned properties ("Site Plan") on 270 acres of RMX-2 and RDT-zoned land, located at the southeast quadrant of the intersection with Clarksburg Road and Snowden Farm Parkway in the Clarksburg Master Plan area ("Property" or "Subject Property"); and

WHEREAS, the Applicant's site plan application was designated Site Plan No. 820070220, Clarksburg Town Center; and

WHEREAS, the Planning Board conditioned its approval of the Site Plan on the Applicant submitting an accurate certified site plan application within 90 days; specifically, Condition No. 16 of the Board's resolution provides:

If the Certified Site Plan is not timely submitted, the Applicant must pay a \$500/day fine for each day the Certified Site Plan is late. If the Planning Board determines that the Certified Site Plan does not conform to all conditions of site plan approval, the Planning Board may assess the Applicant a fine of up to \$500/day for each day after the later of the Certified Site Plan due date or the submittal date until such time as plans have been submitted that conform to all conditions of approval.

Approved as to
 Legal Sufficiency:

8787 Georgia Avenue, Suite 200, Clarksburg, MD 20741-2010 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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WHEREAS, on January 14, 2010, the Planning Board held a regularly scheduled roundtable discussion to receive a report on the progress of the Clarksburg Town Center development; and

WHEREAS, at the January 14 roundtable discussion the Planning Board's staff reported to the Board that although the Applicant had timely submitted its certified site plan application, the application contained significant discrepancies, which the staff detailed in a December 8, 2009 letter to the Applicant; and

WHEREAS, staff further explained to the Planning Board that following the receipt of staff's comments the Applicant promptly submitted revised plans that substantially conformed to the Board's July 16 resolution; and

WHEREAS, the Applicant conceded that there were issues with its initial certified site plan submission, but requested that the Planning Board recognize the significant steps that the Applicant had taken toward resolving those issues; and

WHEREAS, the Staff recommended that the Planning Board impose a \$250.00 per day fine for the 88-day period that lapsed between the Applicant's first and second certified site plan submissions, for a total fine of \$22,000.00, an amount that recognizes on the one hand the shortcomings in the Applicant's initial submission and on the other hand the prompt correction of those shortcomings; and

WHEREAS, the Applicant indicated that it had no objection to the Planning Board setting a fine during the roundtable, and agreed to pay by no later than January 31, 2010 the \$22,000.00 fine recommended by staff; and

WHEREAS, after hearing the statements of its staff and the Applicant, on motion of Commissioner Wells-Harley, seconded by Commissioner Alfandre, the Planning Board voted 3-0 to assess a \$22,000.00 fine against the Applicant for failing to fully comply with Condition No. 16 of the site plan resolution, with Commissioners Hanson, Alfandre and Wells-Harley voting in favor, Commissioner Presley absent having recused herself from the matter, and one Planning Board seat being vacant.

NOW, THEREFORE BE IT RESOLVED that the Planning Board FINDS that the Applicant did not fully comply with the terms of Condition No. 16 of the Board's resolution approving the Clarksburg Town Center site plan, and is not convinced that Applicant's failure to comply was solely due to the complexity of the approved site plan. The certified site plan that the Applicant submitted on October 12, 2009 should have conformed as closely as possible to the plan submitted on January 8, 2010, subject only to revisions required by the Planning Board's express conditions of approval. Although the Planning Board is concerned about the discrepancies in the initial submission, it is convinced that the Applicant has acted in a timely manner to correct the deficiencies in

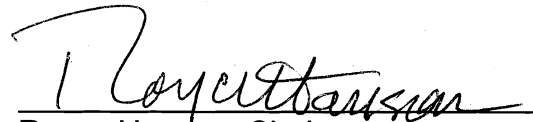
the initial certified site plan submission. Therefore, the Board finds that the \$250/day fine recommended by its staff, is appropriate; and

BE IT FURTHER RESOLVED that the Planning Board orders the Applicant to submit to the Development Review Division a check in the amount of \$22,000.00 payable to the Maryland-National Capital Park and Planning Commission not later than January 31, 2010.

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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Vice Chair Wells-Harley, seconded by Commissioner Alfandre, with Chairman Hanson, Vice Chair Wells-Harley, and Commissioner Alfandre present and voting in favor of the motion, and Commissioner Presley recusing herself, at its regular meeting held on Thursday, January 28, 2010 in Silver Spring, Maryland.


Royce Hanson, Chairman
Montgomery County Planning Board