

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5757**

**APPEAL OF CLARKSBURG VENTURE LIMITED PARTNERSHIP**

OPINION OF THE BOARD

(Public Hearing Date: September 11, 2002)

(Effective Date of Opinion: October 11, 2002)

Case No. A-5757 is an administrative appeal in which the appellant charges administrative error on the part of the Department of Housing and Community Affairs (DHCA) in its issuance of a Condemnation Notice, dated March 18, 2002. The Appellants contend that they do not intend to use the subject property as a dwelling and that they should be given additional time to repair it.

Pursuant to Section 59-A-4.3 of the Montgomery County Zoning Ordinance, the Board of Appeals convened a hearing on the appeal on September 11, 2002. Rex Sturm, Esquire appeared on behalf of the Appellant. He called Robert O. Eisinger, President of Clarksburg Holdings, Inc. a general partner of Clarksburg Venture Limited Partnership, as a witness. Walter E. Wilson, Esquire, Associate County Attorney, represented the Montgomery County Department of Housing and Community Affairs. He called Andrew Jakab, an inspector with DHCA, as a witness.

Decision of the Board:                      Administrative Appeal **Denied**.

**EVIDENCE PRESENTED**

1. The subject property is located at 22900 Whelan Lane, Boyds, Maryland, in the I-3 Zone.
2. On March 18, 2002 DHCA issued a Notice of Condemnation to the Appellants. The Condemnation Notice is based on an inspection of the subject property by Andrew Jakab and states in pertinent part that:

1. The dwelling is damaged, decayed, dilapidated and unsafe, thereby creating a serious hazard to the health or safety of any occupants or the public.

2. The general condition of the property is unsanitary or otherwise dangerous to the health or safety of any occupants or the public. [Exhibit No. 3].

3. Mr. Jakab testified that on March 8, 2002 he observed the following conditions at the subject property which warranted condemnation:

the siding on the building not protecting the inside of the building [Exhibit Nos. 6(d) and 6(e)]

the foundation and overhangs above the porch are deteriorated [Exhibit Nos. 6(f), 6(i)]

a crack in the foundation wall below the bay window [Exhibit No. 6(g)]

the base and roof of the front porch are deteriorated and the front porch is collapsing [Exhibit Nos. 6(h), 6(n)]

deterioration along the foundation wall at the back right corner of the house [Exhibit No. 6(i)]

Mr. Jakab testified that there was definitely a problem with the structural soundness of the house, both on March 8, 2002 when he posted the Condemnation Notice and when he visited the property a week prior to the public hearing. He stated that he was afraid to step onto the porch because it didn't look secure. [Transcript, September 11, 2002, p.18].

4. Mr. Sturm and Mr. Eisinger stated that a family lived in the house for more than 15 years, beginning before the subject property was zoned I-3, and did not pay rent for most of that time. They stated that Clarksburg Venture undertook proceedings to remove the tenant, who eventually abandoned the property, after it was zoned I-3, and after which Clarksburg Venture did not intend to use it for residential purposes. [T., pp.5-6; 25].

5. Robert O. Eisinger testified that the zoning on the property was changed to I-3 through a sectional map amendment based on adoption of the Clarksburg Master Plan in 1994. [Transcript, September 11, 2002, p.28].

6. Mr. Eisinger testified that he had the structural soundness of the house evaluated by an architect and an engineer. He stated that the house is not

in imminent danger of collapse. In response to Board questions, he stated that the house is not fit for human habitation, that he is evaluating the financial consequences of refurbishing the property, and the timeframe in which he will make a decision is based upon the timing for implementation of the Master Pla. [T., p. 28-29, 31].

7. Mr. Sturm stated that because Clarksburg Venture does not intend to use the property as a dwelling, it is not required to put it in a condition for a dwelling purpose. T., p. 32].

## **FINDINGS OF THE BOARD**

Section 26-12(a) of the Montgomery County Code provides:

Any dwelling unit and any nonresidential structure which has any of the following defects may be condemned as unfit for human habitation or unsafe for human occupancy or use by the enforcing agency:

(1) One which is entirely or in part, so damaged, decayed, dilapidated, unsanitary, unsafe or vermin-infested that it creates a serious hazard to the health or safety of the occupants or of the public.

(2) One which lacks, entirely, or in part, illumination, ventilation, heating, water supply, or sanitation facilities adequate to protect the health or safety of the occupants or of the public, as required in this Chapter.

(3) One which because of its general condition is, entirely or in part, unsanitary or otherwise dangerous to the health or safety of the occupants or the public.

The Board finds that the language of the March 18, 2002 Condemnation Notice, describing the condition of the subject property on that date, [Evidence Presented paragraph 4] is based on Sections 26-12(a)(1) and (3) of the Code.

The Board finds that Section 26-12(a) applies to the subject property whether or not Clarksburg Venture intends to use it for a residential purpose.

The Board finds that at the time DHCA issued the condemnation notice, violations of Section 26-12(a)(1) and (3) existed at the subject property and that

the condemnation notice was properly issued. [See Evidence Presented paragraphs 2, 3, 5 and 6]. Therefore,

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Allison Ishihara Fultz, Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that Case No. A-5757, the Appeal of Clarksburg Venture Limited Partnership, is **denied**.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 11<sup>th</sup> day of October, 2002.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 2-A-10(f) of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.