



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Staff Report: Site Plan Amendment 82002027A, The Highlands

CONSENT ITEM #: _____

MCPB HEARING

DATE: June 10, 2010

REPORT DATE: May 28, 2010

TO: Montgomery County Planning Board

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

FROM: Robert Kronenberg, Supervisor *RK*
Development Review Division
301.495.2187
Robert.Kronenberg@mncppc-mc.org



**APPLICATION
DESCRIPTION:**

Located southeast of the intersection with Stringtown Road and MD 355; 2.42 acres within the Clarksburg Master Plan area. This amendment intends to comply with the Administrative Order for Enforcement by proposing to: 1) remove and revise the seating areas and plantings; 2) revise the lighting detail; 3) remove and relocate the stairwells and change the material from stone to brick 4) remove the trellis and decorative fence; and 5) revise the parking lot striping.

APPLICANT: Clarksburg Partners, LLC

FILING DATE: March 29, 2010

RECOMMENDATION: Approval of the site plan amendment and adoption of the draft resolution.

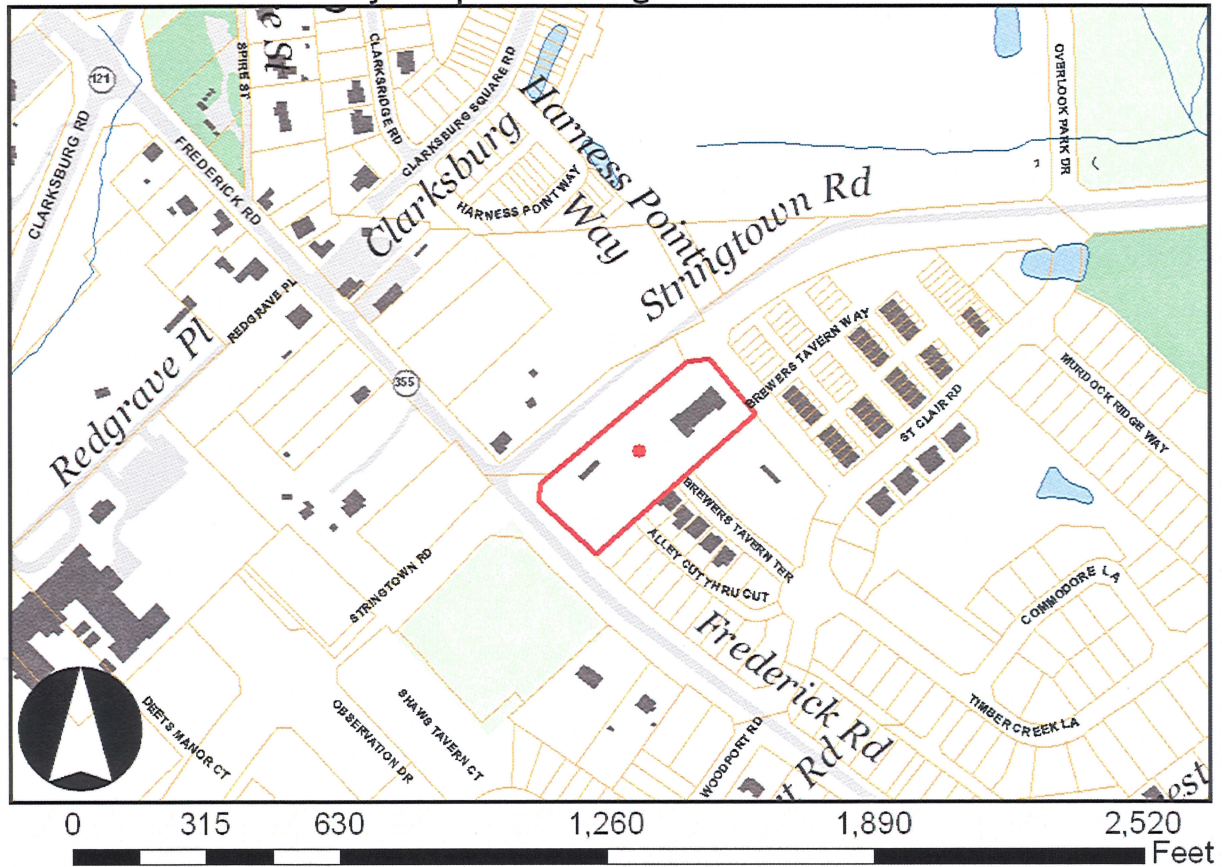
**EXECUTIVE
SUMMARY:**

The amendment is submitted as a result of a violation hearing for non-compliance with the site plan and site plan enforcement agreement. The Applicant was required to submit an amendment to account for as-built conditions and address remaining areas of non-compliance, including the trellis and design of the larger seating area. Staff also addresses the penalty as a result of the violation hearing. The Applicant has not completed the punchlist items, including the landscaping, striping and damaged concrete; however, the Applicant has provided a timeline for the completion of the items prior to June 15, 2010. Additionally, the property has been sold to a different entity; however, completion of the outstanding items will still be required by the Applicant.

SITE DESCRIPTION

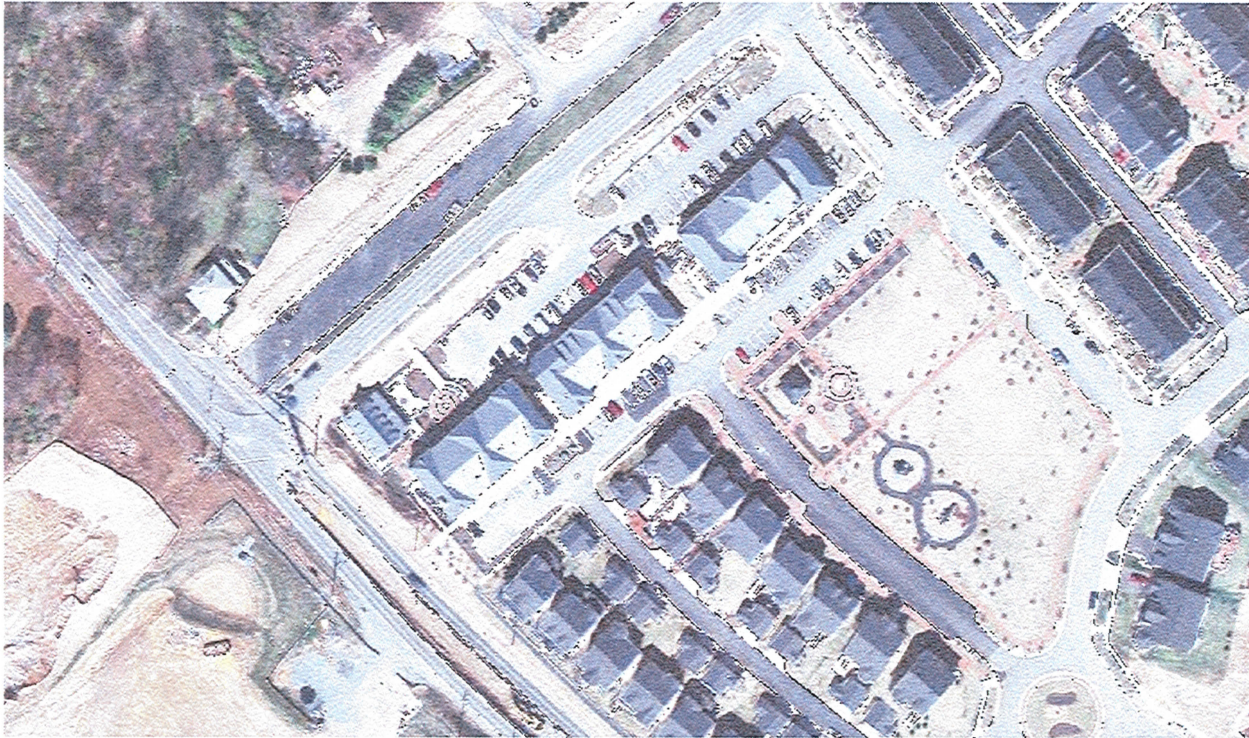
Vicinity

The site is a commercial strip center at the southeastern intersection of Stringtown Road and MD 355 in Clarksburg. The property is adjacent to the residential communities of The Highlands of Clarksburg to the south and east and Gateway Commons across MD 355 to the west. Clarksburg Town Center is located directly north of the site opposite Stringtown Road, as is the historic district of Clarksburg along MD 355.



Aerial View of Site

The existing building is a split-level structure with retail shops on the ground floor and residential and office on the top level. The community building is a separate structure located at the corner of the MD 355 and Stringtown Road. Surface parking provides independent direct access to both levels of the building. Parking and the drive aisle for the office space separates the adjacent residences and park to the south.



Background

The original site plan was approved on May 9, 2002 (Resolution dated October 23, 2002) for 18,950 square feet of commercial office, 12,870 square feet of commercial retail and 10 multi-family units (MPDUs) on 2.42 acres of land.

The Planning Staff issued multiple Notices of Hearing to the Planning Board on September 26, 2009, October 16, 2009 and finally December 16, 2009 and found the Respondent (hereinafter referred to as the “Applicant”) in violation of the following:

1. Failure to install seating areas;
2. Failure to install all landscaping;
3. Failure to follow the specified striping pattern in the parking area;
4. Failure to repair parking lot lighting;
5. Failure to provide the pedestrian stairway between buildings 3 & 4 and changing the footprint and location of the adjoining stairway;
6. Failure to provide the specified stone material on the stairway retaining wall;
7. Failure to install a wood fence on the corner of Stringtown Road & Frederick Road; and
8. Failure to provide the wood trellis in the public open space.

The Administrative Order dated March 9, 2010 required the following of the Applicant:

1. Install and complete the punchlist items by June 15, 2010;
2. Submit a site plan amendment (consent item) by March 15, 2010;

3. Compliance with the approved site plan amendment within 90 days after the approval by the Board; and
4. Pay a penalty in the form of a surety to M-NCPPC in the amount of \$40,000 by March 15, 2010, which could be suspended or partially enacted upon by the Board based upon compliance with the actions and site plan amendment.

AMENDMENT DESCRIPTION

Proposal

In response to the violation hearing and administrative order by the Board, the Applicant submitted a site plan amendment on March 29, 2010, two weeks past the deadline imposed by the Board. However, the Order was not mailed out until March 9, allowing the Applicant only a few weeks to organize their consultant for the submittal of the application and surety. The Applicant also submitted a performance bond in the amount of \$40,000 with the application for the amendment. This addresses items 1 and 4 of the compliance conditions specified in the Order.

As of the writing of this staff report, none of the punchlist items have been started, including the landscaping, striping, lighting and concrete repairs. However, the Applicant has provided a timeline to complete the outstanding items prior to June 15, 2010. The Applicant also modified the initial submittal after objections by Staff regarding the proposed elimination of the trellis. The Applicant provided new drawings with a modified trellis design in the same location as the original approval. The Applicant will need to complete the larger seating area and trellis within 90 days after approval by the Board to remain in compliance with condition 3 of the Order. The Applicant has also proffered to replace the performance bond with cash so the new owner can complete the outstanding items in the event the Applicant is not permitted by the new owner to complete the work.

RECOMMENDATIONS

Conformance to Conditions of Approval

The proposed development must comply with the conditions of approval for Site Plan 820020270 as enumerated in the Planning Board Opinion dated October 23, 2002 except as modified herein.

Description of Amendment[s]

The Applicant requests the following modifications to the Site Plan:

1. Remove the smaller seating area and associated landscaping between Buildings 2 and 3;
2. Revise the larger seating area and associated landscaping between Buildings 1 and 2;
3. Revise the lighting detail;
4. Remove and relocate the stairwells and change the material from stone to brick;
5. Remove the trellis and decorative fence; and
6. Revise the parking lot striping.

PUBLIC NOTICE

A notice regarding the subject amendment was sent to all parties of record by the Applicant on March 30, 2010. The notice gave interested parties 15 days to review and comment on the amended site plan per Montgomery County Zoning Ordinance Section 59-D-3.7. Staff received no inquiries regarding the proposed amendment.

STAFF RECOMMENDATION

Compliance with the Order

The proposed modifications to the site plan do alter the overall character or impact of the development with respect to the original findings of approval; however, the Applicant was found in violation of the modifications and directed to comply with the Administrative Order dated March 9, 2010 in order to bring the site into conformance. The Applicant was ordered to submit a site plan amendment to capture the as-built conditions for the stairwells and materials, small seating area, some landscaping and the decorative fence. The areas of non-compliance such as the missing landscaping, concrete to be repaired and lighting was considered a "punchlist" item and given a June 15, 2010 deadline to install, repair or complete. If these items are not completed within the timeframe set by the Order, further enforcement action will be required.

Site Plan Modifications

The Applicant submitted a plan that replaced the trellis with a decorative sign; however, Staff did not find this in keeping with the Order or spirit of the original approval. The Applicant provided revised plans to incorporate a different design of the trellis to accommodate the intent of the plan approval and to allow visibility into the center. The Applicant also proposed a redesign of the larger seating area, in accord with the Order. The redesigned area with seating and landscaping is acceptable.

Penalty

The Applicant was ordered to pay a penalty through a performance bond in the amount of \$40,000. The surety could be suspended or partially enacted upon by the Board based upon compliance with the actions and proposed site plan amendment. The intent of this condition was to allow the Applicant to get started on the punchlist items and finalize the certified site plan. As previously indicated, the punchlist items have not been started but are tentatively scheduled for completion by June 15, 2010. In accordance with the Order, the Applicant has until June 15, 2010 to complete the punchlist items but has not made any progress since the January 14, 2010 hearing. The performance bond will remain active, in-lieu-of a cash payment for the outstanding items, to ensure completion of the site plan elements. Further, the elimination of the trellis was not in keeping with the spirit and direction of the Board. The Applicant has not shown a willingness to make amends for the items in violation or complete the site plan amendment process. In addition to the completion of the site plan amendment and outstanding punchlist items and installation of the modified seating area and trellis, Staff recommends a penalty in the amount of \$5,000 if the punchlist items are not complete by June 15, 2010. The penalty could be processed by a check made payable to M-NCPPC or money could be collected through default of the bond.

Further, these modifications will not affect the compatibility of the development with respect to the surrounding neighborhood. Staff recommends approval of Site Plan Amendment 82002027A with the following modifications:

1. Remove the smaller seating area and associated landscaping between Buildings 2 and 3;
2. Revise the larger seating area and associated landscaping between Buildings 1 and 2;
3. Revise the lighting detail;
4. Remove and relocate the stairwells and change the material from stone to brick;
5. Redesign the trellis to eliminate the lower panels as shown on the revised plans date stamped by the M-NCPPC on May 24, 2010. The trellis will remain in the same location;
6. Remove the decorative fence; and
7. Revise the parking lot striping.

In addition to the site plan modifications, the Applicant must:

1. Pay a penalty of \$5,000 within 30 days from the mailing of the resolution/order for the subject amendment if the punchlist items are not completed by June 15, 2010;
2. Submit the certified site plan within 30 days from the mailing of the resolution/order for the subject amendment; and
3. Compliance with the items in the March 9, 2010 Administrative Order.

APPENDICES

- A. Draft Planning Board Resolution.
- B. Administrative Order dated March 9, 2010.
- C. Site Plan Opinion dated October 23 , 2002
- D. Letter of Explanation from Applicant dated March 11, 2010.

APPENDIX A



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 10-64
Site Plan No. 82002027A
Project Name: The Highlands
Hearing Date: June 10, 2010

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Division 59-D-3, the Montgomery County Planning Board ("Planning Board") is required to review amendments to approved site plans; and

WHEREAS, on May 9, 2002, the Planning Board approved Site Plan No. 820020270, The Highlands for 18,950 square feet of commercial office, 12,870 square feet of commercial retail and 10 multi-family units on 2.42 acres of land in the RMX-2 zone; and

WHEREAS, on December 16, 2009, the Planning Board found Clarksburg Partners, LLC ("Respondent" or "Applicant") in violation of the approved site plan for:

1. Failure to install seating areas;
2. Failure to install all landscaping;
3. Failure to follow the specified striping pattern in the parking area;
4. Failure to repair parking lot lighting;
5. Failure to provide the pedestrian stairway between buildings 3 & 4 and changing the footprint and location of the adjoining stairway;
6. Failure to provide the specified stone material on the stairway retaining wall;
7. Failure to install a wood fence on the corner of Stringtown Road & Frederick Road; and
8. Failure to provide the wood trellis in the public open space.

On March 9, 2010, the Planning Board issued an Administrative Order requiring the Respondent to:

1. Install and complete the punchlist items by June 15, 2010;
2. Submit a site plan amendment (consent item) by March 15, 2010;
3. Comply with the approved site plan amendment within 90 days after the approval by the Board; and
4. Pay a penalty in the form of a surety to M-NCPPC in the amount of \$40,000 by March 15, 2010, which could be suspended or partially enacted upon by the Board based upon compliance with the actions and site plan amendment.

Approved as to
Legal Sufficiency:

A handwritten signature in black ink, appearing to be 'M. N. C. P. P. C.', written over a horizontal line.

8787 Georgia Avenue, N. C. P. P. C. Legal Department

Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, on March 29, 2010, Clarksburg Partners, LLC ("Applicant"), filed a site plan amendment application designated Site Plan Amendment No. 82002027A for approval of the following modifications:

1. Remove the smaller seating area and associated landscaping between Buildings 2 and 3;
2. Revise the larger seating area and associated landscaping between Buildings 1 and 2;
3. Revise the lighting detail;
4. Remove and relocate the stairwells and change the material from stone to brick;
5. Revise the trellis design to remove the lower level panels and remove the decorative fence; and
6. Revise the parking lot striping.

WHEREAS, following review and analysis of the Amendment by Planning Board Staff ("Staff") and the staffs of other applicable governmental agencies, Staff issued a memorandum to the Planning Board dated May 28, 2010 setting forth its analysis and recommendation for approval of the Amendment ("Staff Report"); and

WHEREAS, on June 10, 2010, Staff presented the Amendment to the Planning Board as a consent item for its review and action (the "Hearing"); and

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Planning Board hereby adopts the Staff's recommendation and analysis set forth in the Staff Report and hereby approves the Site Plan No. 82002027A.

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board and incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that this Amendment shall remain valid as provided in Montgomery County Code § 59-D-3.8; and

BE IT FURTHER RESOLVED, that the date of this written resolution is _____ (which is the date that this resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this written opinion, consistent with the procedural rules for the judicial review of

administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

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 Commissioner _____, seconded by Commissioner _____, with Commissioners _____ (list) voting in favor of the motion, with Commissioner(s) _____ (list) dissenting, Commissioner(s) _____ (list) abstaining, Commissioner(s) _____ (list) being absent or being temporarily absent, at its regular meeting held on Thursday, _____, 200., in Silver Spring, Maryland.

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APPENDIX B



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 10-08
 Site Plan No. 820020270
 Project Name: The Highlands
 Date of Hearing: January 14, 2010

ADMINISTRATIVE ORDER

WHEREAS, under Montgomery County Code Division 59-D-3.6, the Montgomery County Planning Board ("Planning Board") is vested with the authority to enforce approved site plans; and

WHEREAS, on May 9, 2002, Clarksburg Partners, LLC ("Respondent"), was granted approval of a site plan for 18,590 square feet of commercial office, 12,870 square feet of commercial retail and 10 MPDU multi-family units ("Site Plan" or "Plan") on 3.20 acres of RMX-2-zoned land, known as The Highlands in Clarksburg, Maryland ("Property" or "Subject Property"); and

WHEREAS, Respondent's site plan application was designated Site Plan No. 820020270, The Highlands (the "Application") and certified on June 10, 2003; and

WHEREAS, Planning Board staff ("Staff") issued multiple Notices of Hearing to the Planning Board, dated September 26, 2009, October 16, 2009 and finally December 16, 2009, alleging that Respondent was responsible for the following site plan violations:

1. Failure to install seating areas;
2. Failure to install all landscaping;
3. Failure to follow the specified striping pattern in the parking area;
4. Failure to replace damaged concrete;
5. Failure to repair parking lot lighting;
6. Failure to provide the pedestrian stairway between Buildings 3 & 4 and changing the footprint and location of the adjoining stairway;
7. Failure to provide the specified stone material on the stairway retaining wall;
8. Failure to install a wood fence on the corner of Stringtown Road & Frederick Road; and
9. Failure to provide the wood trellis in the public open space.

Approved as to
 Legal Sufficiency:

8787 Georgia Avenue, N.C. Planning Board, Department 10 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, following review and analysis of the alleged violations by Staff, on January 14, 2010, the Planning Board held an enforcement hearing with the Respondent present; and

WHEREAS, at the hearing, Planning Board staff represented that the issues with respect to installation of the landscaping, parking lot striping, damaged concrete and parking lot lighting were "punchlist" items that could immediately be corrected by the Respondent, while the remaining items in the Notice of Hearing would need to be corrected with a site plan amendment, whether that meant modification or elimination of the plan elements; and;

WHEREAS, at the hearing, Planning Board staff and the Respondent stated that the Respondent had stipulated that he was responsible for the nine alleged violations and could rectify the punchlist items with the exception of the lighting, which is a continuous maintenance problem with vehicles in the parking lot, while the remaining items would need to be modified or eliminated from the approved plans; and

WHEREAS, in light of the stipulation, the only issues remaining for the Planning Board to decide were the appropriate amount of any penalty to be imposed and any remedial actions that the Respondent would have to take; and

WHEREAS, at the Hearing, the Planning Board received evidence and heard testimony from Robert Kronenberg, supervisor of the Site Plan team in Development Review Division, about the history of the case, enforcement actions taken by Staff, and the remedial action necessary to bring the site plan into compliance with the original approval, as well as penalties being recommended by Staff for the alleged violations. Mr. Kronenberg testified that the smaller seating area between Buildings 2 & 3 did not adequately provide an area of respite since the HVAC units take up the majority of the area and the larger area between Buildings 1 & 2 would need to be modified to accommodate existing conditions. Mr. Kronenberg also testified that even though this was a major deviation from the approved plans, it did not seem appropriate to relocate the existing stairwell since it provides the necessary exterior access from the plaza area on the ground floor area to the second floor outside Building 3 and that the second pedestrian stairway between Buildings 3 and 4 was not necessarily efficient given the existing grading and lack of pedestrian circulation. The materials associated with the existing stairwell were not the approved stone; however, the brick material was comparable to the existing material with the buildings. Mr. Kronenberg testified to the two remaining items that were eliminated from the approved plans: the installation of the wood fence, which is presently not appropriate given the modifications associated with the handicapped access and landscaping; and the wood trellis which Staff is recommending to be installed in the same location as shown on the approved plans. Respondent cross-examined Mr. Kronenberg on the history of the project and the Respondent's willingness to complete the punchlist items while relying on Staff's

assistance to modify the seating area and the design of the wood trellis; however, the Respondent argued that the installation of the trellis would obstruct visibility for the retail tenants of a struggling retail shopping center.

WHEREAS, Staff recommended that the Board assess the Respondent a penalty of \$40,000.00. Staff explained that this amount was based on the length of time the actions have been in non-compliance, the willfulness of the violations, the economic benefits derived from the violations, the cost of corrective actions, the degree of deviation from the approved plans, and the fact that this amount is well within the \$500 per day limit applicable to site plan violations.

WHEREAS, the Planning Board heard testimony from the Respondent's representative, Mr. Rosenberg, concerning the violations, his efforts to remediate the violations, and the cost of complying with the remediation efforts proposed by staff, and that the costs associated with the improvements would fall on the owners and businesses in the center. Mr. Rosenberg, also informed the Board that the property is in receivership and that the owners don't have the ability to pay for or make the improvements without consent by the bank that is currently acting as the manager of the property.

WHEREAS, on the motion of Commissioner Alfandre; seconded by Commissioner Presley; with a vote of 4-0, Commissioners Alfandre, Hanson, Presley, and Wells-Harley voting in favor and one seat being vacant, at the conclusion of the hearing the Planning Board voted to find the Respondent in violation of the site plan, to impose a penalty of \$40,000.00 on the Respondent in the form of a bond, and require the Respondent to take certain corrective actions including submittal of a site plan amendment. The bond would be held until the actions by the Respondent have been completed, at which time, the Board would be in a position to determine the appropriate penalty depending on the willingness and expediency of the Respondent.

NOW, THEREFORE, BE IT RESOLVED that, pursuant to the relevant provisions of Montgomery County Code Chapter 59, the Montgomery County Planning Board finds the Respondent responsible for failing to install and complete elements shown on the approved site plan in violation of the site plan.

BE IT FURTHER RESOLVED that the Respondent is hereby ordered to:

1. Install and complete the punchlist items by June 15, 2010.;
2. Submit a site plan amendment (consent item) by March 15, 2010;
3. Compliance with the approved site plan amendment within 90 days after approval by the Board;

4. Pay a penalty in the form of a surety to M-NCPPC in the amount of \$40,000.00 by March 15, 2010, which could be suspended or partially enacted upon by the Board based upon compliance with the actions and site plan amendment.

BE IT FURTHER RESOLVED, that the date of this Administrative Order is MAR 9 2010 (which is the date that this order is mailed to all parties of record); and


BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

* * * * *

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 Commissioner Dreyfuss, seconded by Vice Chair Wells-Harley, with Chairman Hanson, Vice Chair Wells-Harley, and Commissioners Alfandre and Dreyfuss present and voting in favor of the motion, and Commissioner Presley absent at its regular meeting held on Thursday, March 4, 2010, in Silver Spring, Maryland.



Royce Hanson, Chairman
Montgomery County Planning Board



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MONTGOMERY COUNTY PLANNING BOARD

OPINION

DATE MAILED: October 23, 2002

SITE PLAN REVIEW #: 8-02027

PROJECT NAME: Highlands

Action on Final Water Quality Plan: Approval subject to conditions. Motion was made by Commissioner Robinson and seconded by Commissioner Bryant, with a vote of 4-0, Commissioners Bryant, Robinson, Perdue and Wellington voting for. Commissioner Holmes was necessarily absent.

Action: Approval subject to conditions. Motion was made by Commissioner Wellington, seconded by Commissioner Bryant, with a vote of 4-0, Commissioners Holmes, Bryant, Robinson, Perdue and Wellington voting for. Commissioner Holmes was necessarily absent.

The date of this written opinion is October 23, 2002, (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before November 22, 2002 (which is thirty days from the date of this written opinion). If no administrative appeal is timely filed, this Site Plan shall remain valid for as long as Preliminary Plan #1-98009A is valid, as provided in Section 59-D-3.8.

On May 9, 2002, Site Plan Review #8-02027 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and evidence submitted in the record on the application. Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:

- 1. The Site Plan is consistent with an approved development plan or a project plan for the optional method of development if required;*
- 2. The Site Plan meets all of the requirement of the RMX-2 zone, and is consistent with an urban renewal plan approved under Chapter 56;*

3. *The locations of the buildings and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient;*
4. *Each structure an use is compatible with other uses and other Site Plans and with existing and proposed adjacent development;*
5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation;*
6. *The Site Plan meets all applicable requirements of Chapter 19 regarding water resource protection.*

Therefore, the Montgomery County Planning Board **APPROVES Site Plan #8-02027**, which consists of 18,590 sf. of commercial office and 12,870 s.f. of commercial retail and 10 MPDU multifamily units, subject to the following conditions:

The **Final Water Quality Plan** is subject to the following conditions:

1. Conformance to the conditions as stated in the Department of Permitting Services letter dated April 1, 2002 (see Attachment A).

The **Site Plan** is subject to the following conditions to be met prior to signature set:

1. Standard Conditions dated October 10, 1995, Appendix A.
2. The approval of this project includes a Planning Board waiver of following regulations: to allow the use of closed section streets within an SPA
3. Street trees species and spacing to conform to draft Clarksburg Streetscape study and the proposed lighting plan to conform to the IESNA guidelines and future street light plans for the Clarksburg planning area.
4. The HOA for the proposed MPDU's shall be to be tied to the future residential portion of Highlands at Clarksburg, combining the projects.
5.
 - a. The Applicant shall construct on the Property a Public Use Building of approximately 1350 gross square feet in accordance with the Site Plan. The Public Use Building is intended to be an amenity to serve the public.
 - b. The Applicant, its heirs, successors and assigns shall be responsible for ensuring that the proposed Public Use Building is properly maintained structurally and available for its intended uses unless amendments to the Project Plan and Site Plan are approved by the Planning Board. Day to day managing, programming and maintenance of the interior of the building and utility costs shall be the responsibility of the user/tenant. No rent or other fee shall be charged to the use/tenant for the use of the Public Use Building.

- c. The Applicant shall enter into a lease agreement with a tenant that reflects a public use (e.g., a visitors center, historical society, art or music center, community center, public agency use, etc.). The Director of Park and Planning must approve in writing the tenant selected. The Planning Board expects the Applicant to finalize the terms of the lease within one year from the execution date of the Site Plan Enforcement Agreement. However, notwithstanding the foregoing, this condition or the absence of an operator shall not interfere with, delay or prohibit the submission and receipt of any building permits, use and occupancy permits or any other permits and/or approvals for the entire Project, including the Public Use Building.
6. The Site Plan Enforcement Agreement shall provide consent to the Historic Preservation Section, M-NCPPC to perform a Phase I Archaeological Investigation of the property prior to construction. The investigation shall not delay the Applicant's construction schedule. The Applicant shall co-operate with M-NCPPC archeological staff regarding any reasonable requests to remove any artifacts found during this survey for use in future public displays.
7. No building permits shall be released for the site until the applicant can verify provision of adequate Storm Water Management for the construction of Stringtown Road (per DPS memo of April 1, 2002), see attachment.
8. Landscape plan to include regularly spaced street tree on Public Street "D" and standard outdoor step dimensions to be used on outdoor steps subject to review of signature set.
9. Future review of Public Utility Plan to ensure preservation of planting areas required for landscape screening.
10. Conformance to DPS memo of May 3, 2002.

APPENDIX A: STANDARD CONDITIONS OF APPROVAL DATED 10-10-95:

1. Submit a Site Plan Enforcement Agreement, Development Review Program and Homeowner Association Documents for review and approval prior to approval of the signature set as follows:
 - a. Development Program to include a phasing schedule as follows:
 - 1) Streets tree planting must progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
 - 2) Community-wide pedestrian pathways and amenities must be completed prior to occupancy of each phase of the development.
 - 3) Landscaping associated with each parking lot and building shall be completed as construction of each facility is completed.

- 4) Pedestrian pathways and seating areas associated with each facility shall be completed as construction of each facility is completed.
 - 5) Clearing and grading to correspond to the construction phasing, to minimize soil erosion.
 - 6) Coordination of each section of the development and roads.
 - 7) Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths or other features.
2. Signature set of site, landscape/lighting, forest conservation and sediment and erosion Control plans to include for staff review prior to approval by Montgomery County Department of Permitting Services (DPS):
- a. Limits of disturbance.
 - b. Methods and locations of tree protection.
 - c. Forest Conservation areas.
 - d. Relocation of stormwater facility outfalls from pond away from forest preservation or other environmentally sensitive areas.
 - e. Conditions of DPS Stormwater Management Concept approval letter dated April 1, 2002.
 - f. Note stating the M-NCPPC staff must inspect tree-save areas and protection devices prior to clearing and grading.
 - g. The development program inspection schedule.
 - h. Conservation easement boundary.
3. Forest Conservation Plan shall satisfy all conditions of approval prior to recording of plat and DPS issuance of sediment and erosion control permit.
4. No clearing or grading prior to M-NCPPC approval of signature set of plans.

APPENDIX D



March 11, 2010

Mr. Robert Kronenberg
MNCPPC Development Review Division
8787 Georgia Ave.
Silver Spring, MD 20910

Re: The Highlands
Consent Agenda Site Plan Amendment

Dear Mr. Kronenberg:

The purpose of this letter is to inform you of the proposed modification to the approved Highlands at Clarksburg Site Plan that necessitated a Consent Agenda Site Plan Amendment. The amendment is related to modifications to the seating areas, landscaping, lighting, striping, and stairwells and allows for the elimination of a decorative fence and trellis.

1. Removed seating area and plantings
2. Revised seating area and plantings
3. Revised lighting detail to reduce vehicle impact on poles
4. Removed staircase and revised plantings
5. Revised location of staircase and changed staircase material from stone to brick
6. Removed trellis and added decorative sign
7. Removed decorative fence
8. Revised striping

With the exception of these changes, the revised plans match the approved Site Plan.

If you have any questions regarding this amendment, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Vic Bryant", written over a horizontal line.

Vic Bryant