

"Federation Corner" column
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Planning Board weary of Clarksburg and other crises

by Wayne Goldstein

The Planning Board continues to disappoint, and does so in new and disturbing ways, almost on a weekly basis. In its latest discussion about yet another Clarksburg planning failure, it is as if the Planning Board now wants to go, not to a post-Clarksburg era of swiftly acknowledging and correcting past mistakes, but to a pre-Clarksburg era of underplaying or denying that it ever made a major mistake in the first place. And, even as additional safeguards and oversight have recently been built into the current plan approval system, when new mistakes are made, the process of handling them leaves more problems unaddressed than resolved.

Two weeks ago, Gateway Commons, one of the Clarksburg projects, came back to the Planning Board for what were described as site plan amendments. Some were quite minor, such as moving a building location a few feet or changing the grade here and there. However, the Clarksburg Town Center Advisory Committee (CTCAC) has made far different claims about the project. When the amendments first came to the Planning Board in July 2006, CTCAC "argued that because the site plan for the development was missing proper height and setback standards, it is invalid and there is now an opportunity for the plan to be redesigned."

The July hearing was continued to allow for other concerns, such as community gathering and green spaces, to be addressed. When the project came back on December 14th, CTCAC, after doing additional research, had discovered that the Planning Board had approved the project in 2003 without making the specific findings required by law for the special planned development zone for the project that allowed greater density.

The response of the Planning Board to this new information? "Another Clarksburg development is not going to be built according to the vision of the Clarksburg Master Plan, but the county Planning Board will not ask for changes... Asking for changes now would be unfair to the developer and could throw the county's development approval process into turmoil, the board said last week." One of the leaders of CTCAC responded: "If they can't correct an error before a single building goes up, what does that say for us? ... I'm worried, I'm very worried."

Between August 2004 and July 2005, CTCAC tried to get the Planning Board to listen to their concerns about the Clarksburg Town Center project. Even after the Planning Board dismissed their claims at the first site plan violations hearing in April 2005, they persisted, continuing to uncover problems with the planning process. This finally led to an uproar, beginning in July 2005, with resultant multiple investigations and law changes, along with the corrections of problems with projects in Clarksburg and other parts of the county that continued until the spring of 2006. Now, barely 18 months after the problems first became public, the Planning Board has decided it is tired of completely fixing what it broke because "too much" time has passed.

The concern with throwing the county's development approval process in turmoil is misplaced because the turmoil began years before July 2005 when the Planning Board began to ignore the law and its rules about how projects must be approved. Worse turmoil is created when the law is quietly ignored than when it is noisily enforced. The indifference to laws that allows them to be ignored becomes the equivalent of an infection that can destroy an institution. Such an "infection" can only be cured when every major mistake, no matter how inconvenient, painful, or wearisome, is exposed to the light of the

public process. Now that the Planning Board has indicated that it wants to stop this seemingly endless examination of its major mistakes of the recent past, we should all be worried.

In fact, the timing of this position, and the decision made by the Planning Board on November 30th concerning the Hillmead/Bradley Hills subdivision, may not be a coincidence. In May 2006, several community members made allegations to the Planning Board of wrongdoing concerning this subdivision. The chair announced that an investigation of the alleged wrongdoing by MNCPPC staff and professionals working for the applicant would be undertaken. However, when I learned that the investigation had been done by MNCPPC staff, I testified at the November hearing that an in-house investigation of an agency can never overcome the appearance of a conflict-of-interest because the investigators have a duty to both the agency and the investigation, and if they serve one duty too well, they serve the other duty inadequately. The Planning Board did not like my observations about the investigation, and decided that the results of the investigation settled all significant controversies. Perhaps, just as CTCAC did not accept the results of the April 2005 hearing concerning alleged site plan violations and continued to persevere, so the two Hillmead/Bradley Hills neighbors persevere, asking for reconsideration of the decision.

In a recent letter to the Planning Board challenging the neighbors' reconsideration request, and cc'ed to a number of other county officials, a firm that did work for the applicant wrote:

"While we continue to feel that citizen participation is important to the planning process, we do not take accusations, particularly of fraud, lightly. In fact, I have forwarded the opposition's request for reconsideration letter, and a copy of the hearing tape to our attorney to evaluate whether the misrepresentations constitute causes of action. That, however, is a matter between our firm and [the two Hillmead/Bradley Hills neighbors.]"

By failing to authorize an investigation that would have had to be acknowledged by all as arms-length and above reproach, the Planning Board has not only not ended this controversy about the allegations, but has created new concerns based on the reactions of various parties. It will come as no surprise to me if its refusal to follow the law and correct the original approval of the Gateway Commons project creates even greater controversy and dissatisfaction with the plan approval process. If the public believes that there has been a return to business as usual at the Planning Board, except that the Board is now willing to openly defy community expectations of transparency, it will be inevitable that both the County Executive and the County Council will have to again make reforming the Planning Board's planning approval processes one of their top priorities, less than a year after these institutions thought they had completed this job.