

"Federation Corner" column
The Montgomery Sentinel - February 16, 2006

Planning Board should investigate and enforce Site Plans
by Jim Humphrey
Chair, MCCF Planning and Land Use Committee

The discovery that the developer and homebuilders violated approved standards for the new Clarksburg Town Center subdivision has generated discussion about needed improvements in the investigation and enforcement of Site Plans. The County Council's Planning, Housing and Economic Development (PHED) Committee is currently debating whether or not to shift investigation and enforcement of Site Plans from the Planning Board and its staff, which was assigned this responsibility in 1994, to the Department of Permitting Services (DPS). In order to explain the position on this issue of the MCCF committee I chair, a short primer on the subject is in order.

Some readers may be wondering what a Site Plan is. Well, there are two basic kinds of building projects in Montgomery County. There are those occurring on property zoned in a category that has set development standards, such as building height and setback from property lines. And, there are projects on property zoned in certain categories that require these standards be tailored for the individual site and established by the Planning Board in an approved Site Plan.

By law, all Site Plans must include basic development standards like building height and bulk, and required setbacks. And it is the responsibility of DPS to verify that new buildings adhere to these basic standards, whether in Site Plans projects or otherwise. But, in approving Site Plans, the Planning Board requires more of a developer than simple compliance with building standards.

Site Plans often contain environment requirements including preservation of mature trees, protection of streams and designated buffer areas, and grading plans specific to the contours of a property. Site Plans can also include the managing of stormwater that flows through or from a property, and retention of certain areas as open greenspace. Some Site Plans may require areas be developed as public use spaces such as outdoor plazas or indoor community meeting rooms. And, still others may require a developer to provide an on-site or off-site amenity to the community, such as a recreation facility, land for a park or school, or construction of a road or bike path, often on a required schedule.

County residents can spend years negotiating terms of a Site Plan with a developer and staff at Park and Planning. Once a Site Plan is approved by the Planning Board, residents should be confident that county employees paid to do so will see that the project is built as approved, or that the public will be notified and allowed to comment if changes are proposed to an approved plan. But, it is at this point in the process that the problems with the Clarksburg Town Center project began.

The residents living in the new Clarksburg Town Center realized that no county employee was verifying that the homes built in their community complied with the approved height and setback standards. DPS Director Robert Hubbard has stated that he was not aware his department was assigned the task of verifying compliance with building standards in Site Plan projects until the Clarksburg scandal broke in the news last September. He now knows that this responsibility rests with his staff, although they currently only conduct field investigations if triggered by citizen complaints. It is troubling that DPS staff routinely accepts the word of surveyors hired by developers attesting to compliance with building standards, without even conducting random spot checks.

Residents discovered violations of other Site Plan provisions in Clarksburg Town Center that were not being monitored by county employees. These involved improper layout of lots and roads, and failure to

provide recreation facilities and stormwater management systems as required. MCCF believes these kinds of Site Plan provisions should be investigated by Park and Planning staff, the agency whose staffers have spent months or years developing a Site Plan with residents and the developer, as mentioned earlier.

In the Site Plan Enforcement study conducted by the MCCF Planning and Land Use Committee*, we suggested the creation of a Site Plan Investigation and Enforcement Office. We remain committed to this idea, and believe it should be situated within Park and Planning. Unfortunately, the Council's PHED Committee members recently rejected a funding request from the Planning Board that would have created a new Compliance Officer position, just the position needed to oversee Site Plan investigation and enforcement at Park and Planning.

Neither Park and Planning or DPS currently has sufficient field investigation staff to conduct adequate Site Plan compliance checks. The Department of Permitting Services does have a very capable staff in their Stormwater Management Division, but only a few field investigators checking building standards. And, Park and Planning has a small, capable field staff verifying compliance with Forest Conservation laws. No matter where the new Site Plan investigation staff is located, good communication between agencies is a must. But, it seems only logical that this new staff should be part of the same organization with knowledge and expertise in the drafting of Site Plans—Park and Planning. And since the authority for enforcement of Site Plans rests with the Planning Board, it will be useful to have this new compliance staff close at hand to provide staff support for any violations hearings the Board may need to conduct.

You and I have a say in this decision. After all, it is taxpayer money that Council members will be appropriating to solve the current problems of inadequate investigation and enforcement of laws and regulations relating to new development in our county. But, Council members cannot represent you if they don't know your opinion. If you believe that a compliance office should be established at Park and Planning to investigate and enforce Site Plans, send an email to county.council@montgomerycountymd.gov.

*The MCCF Site Plan Enforcement study released last August 30, along with the January 23 Addendum, can be accessed from the "Archived Documents" page of the Federation's website—www.montgomerycivic.org.