

"Federation Corner" column  
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### **Planning enforcement is ongoing**

by Jim Humphrey, Chair, MCCF Planning and Land Use Committee

In 2004, a handful of residents of the Clarksburg Town Center development, a new subdivision being built next to the Clarksburg historic district, contacted the Montgomery County Civic Federation as well as a number of county government officials, to assert their belief that their community was not being constructed in accordance with the plans which had been approved by the Montgomery Planning Board.

After initially denying that there was a problem, staff at the Planning Department finally admitted in mid-2005 that there did appear to have been violations of the approved Site Plan for the Clarksburg Town Center development. The case was then brought before the Planning Board, first to verify that violations had occurred, next to determine what fine or penalty should be imposed on the developer, and finally to decide how best to amend the plan so the project could be completed. This last was necessary since some of the violations were irreversible, which meant that the subdivision could no longer be built according to the plan as originally approved.

When the media brought the case to the attention of the public, the Civic Federation began hearing from residents living elsewhere in the county claiming similar violations of approved development plans were occurring in projects under construction in their communities. The MCCF Planning and Land Use Committee which I chair conducted a study and, in August of 2005, released a report alleging that at least a dozen new developments under construction in the county had violated their approved plans--either the approved building standards, forest conservation requirements, provisions of affordable housing law, or some combination of these. Then, in December of that year, the Planning Department staff released the findings of their investigation of every development project under construction countywide, which included allegations of several more plan violations that my committee had not uncovered.

Clarksburg Town Center, however, was the case most publicized in the media, and "Clarksburg" became the code word for not only developer violations of approved project plans, but also the environment of lax enforcement of plans that had allowed the violations to occur. In rapid order, the Director of the Parks & Planning Department resigned (and those departments were subsequently split apart under new leadership) and a lower level staffer involved in the Clarksburg Town Center debacle was removed. Then Planning Board Chair Derick Berlage was replaced, even though he was not Chair when the environment of permissiveness had flourished and had, in fact, fairly quickly instituted processes for improved accountability and transparency. And, finally, in 2006 the County Council enacted legislation that transferred to the Department of Permitting Services the responsibility for investigating adherence of development projects to the approved plans.

Enforcement hearings were held by the Planning Board on plan violations involving a handful of projects, with fines issued or other remedies required, while other violations resulted in corrective actions being imposed by administering agencies or were dropped due to insufficient evidence. The Clarksburg Town Center case slowly played out in a series of hearings until, in 2008, the Planning Board eventually approved an amended plan for completion of the subdivision. The developer was to have come back last year with a set of drawings that reflected the approved amendments, for final sign off by the Board. But, after a series of delays, the Board has scheduled a discussion for today, January 14, to consider the Planning Department staff claim that the drawings the developer has submitted contain significant differences from the amended plan approved over a year ago.

After sitting through the marathon 2008 hearing on the Clarksburg Town Center plan amendments, I and other citizen advocates hoped the issue of plan violations had finally been put to rest. And then I read a sentence in the Planning Board Spring 2009 Semi-Annual Report noting that there was a backlog of violations which the Board needed to address.

I called Rose Krasnow, Director of the Development Review Division in the Planning Department, to ask if I could get a copy of the list of alleged plan violations that were awaiting Board action. After consulting with the legal department, Krasnow informed me that she had been advised not to release the list but the violations would become known to me, and the public, when they were scheduled for hearings and placed on the Board agenda.

Since spring of last year, the Board has held enforcement hearings on alleged violation of approved plans involving seven separate properties in the county, three related to construction that does not meet the imposed standards and four involving violations of forest conservation or stormwater management plans. And there are four other forest conservation violation cases that I know of which are still to come before the Board, three to be heard on February 1. One wonders how many more cases are still backlogged.

Violations of forest conservation law are particularly worrisome, given what we know about the importance of trees in mitigating the effects of air pollution. In some cases, the loss of a single specimen tree in an urban setting can exacerbate the heat island effect in a localized area, increasing the ambient air temperature by as much ten degrees in summer. Certainly the loss of an acre or more of trees has a more widespread negative impact, especially considering that tree canopy coverage in the county decreased from 48% in 1973 to only 27% in 2003, and has most certainly shrunk even further since. The State legislature believes tree preservation is so important that during the 2009 session they approved the Roadside Tree Preservation Act, signed by Governor O'Malley last May, to protect individual trees growing alongside streets and roads throughout the state. No one, including county governments and utility companies, may trim, harm or remove a tree in the public right-of-way without first obtaining a permit from the Maryland Department of Natural Resources.

After the whole "Clarksburg" debacle, I am puzzled as to why some developers, property owners and builders have still not gotten the message that it's better to seek an amendment to a Board approved plan, or request a permit from DNR to remove a tree in the public right-of-way, than to just go ahead and violate the law and hope you don't get caught,

*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 [theelms518@earthlink.net](mailto:theelms518@earthlink.net)*