

SITE PLAN ENFORCEMENT - ADDENDUM

An Addendum to the Study released August 30, 2005
by the Planning and Land Use Committee, Montgomery County Civic Federation
January 23, 2006

Contents

	<u>Page #</u>
Introduction to Addendum	I
Revised listing of Site Plans with alleged violations	III
Listing of alleged violations of MPDU law	V
Biweekly Update Reports to Council PHED Committee	VI
Department of Permitting Services & Planning Board--Problems and Responses	VIII
Additional Recommendations and Conclusions	XI

Introduction to Addendum

In our Site Plan Enforcement study released on August 30 of last year, MCCF called for a thorough investigation into all allegations of Site Plan violations, in order to establish the full nature and scope of the problem. By September 29, Park and Planning staff had added their allegations of violations of six additional Site Plans to the list included in our study. But, to date no investigation has been conducted by any branch of government into the details of all the violations that have occurred, how they occurred, and how a Site Plan enforcement process that is sound in theory was so misapplied. We believe a full and public admission of any failures of government is a necessary first step to restoring public confidence.

This study is not intended as a substitute for an investigation by the County Council or for the scheduling of violations hearings by the Planning Board. But, some in government are viewed as trying to bypass investigation, proposing solutions to problems that have not received full and public examination. We hope by providing details of the issues as we know them that we can prompt a response to the following Action Items.

- Despite progress to date, more must be done to investigate the significant pattern of county-wide Site Plan violations, and independent management audits of development related procedures should be initiated.
- The government must include residents in all development issues, including the investigation and solution phases of the current matter.
- The County Executive and Council must increase oversight, starting with verifying that improvements claimed to be made have actually occurred.

We do acknowledge that some investigation has taken place. On September 15, the County Council's Planning, Housing and Economic Development (PHED) Committee began a series of sessions during which they receive reports from the Planning Board, the

Department of Permitting Services (DPS) and the Department of Housing and Community Affairs (DHCA) on actions being taken to coordinate and improve Site Plan enforcement. We believe the information provided to the committee so far is insufficient to a full investigation. For example, Park & Planning staff has provided the PHED with data on compliance with requirements for the 116 Site Plans approved by the Planning Board since January 1, 2003. However, several of the Site Plans for which violations are alleged are projects that are still under construction but which were approved by the Board prior to 2003. In addition, we believe that the Biweekly Update Reports, provided to the PHED by DPS and the Planning Board beginning on August 11, are misleading in some instances in that they assert corrective actions have been taken which we contend have not occurred. These instances are discussed in the section of this Addendum entitled *Biweekly Update Reports to Council PHED Committee*.

On November 8, 2005, the Office of Legislative Oversight, the investigative arm of the County Council, issued their report entitled *Fact Finding Review of the Clarksburg Town Center Project, Report No. 2006-3*. But no other projects where site plan violations were alleged were investigated by OLO, even though the MCCF study had identified four others and Planning staff had added six more to the list by late September, six weeks prior to issuance of the OLO report. And, on January 16, 2006, Dr. Royce Hanson filed his findings and recommendations with the Council, as part of his functioning as Special Adviser on the Development Approval and Implementation Process. But, the Council PHED Committee charged with oversight in planning and land use issues has yet to inquire into, or receive reports of, the details of many of the Site Plan violations alleged by MCCF and Park and Planning staff.

We appreciate Planning Board Chairman Derick Berlage's public apology for failures in Site Plan approval and enforcement at Park and Planning, and his efforts to effect administrative change and improve specific processes. But, we think that the Board must make a timely decision on whether to proceed with formal hearings on each project in which violations are alleged, and hold any merited hearings as soon as possible. To date, the Planning Board has held violations hearings for only two of the eleven total projects in which Site Plan violations are alleged--Clarksburg Town Center and Bethesda Crest. And, a final finding on Clarksburg Town Center has been deferred pending a Plan of Compliance being agreed to in mediation currently underway. MCCF has asked that the Board not consider approving amendments to any Site Plan following the filing of a formal request for violations hearing, as a matter of policy, until determination is made on the request and the violations hearing process is concluded, if deemed to be merited.

The MCCF Planning and Land Use Committee appreciates the announced intentions of the Directors of the Department of Permitting Services and the Department of Housing and Committee Affairs to implement changes to procedures, to ensure that the responsibilities assigned to them in the County Code regarding development issues are fully met. But, a general lack of transparency and citizen responsiveness in the operation of these departments generates a concern over effective and timely implementation. The changes to departmental and Park and Planning procedures being suggested by MCCF will be easier to discuss after an examination of shortcomings that follows.

Revised listing of Site Plans with alleged violations

To our thinking, the following does not constitute *ex parte* communication with Planning Board Commissioners should they read this Addendum, since this information is the basis for our allegations and the request for violations hearings that has already been filed with the Board. Should they decide to hear these matters, documentation can and will be provided to the Board by MCCF, at which time the alleged violators will be allowed opportunity for rebuttal according to Board procedures in place.

Clarksburg Town Center - On July 7, the Planning Board ruled that one hundred and two (102) violations of height and setback requirements had occurred. On October 6, the Board heard allegations by the Clarksburg Town Center Advisory Committee of additional violations, as well as rebuttal by the developer and various home builders and their land-use attorneys. At that time, the Board found that a violation of the staging requirements for provision of community recreation facilities had occurred, and found no violation of the inspections requirements had occurred. The Board also deferred a vote concerning MPDU timing and clustering, and a scheduled December ruling was postponed when the Board agreed to allow the parties to enter into mediation to formulate an acceptable Plan of Compliance for completion of the project. DPS has stopped actions on all Building Permits for the project.

Bethesda Crest - At the November 17 hearing, the Planning Board ruled the developer violated the law by beginning clearing, grading and excavation prior to Signature Set approval, and a fine of \$6,000 was imposed. In addition, the Board and developer agreed to a Plan of Compliance concerning height and setbacks for any dwelling units not yet completed as well as required neighborhood protection measures.

U. S. Pharmacopoeia project, Twinbrook - On September 23, M-NCPPC placed a Stop Work Order on the site for violation concerning clearing, grading and excavation prior to Signature Set approval. Also, DPS placed a Stop Work Order on all Building Permits for this site. On October 5 the violations were corrected and Stop Work Orders were lifted, however Planning Board has yet to schedule a violations hearing in order to levy a fine for the exact same violation as that found and fined in the case of the Bethesda Crest project. MCCF filed a formal request for such hearing with the Board on January 11, 2006, but has not yet received an official Board response.

Maple Ridge Townhomes, aka Seaton Square, White Oak - On November 4, M-NCPPC placed a Stop Work Order on the site for violation of building height and setback and of staging requirement for recreational facilities. DPS verified violation of the approved height limit by fifty-five (55) built units of the fifty-nine (59) approved in the project, but challenged the basis for alleging setback violation. DPS has also stopped actions on all Building Permits for the project. A Planning Board threshold hearing scheduled for December 15 was deferred and has not yet been rescheduled. MCCF filed a formal request for such hearing with the Board on January 11, 2006, but has not yet received an official Board response.

Cider Barrel site project, Germantown - Development Review Division staff at Park and Planning alleges violation of the minimum required setback for built garages in this project. Planning Board has not yet scheduled a hearing on alleged violations. MCCF filed a formal request for such hearing with the Board on January 11, 2006, but has not yet received an official Board response.

Kings Crossing, aka Vistas at Woodcliffe Park, Germantown - MCCF alleges that five amendments considered and approved by Park and Planning staffer Wynn Withans as Minor Site Plan Amendments were, in fact, Major Site Plan Amendments that should have been approved by the Board. The five amendments are detailed on page 12 of the staff packet written by Development Review Division staffer Robert Kronenberg and dated December 28, prepared for a January 5, 2006 Board hearing on approval of a revised MPDU phase for this project. MCCF asserts the changes approved by staff were Major Site Plan Amendments because they pertained to fundamental determinations of the Board in approving the plan (see County Code Sec.59-D-3.4) involving unit relocation, and changes to the layouts of lots and blocks, required setbacks, the pedestrian circulation system and recreation facilities. In addition, as Mr. Kronenberg noted in his report, three of the five amendments approved by staff were never logged in by the Development Review Division. MCCF submitted a formal request for violations hearing to the Board on December 19, and repeated the request in our testimony at the January 5 Board hearing on the MPDU phase revision, but has not yet received an official Board response.

Greenway Village, aka Arora Hills, Clarksburg - Park and Planning staff made initial assertions regarding violations of this plan. Following investigation, MCCF alleges violation of the staging requirement in the Site Plan approved for Phases I and II that recreation facilities be provided prior to more than 70% occupancy of units in these phases. This occupancy level has been surpassed without provision of either the bike path along Skylark Road or the one along Cherry Branch Drive/Persimmon Ridge Road.

In addition, no development standards currently exist for the Greenway Village project (i.e.; no maximum allowed building heights, and minimum required setbacks specified for only single-family detached units). The property on which the project is sited is zoned PD-4, a zone category that contains no height and setback requirements, making inclusion of such standards in this Site Plan not only a requirement of the County Code, Sec.59-D-3.23(a), but a necessity for use in issuance of Building Permits. However, on September 12, 2002 under the chairmanship of Arthur Holmes, the Planning Board unanimously approved a Site Plan for the Greenway Village project that contained "no development standards" (as noted on page 5 of the January 5, 2006 staff report prepared by Community Based Planning staffer Fred Boyd for a January 12 Planning Board hearing on amendment of the Site Plan for Greenway Village Phases I and II, in which most of the 486 residential units are built). The January 12 hearing was postponed by the Board and has not yet been rescheduled. On January 11, 2006, MCCF submitted a formal request to the Board for a violations hearing, but has not yet received an official Board response.

Clarksburg Village - We understand that Park and Planning staff has discovered instances of lot size and layout of blocks at variance with approved plan and record plat, but they have not made public their allegations. On January 11, 2006, MCCF submitted a formal request to the Board for a violations hearing, but has not yet received an official Board response.

Highlands at Clarksburg - We understand that Park and Planning staff has discovered violations of the approved Site Plan, but they have not made public their allegations. On January 11, 2006, MCCF submitted a formal request to the Board for a violations hearing, but has not yet received an official Board response.

Layhill Village East, aka Nicholson property, Aspen Hill - MCCF reiterates allegations of violation of the tree save provision of the Forest Conservation Plan contained in the approved Site Plan for this project (see page 7 of initial MCCF study). On January 11, 2006, MCCF submitted a formal request to the Board for a violations hearing, but has not yet received an official Board response.

Residences at Rosedale, Bethesda - MCCF reiterates allegations of violation of the "neighborhood protection measures" provision contained in the approved Site Plan for this project (see page 4 of initial MCCF study). On January 11, 2006, MCCF submitted a formal request to the Board for a violations hearing, but has not yet received an official Board response.

Listing of alleged violations of MPDU law

Edgemoor IV, Bethesda - MCCF alleges violation by the developer of the original signed MPDU Agreement dated November 14, 2001, which specified the MPDU requirements for Phases I and II (townhouses) and Phase III (high-rise condo building) of the Edgemoor project must be met by provision of a 12-unit MPDU building as Phase IV on Hampden Lane to be constructed at the same time as the Phase III high-rise. At the time the last unit in the high-rise condo building was completed and the Use and Occupancy Permit was issued for it on December 8, 2003, construction of the MPDU building had still not begun. However, no enforcement action was taken by DHCA.

MCCF also alleges violation of MPDU law, Sec.25A-5(e)(2)(C) of the County Code, by the Director DHCA in signing a second MPDU Agreement on January 4, 2004, allowing the developer to provide the Hampden Lane property as *land in lieu of units* (see page 3 of initial MCCF study). MCCF has also learned that this second agreement approved by Director DHCA violates a provision of a resolution approved by the County Council sitting as District Council (Resolution 14-419 concerning Development Plan Amendment 00-2, adopted on February 1, 2000) for this project that states, "Among other things, a significant purpose of the DPA is to authorize the transfer of moderately priced dwelling units from the high-rise to a 12-unit multi-family building to be located on Hampden Lane." So, we assert that Director DHCA in this instance not only violated the MPDU

laws, laws they are charged with enforcing, but also a provision of a resolution adopted by the Council.

Clarksburg Town Center - On October 12, 2005, DPS stopped review of all pending residential Building Permits in this project at the request of DHCA, due to violations of the MPDU Agreement. Violations involve the developer not meeting the projected completion date for all of the MPDUs, and changing the unit counts and phasing for both market rate units and MPDUs without approval from the Director DHCA (see also pending Planning Board action, page II of this Addendum).

Kings Crossing, Germantown - In addition to alleged Site Plan violations detailed on page III of this Addendum, MCCF alleges violation of MPDU law, Sec.25A-5(i), by the Director DHCA. That section of the Code requires "MPDUs are built along with or before other dwelling units" and "no or few market rate dwelling units are built before any MPDUs are built." But, in signing the original MPDU Agreement dated January 23, 2004, the Director DHCA allowed the developer to provide all 102 MPDUs required in this project as the final phase of construction--a violation of the MPDU laws the Director DHCA is charged is enforcing. Also, according to this Agreement, MPDU construction was to have begun no later than June 2005, yet when the deadline passed no enforcement action was taken by DHCA. We are aware that a Site Plan Amendment was approved by the Planning Board on January 5, 2006, allowing a different building type for the 102 MPDUs required. We are also aware that a revised MPDU Agreement has been proposed by Director DHCA. But, we believe that provisions of this proposed Agreement, allowing possible sale of the MPDUs to seniors who may have previously owned a home and may earn up to 80% of Area Median Income, will require an amendment to the Executive Regulations currently in place that are applicable to the MPDU Program.

Layhill Village East - In addition to the alleged Site Plan violation detailed on page V of this Addendum, MCCF alleges the developer has violated the staging requirements of the MPDU Agreement dated September 20, 2005, requiring construction to begin on the six required MPDUs no later than September 2005. At present, construction has only begun on two of the two-over-two units, yet no enforcement action has been taken by DHCA.

We also allege the developer and DPS violated MPDU law, Sec.25A-5(h) of the County Code, which states "The Department of Permitting Services must not issue a Building Permit in any subdivision or housing development in which MPDUs are required until the applicant submits a valid MPDU agreement which applies to the entire subdivision or development." We assert this because when our study was released in August 2005, Building Permits had already been issued by DPS and sixteen of the 24 market rate units in this project were built or under construction, yet according to DHCA no valid MPDU Agreement existed for this project until the following month. This issue will be further discussed in the section of this Addendum entitled *Department of Permitting Services--Problems and Responses*.

Regency at Leisure World, aka the WSSC site, Norbeck - Allegations of developer violations of MPDU law appear on page 6 of the initial MCCF study, concerning the fact that the required MPDUs have yet to be provided although all market-rate units in this project have been constructed. Since that time, our committee has been made aware that the Director DHCA, in agreeing that the MPDUs could be constructed in the second and final phase of this project, violated the MPDU laws, Sec.25A-5(i) of the County Code-- laws they are charged with enforcing. In addition, the developer violated a provision of the Site Plan Enforcement Agreement, the effective date of which was October 2, 2002, when construction of the on-site MPDUs did not commence on May 1, 2003 as required.

However, we now also allege that since release of our study last August another violation of county law has been endorsed by the Director DHCA in the form of a second, superseding MPDU Agreement for this project dated September 7, 2005. The new Agreement requires eleven MPDUs on-site in the Regency subdivision, just as the original one did, but it allows the six additional MPDUs originally required "on-site or elsewhere in Leisure World" to be provided "elsewhere in the planning district." This is a violation of Binding Element No. 1 of the legally enforceable Development Plan for this project (G-782, certified on August 9, 2000 by Philip Tierney, Hearing Examiner with the Montgomery County Office of Zoning and Administrative Hearings).

Biweekly Update Reports to Council PHED Committee

In the *Introduction to Addendum* (page II), we stated that certain actions asserted to have taken place at M-NCPPC and DPS in their Biweekly Update Reports to Council have not occurred. They are as follows--

- In every Biweekly Update Report to Council, beginning with the first one dated August 11, 2005, the following Action item appears--"Department of Permitting Services and the Planning Board must verify the setback and height restrictions spelled out in the approved site plan." MCCF has learned that beginning in early 2003 more than 480 Building Permits were issued by DPS for residential units in Phases I and II of the Greenway Village project in Clarksburg, some as recently as mid-November 2005, without any height and setbacks standards having ever been approved for this project (see page IV of this Addendum). The issuance by DPS of Building Permits for the Greenway Village project Phases I and II was allowed to continue despite the inclusion of an Action item in the November 23 Biweekly Update Report stating, "A county wide freeze on issuance of Building Permits in site plan zones (residential and commercial) continues until height limit and setback requirements can be verified by the Department of Permitting Services." MCCF believes this freeze should have applied to issuance of Building Permits for the Greenway Village project, since no such requirements exist. Responsibility for this error lies not only with the Park and Planning staffer who reviewed the Building Permit applications and approved issuance but also with DPS, since Sec.59-D-3.4(c)(3) of the County Code states that upon approval by the Planning Board Site Plans must be forwarded to DPS "for reference in issuing Building Permits."

- In the August 11 Biweekly Update Report to Council, DPS and the Planning Board stated that verification of height limits would be accomplished by having engineering firms or surveyors hired by developers submit forms certifying the height of all buildings in Site Plan projects. It was stated these forms would include the following sentence, "The height of this building, as defined by the Montgomery County Zoning Ordinance, is ___ feet, per the architectural drawings, dated ____, which complies with the Site Plan #_____ approved by the Montgomery County Planning Board; **the height of this building may be impacted by final grading, but the building should not exceed ___ as permitted by the site plan.**" Since another Action item states that "any Building Permit application that uses the term "story" to describe the height of a building...must be rejected," we know that the final blank in the form must be filled in with the height permitted in a Site Plan as expressed in number of feet. MCCF is aware that as late as October 2005, the engineering firm of Charles P. Johnson was submitting such height verification forms for the Greenway Village project Phases I and II, but employing a substitute final phrase "**...as permitted on this lot**" for the phrase "**...as permitted by the site plan.**" We oppose the substitution of phrase, as it may serve to mask the fact that no building height standards currently exist in the site plan approved for Greenway Village.
- In the November 23 Biweekly Update Report to Council, the following Action item appears, "All requests to amend site plans in Clarksburg must be deferred until reviews of what went wrong in Clarksburg and elsewhere are completed and the Council has an opportunity to take necessary actions." Despite this assurance, the Planning Board scheduled an amendment hearing for the Greenway Village Phases I and II Site Plan for January 12, 2005, which was announced in the agenda posted on their website on January 6. Fortunately, by the afternoon of Monday, January 9, the Board had rethought this action and deferred the item.

Department of Permitting Services and Planning Board--Problems and Responses

Department of Permitting Services -

During a September PHED worksession, DPS Director Robert Hubbard announced that his department had not been verifying that signed MPDU Agreements existed prior to issuance of Building Permits, as required by Sec.25A-5(h) of the County Code (see Layhill Village East project, page VI of this Addendum). Director Hubbard has initiated a change in procedure, in coordination with DHCA, to assure compliance with MPDU law with regard to issuance of Building Permits in every project where applicable.

DPS Director Hubbard has stated that until the Clarksburg Town Center site plan enforcement problems received widespread attention, his department was of the understanding that Park and Planning was responsible for verifying compliance with zone standards in Site Plan projects. We understand that the Director is now aware that his Department is responsible, under the County Code, for verifying that every building constructed in the county meets all applicable development standards, including those in Site Plan projects (not the Planning Board staff).

With regard to issuance of Building Permits for projects in non-Euclidian zones, Optional Method projects, or any project where development standards are established in Site Plan approval, we believe DPS should be providing a double check to the Park and Planning review/approval process to ensure that proposed buildings meet all applicable standards. And a system must be put in place at DPS, in coordination with Park and Planning, to ensure that any Site Plan constraints on permit issuance are strictly enforced (e.g.; no more than 70% occupancy must occur prior to provision of public amenities, or no more than a certain number of Building Permits for dwellings should be issued prior to provision of all recreation facilities).

During the October 17 PHED Committee session, DPS Director Hubbard announced that his department is not conducting regular field checks for height or setbacks. He stated that his department does not have the staff capability to measure the height of buildings when they are completed (although such capability was secured by contract for the extraordinary, one-time effort of verifying compliance to height standards of the 116 Site Plan projects approved since January 1, 2003). DPS does have staff capability to measure setbacks if and when a complaint is received, but normally accepts the Wall Check provided by an engineering firm or surveyor hired by a developer, which certifies that a building's foundation lies within the required setback distances from property lines. MCCF believes that if such voluntary compliance certification is to be regularly accepted by DPS, they should perform random spot checks for compliance with height and setback requirements, by contracting the services of a surveyor to measure heights if necessary. Such spot checks would serve as an incentive to honesty and accuracy on the part of developers and the surveyors they hire, just as random spot checks of restaurant kitchens by the Department of Health now serve as an incentive to voluntary adherence to county health regulations.

Planning Board -

To their credit, on November 8, 2005 the Planning Board announced a list of 44 changes to the Site Plan approval processes at Park and Planning, and claimed 19 had already been put in place. One change reported as in place in October-- creation and use of a protocol form for Building Permit review--has already failed. We know permits for Greenway Village were reviewed and approved by staff into November, yet the project has no approved development standards (Addendum, pages IV and VII). On January 17, 2006, the Board released a *Management Improvement Plan for the Development Review Process*, but the Site Plan investigation and enforcement improvements that are so critical to preventing a recurrence of the Clarksburg fiasco have not yet been fully addressed.

In addition to lack of field investigation at M-NCPPC to check Site Plan compliance, MCCF committee members have identified five key failures related to the Clarksburg Town Center violations. The first four are being addressed by the Board.

- Various documents of Site Plan approval by Planning Board were inconsistent in their stated requirements. In at least two cases, the Site Plan approvals in text form contained different standards (height, setbacks) in the data tables than were contained in the data tables included on the Signature Set of drawings for the projects. In hearing the allegations of violations in these two cases, the Board chose to allow the more liberal of

the two sets of conflicting standards to be applied to the project. Staff must be diligent in ensuring consistency in applicable standards from Development or Project Plan phase, through Preliminary Plan review, and then Site Plan and Signature Set approval.

- As a Condition of Approval for at least two Site Plan projects, the Planning Board transferred to staff the authority for subsequent approval of plan amendments. However, the County Code disallows any but the Board from approving amendments that involve fundamental determinations made in the original approval, such as height and location of buildings and required building setbacks. Amendment approval process is under review.
- In the past, the Planning Board has allowed land-use attorneys hired by the developer to draft the Board's Site Plan Opinion issued following approval, a document that might be used as the basis for any legal challenge or allegations of violations. Board has stated this will no longer be allowed, but they should request more funding from the Council if additional legal staff is needed at Park and Planning.
- No process was in place for notifying adjacent neighbors and affected civic groups when amendments to approved Site Plans were being considered by the Board or staff. Residents of several communities were shocked, therefore, to find that the approved plans for projects in their area had been changed without their knowledge or any opportunity for comment by them. Board has stated intention to improve the notification process.
- The Board has no clear and defined procedures for responding in a timely fashion to filing of requests for Site Plan violations hearings, when allegations are made either by their own staff or citizens. Because of this, the citizens of the Clarksburg Town Center Advisory Committee waited nine months between the time they contacted the Board alleging violations by the developer of their community and the Board's scheduling of a violations hearing. The Board should establish a maximum response time following formal request for a violations hearing, during which they must either schedule such a hearing or respond indicating reasons the allegations are deemed insufficient to merit a hearing. We reiterate our belief that the Board, as a matter of policy, should not consider amendments to any Site Plan for which action is pending on a formal request for a violations hearing.

As stated in the initial MCCF study, we think that Park and Planning should create a separate office to investigate and enforce Site Plans, hire field investigation staff, and train them to verify compliance with Site Plan requirements and coordinate their efforts with other agencies. For example, staff needs to perform field checks to monitor provision of recreation facilities required by some Site Plans, and coordinate with DPS if an approved plan limits the issuance of permits to no more than a set number prior to provision of such facilities. We also believe that field checks must be routinely performed to ensure that lots and blocks in subdivisions are laid out according to the approved plan and the record plat.

While we are supportive of the Board's effort to consider changes in other areas such as their hearing process, MCCF Planning and Land Use Committee members are concerned that the Board and staff not stretch themselves too thin while there are more pressing matters to address. We understand that this past January 6, more than one-half dozen staff members from the Community Based Planning Division were temporarily reassigned to different jobs at Park and Planning, some to Development Review Division

which is currently short staffed. This action leaves residents in whole sections of the county without a staff member in Community Based Planning to contact should they have questions regarding development proposed in their neighborhood. We are concerned that the Board and staff not dissipate their energies on non-critical matters, such as reform of the hearing process, at a time when it is more important to focus on improvements in development review, approval, investigation, and enforcement.

Additional Recommendations and Conclusions

The failures of government brought to light during the uncovering by citizens of Site Plan violations in Clarksburg point to an environment of permissiveness toward development approval and enforcement that has been in place for the past decade or so. Whether this permissiveness was the result of a top-level policy decision to facilitate development or more benign but equally damaging inattention to management of a highly dedicated and skilled county workforce struggling to cope with an ever more complex workload, the results are the same. Lax or inappropriate procedures, a lack of transparency, unresponsiveness to residents, and a culture based on accommodation of development have taken hold in the several branches and levels of county government involved with land use regulation and enforcement. Symptoms include--

- the Planning Board allowing land-use attorneys hired by developers to draft Board Opinions for Site Plan approvals of projects they represented before the Board for their developer clients, and inadequate processes for approval and enforcement of Site Plans
- the Department of Permitting Services failing to enforce stringent standards for the issuance of Building Permits, and being unaware of their responsibility under the County Code to enforce development standards for all construction taking place, including in Site Plan projects
- Zoning Enforcement personnel at DPS seen as less than cordial by residents, appearing sometimes to contort interpretation of standards to allow development
- the Department of Housing and Community Affairs joining with developers in crafting agreements that violate the Moderately Priced Dwelling Unit Program laws the department is charged with enforcing

Responsibility for this environment of permissiveness rests with those higher up in county government, too. The County Executive has not met oversight responsibilities, failing to ensure proper management of land use regulations which fall under that branch. And the County Council oversight of Park and Planning functioning has been inadequate. The Council has also played a more active role in the facilitation of development. The proliferation of Zoning Text Amendments designed to alter zone standards, especially those to facilitate approval of single development projects, is a contributing factor to what Dr. Royce Hanson termed "a bloated, inconsistent, and almost incomprehensible zoning ordinance." MCCF vigorously supports Dr. Hanson's recommendation (pg. 7, Memo #2 dated January 17, 2006) that "Members of the Council should exercise more self-discipline in offering text amendments that address single, or a limited number of, cases."

It must be noted that project-specific ZTAs introduced in Council are often drafted by the very land-use attorneys hired by developers to represent their projects before the Planning Board, projects that may depend on building standards altered by ZTA for their approval. The services of these land-use attorneys, who participate in every step of the approval process, add to the cost of development in the county. And in housing projects, that added cost is passed on to the purchaser in increased housing prices. A clearer and more consistent zoning ordinance would provide surety and perhaps a quicker pace to the project approval process, and reduce the need to use land-use attorneys to promote projects instead of the developers themselves. And, it would benefit residents who seek satisfactory enforcement of reliable and easily understandable standards.

In general, the MCCF Planning and Land Use Committee members believe that any improvements to the development review, approval, investigation and enforcement processes of county government, whether in Site Plan projects or Euclidian zone projects, should be made with the following four considerations in mind. We believe that these considerations, related to transparency and accountability, are essential to the restoration and retention of the citizens' confidence that government is functioning in their best interest.

- **Notification.** The public must receive adequate and timely notification of all proposed decisions of government that may affect them and the quality of life in their community.
- **Access to information.** The public must have easy access to complete and accurate information concerning proposed policies and decisions under consideration by their government.
- **Inclusion.** Citizens should not only be allowed to participate in the deliberation and decision making processes of government, but should be actively encouraged and accommodated to do so.
- **Reliability.** Following citizen participation in decision making and setting of policy, government should act to effectively and fully implement those decisions and policies, or inform and reengage the public should any changes be considered necessary.

In the past year, the County Council and the Planning Board have made improvements in the availability of information to the public on their internet websites. We encourage the continuation of this trend, and suggest that staff packets for Council committee sessions be made available on-line. At the same time, we are troubled that recent changes in development approval and enforcement procedures designed for greater responsiveness to citizens and transparency have been formulated without involvement of citizens. We echo Dr. Hanson's recommendation that internal management audits should be undertaken at MNCPPC and Executive branch departments to ensure that procedures are necessary, effective and efficient, and that external audits should also be undertaken at somewhat longer intervals. And, we urge the results of these audits be made public.

At the core of good zoning practices is the protection of individuals and communities from the negative impact of incompatible and unwise land uses, and provision of clear standards for regulation of a profit-driven industry. Residents of this county are primary stakeholders in the creation and implementation of land use policy and regulation, and should be included as equal partners in all aspects and at all steps of the process.