

"Federation Corner" column
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Development plan violations not disclosed

by Jim Humphrey
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I thought that following the site plan violations debacle that came to be known as "Clarksburg" (which brought to light not just violations of the Clarksburg Town Center plan but of the plans for at least 8 other projects in various locations around the county) the Planning Board had established a process to deal with any future plan violations in a timely manner. I certainly believed that developers had gotten the message that, should they find they cannot construct a project as approved, it is advisable for them to return to the Board and seek a plan amendment rather than simply violating the plan as approved. So I was puzzled to read in the Park & Planning Spring 2009 Semi-Annual Report to the County Council that the Planning Board is dealing with a backlog of plan violations.

"Enforcement Regulations. At the board's direction, staff is developing a comprehensive strategy for handling a backlog of violations by applicants who have not adhered to preliminary or site plan conditions or to forest conservation regulations. We are drafting amended legislation and regulations that will enable us to employ similar enforcement practices regardless of the type of violation. We plan to better train our inspectors so they understand how to document each case, gather evidence and give testimony at hearings when necessary. We also are systematically honing the list of alleged violations to determine the appropriate level and method of enforcement to pursue." (This is the entire entry regarding plan violations, from page 7 of the Spring 2009 Semi-Annual Report.)

In the aftermath of the 2004-05 revelations of multiple site plan violations, it was decided that the Department of Permitting Services (DPS) field inspectors would take the lead in determining whether development projects were being constructed in adherence to plans approved by the Planning Board. Individuals and neighborhood citizen associations can now register allegations of plan violation, too, by calling the DPS Complaint Hotline at 240-777-6259. Then, if DPS staff believes a plan violation has occurred, they submit the allegation to Planning Department staff which must investigate the validity of the claim, issue a citation if warranted (the equivalent of a Stop Work Order until the issue of the violation is resolved), and then bring the issue to the Planning Board for final resolution and possible levying of fines.

That is the "post-Clarksburg" process that I thought was in place, and which I believed would work efficiently if another developer ever violated another approved plan. So, it surprised me to learn that at a time when the Planning Department is only processing about one-third the number of plan applications as usual, due to the economic downturn, that a backlog of unresolved plan violations exists. What came as an even bigger surprise to me was that when the County Council discussed the Semi-Annual Report with the Planning Board on March 31, not one Council member asked a single question about the plan violation issue.

Why has a backlog occurred when regulations and a process to efficiently deal with plan violations was supposedly put in place following "Clarksburg"? Is the backlog a result of insufficient staff, or poor management of that staff? How many violations are there in this current backlog? What is the nature of the alleged violations? What, if any, action has been taken where a violation was verified-- citations issued, fines levied, plan amendments considered by the Board for irreversible violations?

Not one of these questions was asked by our elected representatives. So in my role as Chair of the MCCF Planning and Land Use Committee I asked these questions of a member of the Planning Department staff, in a phone conversation and follow-up email.

In an email response from this Planning Department staffer, I was told that after checking with the M-NCPPC legal department they were advised that they should not release the list of violations to me. The staffer stated that on April 16 the Board had met with legal counsel in closed session regarding the enforcement issue, and they should be able to give me more information in the future. But if citations have been issued and fines levied in some cases, as I have been led to believe, then this is a matter of public record and should be made available to me or any other member of the public without having to resort to the filing of a formal Freedom of Information request.

We are also aware that the Planning Board tried but failed to obtain approval of subpoena power in the state legislative session which just ended, a power which we assume the Board believes it needs primarily to deal with enforcement cases. This, too, comes as a surprise to me since, before he was appointed as Board Chairman, Royce Hanson stated in a public memorandum to the County Council concerning the site plan violation issue that subpoena power was unnecessary.

"While there is a clear need for the Board to improve its record keeping, responses to complaints, and procedures for adjudicatory hearings on violations of site plans, the addition of subpoena power does not meet that need. The primary objective of such hearings is to resolve problems in a timely manner. A clear and well-maintained documentary record, routine inspections of work in progress, prompt investigation and hearing of complaints, and transparency with regard to amendments of approved plans are fundamental tools to ensure compliance. If these fundamental requirements are met, the power to subpoena should be unnecessary." (Hanson Memorandum #1 entitled "First, do no harm--Legislation and Text Amendment Responding to Clarksburg Issues," dated January 12, 2006)

What has changed? Why does the Chairman now think that subpoena power is a necessary tool for the Planning Board to have in their enforcement arsenal?

We have all heard the assertion from elected officials that the basic hallmarks of good government are transparency, accountability and citizen inclusion. All three are currently in short supply at the Planning Department and Board. And our Councilmembers apparently have no will to demand them, although they have oversight responsibility over both bodies.

The views expressed in this column do not necessarily reflect formal positions adopted by the Federation. To submit an 800-1000 word column for consideration, send as an email attachment to waynemgoldstein@hotmail.com