

Exhibit A

Exhibit 61(b)(i)
OZAH Case No: CU 25-02

**AFFIDAVIT
OF DAVID W. BROWN**

1. I, David W. Brown, am over eighteen years of age and competent to testify as to the matters set forth below.

2. This Affidavit is made upon personal knowledge.

3. I am a Maryland licensed attorney, and have been in active practice in Maryland for over twenty years. My Maryland practice has been almost entirely within Montgomery County, with a principal focus on land use and zoning matters. I have frequently represented clients before the Montgomery County Board of Appeals, the County Office of Zoning and Administrative Hearings, the County Council, the County Circuit Court, and the Montgomery County Planning Board.

4. I was retained by the Clarksburg Town Center Advisory Committee ("CTCAC") in the late spring of 2005 to advise and represent CTCAC. CTCAC was an informal organization of residents of Clarksburg, Maryland, which had complained to the Board that buildings were being built in Clarksburg in violation of building height and setback limits. The Board had rejected the CTCAC complaints in April 2005.

5. Following the April Board decision, CTCAC, through diligent and exhaustive efforts, uncovered evidence demonstrating that built residences had building height and setback violations. CTCAC demonstrated this in a renewed Board hearing, and also that the violations had been effectively covered up by staff-level approval of after-the-fact modifications to height and setback limits as shown on Board-approved site plans that did not show any Board-approved changes. This was a quite sensational outcome that reverberated not only within the confines of the Planning Board, but also

within the County Council, the developer community in the County, the press, and the public that counted on the Planning Board to ensure that developers and builders met their obligations as project approvals were implemented.

6. What followed was more Board hearings where additional site plan violations among builders in Clarksburg were presented by CTCAC and confirmed by the Board. At the same time, investigation of other possible site plan violations remained ongoing, with the prospect for additional violation hearings in the fall of 2005.

7. About this time I was contacted by Council President Tom Perez, seeking CTCAC's consent to the suspension of further hearings and entry into mediation with the Clarksburg builders and the overall developer, Newland Communities, with a view toward agreeing on a program of remediation and plan revisions. CTCAC, seeing this as an opportunity to ensure that new final site plans would be much more closely aligned with the vision for the Clarksburg Town Center as detailed in the Clarksburg Master Plan, agreed to the Perez proposal. The Clarksburg builders and Newland, by this point facing a staff recommendation of fines in excess of \$3 million, also agreed to the mediation plan.

8. On a joint petition agreed to by the Planning Board in December 2005, the Board suspended the ongoing violation proceedings while the mediation was underway. The mediator, chosen jointly by the parties to mediation, was retired Circuit Court Judge Barbara Kerr Howe. The end result five months later was a settlement agreement overseen by Judge Howe, finalized in April 2006, and agreed to and signed by Newland, the builders, and all of the CTCAC individual members. The President of

CTCAC was Amy Presley, who later went on to serve two terms as a member of the Planning Board.

9. The settlement agreement had both a back- and forward-looking aspect. The backward-looking aspect was that past site plan violations would not require any building changes, such as reducing heights or correcting setback violations, or any liability for penalties for violations, whether adjudicated thus far or not. The forward-looking aspect was an agreed set of plan changes for future development to bring the end result for Clarksburg Town Center more in keeping with the Master Plan for Clarksburg, specifically relative to a pedestrian-friendly, walkable, town center retail core with space and features encouraging community gathering.

10. The settlement agreement provided conceptual plans for revision to existing approved or unapproved site plans for Clarksburg, to be memorialized in a Plan of Compliance for Board approval. The Plan of Compliance envisioned by the settlement agreement was prepared by the parties in the weeks following execution of the agreement, and submitted to the Board with a cover letter from Newland attorneys on May 3, 2006.

11. The cover letter, approved by CTCAC, describes the attached Plan and explains its relationship to the settlement agreement as follows:

This Plan of Compliance was prepared in detailed collaboration with and is assented to by Newland Communities, Clarksburg Town Center Advisory Committee ("CTCAC"), and each of the builders within the Town Center. . . .

The Plan of Compliance is also being submitted in furtherance of the mediated settlement agreement reached among the parties.

The Plan of Compliance consists of a comprehensive set of baseline plans, a detailed narrative description of proposed modifications to the baseline plans,...and supporting exhibits depicting the proposed modifications. It is anticipated that in the event the Staff recommends and the Planning Board approves the Plan of Compliance, detailed amendments to the existing Project Plan, Preliminary Plan and Site Plan approvals will be prepared consistent with the Plan of Compliance and submitted for review by Staff and action by the Planning Board.

12. The attached narrative referenced in the cover letter, entitled “Major Elements Making Up Plan of Compliance,” is a 12-page single-space document that amplifies on the Development Terms while utilizing most of the Development Terms’ Exhibits. Its exact wording was extensively negotiated by the parties during the four weeks between execution of the settlement agreement and submission of the Plan of Compliance.

13. On June 1, 2006, the staff issued its report recommending approval of the Plan of Compliance. On June 15, 2006, the Board conducted a hearing and, on motion of Commissioner Robinson, voted 4-0 (Commissioner Bryant absent) to approve the Plan with certain modifications. On August 17, 2006, the Board adopted Resolution MCPB No. 06-20 approving the Plan, which it described as the “Compliance Program,” with the modifications that were voted upon at the hearing. The Resolution expressly defines the elements, terms and conditions of the Compliance Program. Id. § 3. The Resolution provides that the parties – Newland, the builders and CTCAC -- “voluntarily consented and agreed to the various elements, terms and conditions expressed herein for purposes of the Compliance Program.” Id.

14. The Resolution includes four Board findings. Finding 4.1 deals with grandfathering. Finding 4.2 is a public interest finding, grounded in the Board’s belief

that completion of the Compliance Program will provide “substantial enhancements to community amenities and facilities planned for [Town Center].” Id. at 6. Finding 4.3 is the Board’s assessment that completion of the Compliance Program is a lawful and appropriate alternative to fines and penalties, and that “implementation of the Compliance Program will remediate and resolve all Violations.” Id. Finding 4.4 is geared to public safety approval of street network modifications. Id.

15. In accordance with the Findings, the Board ordered Newland and the Builders “to comply strictly with each of the elements, terms, and conditions of the Compliance Program.” Id. The Board recognized that the Compliance Program had to be translated into detailed, engineered plans that may require modifications, but correspondingly advised Newland and the Builders that, barring modifications required by law or unforeseen physical project conditions, the Board “intends to require only such modifications that are reasonably consistent with the Compliance Program.” Id. at 7. The Board instructed the staff “to undertake all reasonable measures to detect and report to the Board [Newland’s and the Builders’] compliance and non-compliance as the applicable case may be.” Id. at 6.

16. The Board’s approval of the Compliance Program triggered a 3-stage plan approval process that began right away, as the parties had agreed. Id. at 4. Stage 1 was the immediate lifting of stop work orders on 78 units that were unfinished at the time stop work orders were issued in 2005. Stage 2 was the approval of a revised site plan for Sections 2D and GG and three builder condos, to allow completion of 118 units. The Stage 2 Plan was submitted and approved in 2007, and was long ago completed. Stage 3 was the submission of a revised project plan, preliminary plan and site plans for the

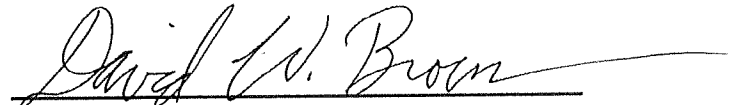
remainder of the entire Town Center Project. The Compliance Program directed the Stage 3 submission be made by October 26, 2006, and required the entire Project to be completed by June 15, 2010. Id. at 5.

17. Since that time, various project deadlines were extended at Newland's request. The original deadline of October 2006 was Newland's proposal; CTCAC was hopeful the date would be met. On September 20, 2006, with support from CTCAC, Newland requested an extension of the preliminary plan, as well as the time to submit new plans, to April 26, 2007. A series of further extensions, not objected to by CTCAC, were granted, through March 26, 2008.

18. Thereafter, progress toward completion of the Compliance Program continued to lag. By 2011, Newland, a developer with a national focus, had continued to fail to meet its obligations under the Compliance Program. Newland, under threat from the Board of the imposition of fines on a daily basis for its continued failure, sold the Town Center Project. The sale was to Third Try, LLC, on December 19, 2011, for the sale price of \$1.00. Third Try is an entity owned or controlled by David Flanagan, a local developer.

19. The Compliance Program, consistent with the settlement agreement underlying it, is binding on successors and assigns. The obligations Newland undertook in the settlement agreement, in proffering the Plan of Compliance, and in accepting the terms and conditions of the resulting Board-approved Compliance Program, did not end with its sale of the Project. Beyond these specifics, development obligations run with the land. In any sale of the Town Center Project to another entity, that entity assumed both the benefits and the burdens of completing Stage 3 of the Town Center Project.

I DECLARE under the penalties of perjury
and the laws of Maryland that the foregoing
is true and correct. Executed on February 6,
2025.



David W. Brown

Exhibit B

Resolution No.:	<u>15-1125</u>
Introduced:	<u>July 26, 2005</u>
Adopted:	<u>July 26, 2005</u>

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Perez, Andrews, Praisner, Leventhal, and Denis

Subject: Short-Term Measures to Assure Compliance with Site Plans

Background

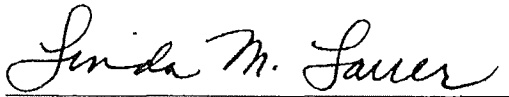
1. Serious failures in the enforcement of site plans during construction in Clarksburg Town Center have been exposed through the efforts of citizen activists.
2. The public trust in Montgomery County's development management has been seriously damaged by these failures.
3. The enforcement of site plan conditions and requirements is essential to the safety and well-being of County residents and the integrity of the County's planning process.
4. The County Council has oversight responsibility to ensure that agencies responsible for these activities are fully exercising their obligations.
5. The County Council has initiated detailed reviews of the process and actions taken and not taken in the Clarksburg Town Center.
6. The County Council has directed the Office of Legislative Oversight (OLO) to complete a fact finding review of what went wrong in the County development review and implementation processes, and any actions that might fix the problems identified.
7. The following actions by the Montgomery County Planning Board and the Department of Permitting Services (DPS) will ensure thorough review and compliance of building permits with site plans while comprehensive reviews of the planning and enforcement process are pending.
 - No new building permits may be issued in the Clarksburg Town Center development until further review and certification of compliance with appropriate site plans by the Park and Planning Department and DPS.
 - All requests to amend site plans in Clarksburg must be deferred until reviews of what went wrong in Clarksburg and elsewhere are completed and the Council has an opportunity to take necessary actions.

- DPS, the Department of Public Works and Transportation (DPWT), and the Planning Board must review the roads and other required infrastructure within the Clarksburg Town Center and provide the Council with a report by August 15, 2005, regarding the status of the implementation of the provisions of the Clarksburg Town Center site plans pertaining to road infrastructure, including recommendations to ensure that the necessary road infrastructure is in place in a timely fashion.
- A countywide freeze on issuance of Building Permits in site plan zones (residential and commercial) must continue until height limit and setback requirements can be verified by DPS.
- Almost 200 building permit applications (residential and commercial) are currently pending with county authorities. No permits may be issued until each applicant resubmits site plans that disclose height and setback compliance. DPS and the Planning Board must verify the setback and height restrictions spelled out in each approved site plan.
- Any building permit application that uses the term "story" to describe the height of a building, instead of indicating proposed height by actual measurement of the building, must be rejected.
- The Planning Board and DPS must conduct an immediate audit of site plans approved throughout the County since January 1, 2003, to ensure that work being done is in accordance with the specifications of the approved plans. The Planning Board and DPS should immediately suspend development in any site plan where violations are uncovered.
- Park and Planning Department mid-level personnel must no longer approve "administrative" or so-called minor amendments to site plans. The Director of Park and Planning must personally approve every amendment to a site plan that is not considered by the Planning Board, and any site plan amendment review, major or minor, must include public notice.
- Subject to Council approval, DPS and the Planning Board must submit to the County Council by July 30, 2005, a staffing plan to increase the number of personnel dedicated to site plan and other enforcement duties. The resources for additional personnel must come from increased fees on developers and builders, not from taxpayer-funded sources.
- Existing personnel in DPS and the Park and Planning Department must be immediately re-deployed to perform site plan inspections. The County Council must be provided with a plan for training new and redeployed employees.
- DPS and the Park and Planning Department must immediately begin the process of recruiting additional, qualified personnel to perform enforcement functions for the two agencies.
- The builders and developers involved in the proceeding pending before the Planning Board pertaining to the Clarksburg Town Center development have agreed to the community's request that the Planning Board investigate and adjudicate *all* allegations of violations prior to adjudication of the sanctions. The Council endorses this approach.

Action

The County Council for Montgomery County, Maryland urges the Montgomery County Planning Board and the Department of Permitting Services to take these actions immediately. The Chair of the Planning Board and the Director of the Department of Permitting Services must provide biweekly reports to the Council updating the Council on their progress in implementing each step outlined in paragraph 7.

This is a correct copy of Council action.

A handwritten signature in cursive script, reading "Linda M. Lauer", written in dark ink. The signature is fluid and elegant, with the first letters of each word being capitalized and prominent.

Linda M. Lauer
Clerk of the Council

Exhibit C

6/15/06

MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

M-NCPPC



THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

June 1, 2006

MEMORANDUM

TO: Montgomery County Planning Board

FROM: John Carter, Chief (301.495.4575) *JC* Rose Krasnow, Chief (301.495.4591) *RK*
Community-Based Planning Division Development Review Division

SUBJECT: Plan of Compliance
Clarksburg Town Center

RECOMMENDATION

The staff recommends approval of the Plan of Compliance for the Clarksburg Town Center with the following comments.

1. **Resolution of Violations** - The staff recommends that the Plan of Compliance, with its proposed new amenities and facilities as well as other enhancements be accepted as an appropriate alternative to imposing fines or monetary penalties in accordance with Section 59-D-3.6 (a)(4) of the Montgomery County Zoning Ordinance. The Plan of Compliance will remediate and resolve all findings of violations including other alleged violations that have not yet been resolved by the Planning Board.
2. **Future Review Process** - The Plan of Compliance proposes amendments to the approved Project Plan and the certified Site Plans as indicated in the enclosed "Description of Major Elements Making Up Plan of Compliance", and the "Plan of Compliance Design Concepts" (see attachments). The future approvals include the interim review of Site Plan amendments for Sections 2D and GG and for Manor House Buildings 10, 11 and 12, to be followed by the review of the overall modified Project Plan, Preliminary Plan, the Site Plans, and a new Site Plan for the retail core, as described in the phasing.

Although the other agencies have been given an opportunity to review the Plan of Compliance, the staff recognize that the information presented is conceptual in nature and that additional review of more detailed plans may require some modifications. At the same time, the staff also recognize the importance that the Mediation Group placed in the Plan of Compliance. The Mediation agreed that any significant changes to the document brought about as a result of the additional level of review will require binding arbitration.

3. **Phasing and Next Steps** - As part of the Plan of Compliance, the staff recommends that the following phasing of development be approved:

- a. **First Stage: Begin Construction** – At the current time, stop work orders are in place in certain designated areas of the community. The public interest is to have construction resume in the Town Center as quickly as possible. If the Planning Board approves the Plan of Compliance, the initial stage of the development will lift the stop work orders on some lots in Section 2D and GG (see Exhibit R of the Plan of Compliance), and Manor House Buildings 7 and 9. The construction of Stringtown Road and Clarksburg Road will also continue. The Planning Board has already approved these lots as shown on a certified Site Plan and Record Plat. Staff does not recommend any modifications to these lots. Section 2D (near the elementary school) and Manor House 9 are located east of Overlook Park Drive. Section GG is located south of Clarksburg Square Road near the retail core and Manor House 9 is located west of Overlook Park Drive to the north of Clarksburg Square Road. These lots include single-family detached units, townhouses, and multi-family buildings. Construction of Stringtown Road between MD 355 and Overlook Park Drive, and Clarksburg Road between MD 355 and Spire Street can also continue in this First Stage.
- b. **Second Stage: Approval of a Revised Site Plan for Section 2G and GG** – The applicant will submit a revised Site Plan for the remaining portions of Section 2D and GG, as well as for Manor House Buildings 10, 11 and 12. Construction will only proceed after the Planning Board approves these revised Site Plans. These Site Plans could be submitted and approved before the modified Project Plan, Preliminary Plan and Site Plans for the entire development are approved.
- c. **Third Stage: Approval of a Revised Project Plan, Preliminary Plan and Site Plan** – The approved overall Project Plan, Preliminary Plan, and Site Plans will need to be revised, and a new site plan for the retail core will need to be approved, before the remaining development in Clarksburg Town Center will be able to proceed. This step is intended to incorporate all of the elements of the Plan of Compliance into an amended overall Project Plan, Preliminary Plan, and the newly approved or amended Site Plans. A new phasing plan for the entire development will also be included as part of this third stage review.

PURPOSE

The Plan of Compliance is intended to address violations of the approved Project Plan and Site Plans and to provide significant improvements to the Clarksburg Town Center to address all violations and other concerns. This Plan of Compliance is the result of a joint effort by the Clarksburg Town Center Advisory Committee (CTCAC), and the developer (Newland Communities) and builders (Bozzuto, Craftstar, Miller and Smith, NV, and Porten Homes).

Violations - On July 7, 2005 after notice to the applicant, the Planning Board found that the approved development was not in compliance with the certified Site Plans. The following violations were found:

1. Established building height limits of 35 feet for single-family units, and 45 feet for multi-family units were exceeded
2. Established front yard setbacks were less than the established design standards
3. On October 6, 2005, after notice to the applicant, the Planning Board also found that the approved development was not in compliance with the approved Site Plans. The Planning Board found that the Amenities and Facilities were not constructed in accordance with the approved Phasing Plan.

Other Concerns - In addition to the identified violations found by the Planning Board, staff was also investigating several other alleged violations, including the following:

1. Elimination of "O" Street and the Pedestrian Mews
2. Phasing and Location of MPDUs
3. Conformance with the Development Standards (including setbacks for side and rear yards, minimum lot area, and lot width minimums)
4. Elimination and Reduction in Size of Alleys and Roadways
5. Changes in Blocks with Respect to Unit Types and Configuration Without Planning Board Approval
6. Modification of Environmentally-related Features
7. Parking Requirements
8. Altered Documentation

On November 25, 2005, the applicant and the Clarksburg Town Center Advisory Committee requested time to address these concerns as part of a mediated attempt to resolve all issues. On December 2, 2005, the Planning Board suspended all violation hearings with the hope that the parties could come to an agreement with respect to a Plan of Compliance that could be submitted to the Planning Board for review and approval.

The parties selected a mediator, the Honorable Barbara Howe, and worked to come to an agreement over a period of 5 months. On May 3, 2006, a Plan of Compliance was submitted to the Planning Board. The proposed Plan of Compliance is intended to address all of the concerns identified above and provide improvements that will foster the creation of a unique community. This report provides the project description, staff analysis and recommendations for the Plan of Compliance.

PROJECT DESCRIPTION

The Plan of Compliance includes a set of plans, illustrations, and a written description of the proposed modifications to the existing Project Plan, Preliminary Plan, and Site Plans. This plan is the result of an extensive process to both improve the existing approved project and to address violations and concerns.

The Plan of Compliance calls for significant revisions to the plans submitted, but never approved, for the retail core. The Plan creates a mixed-use core that includes a revised town plaza and town green space, a grocery store, small shops, a library, a mix of live-work units, townhouses, and multi-family units. The new town plaza and green space includes a site for a library, seating areas, street lighting, street trees, and an open air market building for outdoor civic events that will serve as the central focus for the Town Center. Instead of extensive surface parking as proposed in the plan that had been submitted previously to the Department of Park and Planning, the new mixed-use core includes two parking garages lined by three story retail spaces and residences to maintain a pedestrian scale and orientation. These features provide a significant improvement to the approved project.

The Plan of Compliance also proposes a grand stairway with landscaping leading from the Town Center to the Clarksburg United Methodist Church. This will help establish a strong link between the old and the new while creating a much more attractive view. Additional landscaping will be provided along the adjacent street. The Plan also calls for the developer to dedicate an existing town center lot to the church for the provision of a driveway, additional parking, and access for the handicapped. These measures will greatly improve both the vehicular and pedestrian connections from the community to the church.

Along the main street for the Clarksburg Town Center (Clarksburg Square Road), improvements to the land bridge will be provided including new walls, streetlights, special paving, curb ramps, and seating areas. The Clark Family Memorial will be constructed at the western edge of the land bridge near the intersection of Overlook Park Drive. This highly visible area serves as the transition area between the eastern and western portion of the Town Center.

The Plan of Compliance seeks to balance the enhanced retail core in the area west of the Greenway with enhanced recreational amenities in the area east of the Greenway. The eastern portion of the Clarksburg Town Center includes Sinequa Square, and the recreation center and pool area. In addition to the features included in the approved Project Plan, Sinequa Square is proposed to include an outdoor amphitheater and additional landscaping. The pool complex will include a new 1,200-square foot community building, providing meeting space with audio/visual wiring and a non-commercial kitchen. The existing pool will be enlarged to accommodate regulation swim meets and a water slide will be added. In addition, a new building containing a year-round, heated lap pool is proposed, along with another 800-square foot concessions building, and expanded parking. These new facilities should more than compensate for the loss of a small pool facility in the western portion of the community and will help unite the two sides of the neighborhood.

The Plan of Compliance also augments and enhances the other amenities in the Clarksburg Town Center. Murphy's Grove Pond, located near Stringtown Road at Clarks Crossing Drive, will include enhanced landscaping, the removal of an existing white picket fence, a fishing pier, and a walking trail. Some of these improvements will be put in place on an interim basis, because the final enhancements to the pond cannot be completed until the facility is no longer needed to provide sediment control for the ongoing construction activity. In addition, the stormwater management area located behind Burdette Forest Road (Stormwater Management Pond #3) will feature a seating area, and a trail connecting to the town plaza. The Plan of Compliance also calls for a new park and townhouses to be provided instead of Condominium Building 6, which was to be a 26-unit building immediately across from and identical to existing Condominium Building 3.

At the end of Clarksburg Square Road, the 70-acre Piedmont Woods Park will be retained. This park will include hard surface courts and picnic areas. The new features in the Plan of Compliance also call for a dog park and hiking trails. This area is proposed for future dedication to the M-NCPPC for maintenance.

ANALYSIS

1. Conformance with the Clarksburg Master Plan

The proposed Plan of Compliance conforms to the guidelines in the Approved and Adopted Clarksburg Master Plan. The Clarksburg Master Plan developed high expectations for building a complete community in the Town Center area. The Plan of Compliance updates and enhances the Town Center area approved in the Project Plan dated April 4, 1995 to foster the creation of a complete community.

Land Use and Mix of Residential Units Plan - The Plan of Compliance is consistent with the guidelines in the Clarksburg Master Plan for the mix of unit types. The Plan of Compliance provides more single-family units and fewer multi-family units than the approved Project Plan. A key feature of the Plan of Compliance is the elimination of one condominium (multi-family) building, and its replacement with townhouses and an additional green area or park. The following table identifies the mix of unit types and the maximum number of total units.

Table: Mix of Residential Units

Unit Types	Master Plan Guidelines	Approved Project Plan	Plan of Compliance
Single Family Detached	10-20%	15% (195 Units)	20% (241 Units)
Single Family Attached and Townhouses	30-50%	50% (650 Units)	54% (661 Units)
Multi-Family Units and Live Work Units (500 Units)	25-45%	35% (455 Units)	26% (319 Units)
Total Units	1,380	1,300	1,221

Mixed-Use Core Including the Retail Center - This area will be substantially revised and improved. The majority of the retail will be located along pedestrian friendly streets instead of adjacent to a surface parking lot. Land will be dedicated for a library and an additional site that can accommodate a parking garage to serve the library. The existing town green will be modified to include a plaza area, an open-air market building, and a smaller green area to serve as the central gathering area for the Clarksburg community. A grocery store will be provided. Structures adjacent to the grocery store will include retail or office space on the first floor with residential uses on the second and third floors.

Transportation and Mobility Plan - The Plan of Compliance retains the emphasis on constructing sidewalks, bikeways, and natural surface trails as proposed in the approved Project Plan. A separate bike trail will be provided parallel to Overlook Park Drive. A natural surface trail will be provided near the existing stream. These items were already included in the approved Project Plan and Site Plans. In addition, the Plan of Compliance will improve the balance of parking throughout the entire development. It includes a minimum of two parking structures within the retail core. On street parking along specified streets will be revised to meet the requirements of the Montgomery County Fire and Rescue Service.

2. Conformance with the Development Standards

The proposed Plan of Compliance is in conformance with the requirements of the RMX-2, and the RDT Zones as indicated in the following table.

Table: Comparison of Development Standards in the RMX-2 Zone

Items	Required/ Allowed	Approved Project Plan	Plan of Compliance
Lot Area (acres)	NA	197.3 (RMX-2) 63.0 (RDT) 260.3 total	197.3 (RMX-2) 63.0 (RDT) 260.3 total
Green Area			
1. Commercial Area	15%	+15%	+ 15%
2. Residential Area	50%	+ 50%	+ 50%
Density of Development (Master Plan Recommendations)			
1. Retail and Office	920,000 SF	250,000 SF	195,500 SF
2. Residential	1,380 DUs (5-7 DUs/acre)	1,300 DUs	1,221 DUs
MPDUs	12.5%	12.5%	12.5%

Note: Standards for building height and setback within the different sections of the development will be determined as part of the amended Project Plan and Site Plan.

Building Height – The Plan of Compliance proposes to modify some of the existing Manor House buildings, eliminates an approved multi-family building, and establishes new development standards for the remaining buildings to be approved in the Town Center. The following items summarize the proposed revisions:

- **Retail Core** - Buildings in the retail core will be limited to three stories instead of the four stories approved in the original Project Plan.
- **Condominium Building** - An approved condominium building will be eliminated and replaced with townhouses and a small park.
- **Compatibility Features** - The landscaping plan will be augmented by \$1,000,000 to establish compatibility and improve the appearance of the development. These funds, in addition to other features, will be used to mitigate the impact of height and setback on existing units. The Plan of Compliance confirms the construction standards for all existing buildings that will remain. As part of the new Project Plan, Preliminary Plan, and Site Plans, the specific building heights and setbacks for new buildings within each section of the project will be delineated.

Design Standards for Side and Rear Yard Setbacks, Minimum Lot Area, Lot Width at Building Line, and Lot Coverage - The Plan of Compliance accepts the development standards for those buildings already constructed. The revised Project Plan, Preliminary Plan, and Site Plans will carefully describe the development standards for the future development.

3. Amenities and Facilities

The proposed Plan of Compliance augments and enhances the amenities and recreation facilities approved in the Project Plan and Site Plans. The following tables compare the amenities and recreation facilities approved in the original Project Plan with the additional amenities and recreation facilities proposed in the Plan of Compliance.

Table: Comparison of Amenities

Approved Project Plan	Plan of Compliance
- Town Green	- Large enhanced Town Green and Civic Plaza
- Land for a future civic building without parking	- Land for a future library with nearby parking
- Streetscape system	- Streetscape system augmented by a contribution of \$1,000,000 in addition to the approved streetscape
- Neighborhood squares and formal green areas	- Neighborhood squares and formal green areas augmented by additional landscaping and parking areas
- Greenway dedicated for park use	- Greenway dedicated for park use
- Specialty planting along greenway roads	- Specialty planting along greenway roads augmented by additional features along the bridge area
- Dedicated elementary school site	- Dedicated elementary school site
- Murphy's Grove Pond area	- Augmented landscaping and park features for the Murphy's Pond area

The Montgomery County Public Libraries reviewed the Plan of Compliance. They support the proposed location and size of the library. The present site provides for a two-story library with a gross floor area of approximately 15,000 square feet and a footprint of 10,000 square feet. The library will be a central feature of the community located in the central plaza area. The proposed location of the parking will allow approximately 45 surface spaces or 90 spaces in a parking garage. The FY 08 Capital Improvements Program includes the cost to design the library, but it does not include the cost of construction for the building or a parking garage. The construction for the library should be coordinated with the construction of the retail core.

Table: Comparison of Recreational Facilities

Approved Project Plan	Plan of Compliance
- 4 Tot lots	- 4 tot lots
- 6 multi-age playgrounds	- 6 multi-age playgrounds
- 3 hard surface courts (tennis courts)	- 3 hard surface courts (2 tennis courts, and 1 basketball court)
- Bikeway system	- Bikeway system
- Natural surface trail within greenway	- Natural surface trail within greenway
- Small outdoor swimming pools (2)	- Enlarged outdoor swimming pool for community swim meets with an additional lap pool for year round use, an 800-square foot public building, a 1,200-square foot civic building, and additional parking areas
- Wading pool (2)	- Wading pool (1)
- Large recreation area/Piedmont Park	- Large recreation area/Piedmont Park*

Note: *The Parks Department has been carefully reviewing the requirements for this park if it is to be a county owned and maintained facility.

4. Phasing and Placement of Moderately Priced Dwelling Units

The Plan of Compliance includes the required number (12.5 percent) of moderately priced dwelling units. These units will be located proportionally throughout the Clarksburg Town Center. A maximum of 55 moderately priced dwelling units will be located west of Overlook Park Drive to ensure that the units are evenly placed throughout the development. Specific block locations will be established during the review of the Project Plan, Preliminary Plan, and Site Plans.

5. Design Standards for Streets and Alleys

The staff met with the Department of Public Works and Transportation. They have been involved in the review of this project and other similar projects for more than a decade. In addition to safety and access, they recognize that appropriate street standards often establish the first impression of a community. At this point in time, the Department of Public Works and Transportation has identified the following items that may need additional review:

- Intersection spacing and sight distance especially for the intersections along General Store Road and Overlook Park Drive

- Pedestrian crossing to connect to Piedmont Park
- Phasing construction for public and private roads especially Overlook Park Drive and Clarksburg Square Road
- Classification of internal roads and the location of on-street parking especially in the retail core

Because the Plan of Compliance is a concept document, these items should be addressed in depth during the review of the modified Project Plan, Preliminary Plan, and Site Plans.

Modifications for the Fire and Rescue Service - The Montgomery County Fire and Rescue Service identified concerns with the function and width of some of the streets. The Plan of Compliance addressed these concerns and proposes eliminating on-street parking on one side of some streets as requested by the Fire and Rescue Service to accommodate emergency access.

Connection to MD 355 - Clarksburg Square Road is proposed to be connected (right-in and right-out) to MD 355, preferably along an alignment that does not require the historic house to be relocated. Final location will be indicated on the future Project Plan, Preliminary Plan, and Site Plan. Improvements are limited to the dedication of the public right-of-way and a construction cost of \$500,000.

6. Environmental Plan

The proposed Environmental Plan is intended to preserve the natural environment and establish a transit and pedestrian oriented town without further compromise to the land use plan or the environment. A forested buffer will be retained along all streams, existing mature trees will be preserved and augmented, and a "no net loss" of wetlands policy has been established. The Plan of Compliance will replace one large condominium building with townhouses and a large green area. Additional landscaping will be provided around the Murphy's Grove stormwater management pond, along Overlook Park Drive adjacent to the retail core and stormwater management pond #2, and adjacent to the single-family detached units located near stormwater management pond #3. Other elements of the approved Project Plan remain unchanged.

The Department of Permitting Services has also been involved in the review of this plan and similar plans for over a decade. At this point in time, the Department of Permitting Services has identified the following items that may need additional review:

- Recalculate the impervious area
- Revise the water quality plan
- Provide adequate access to the stormwater features
- Meet area wide Special Protection Area requirements

The Department of Permitting Services looks forward to the next step in the development process.

7. Condominium Buildings and Manor Houses (Condominium Building 5 and 6, and Manor House Building 7, 9, 10, 11 and 12)

Several modifications to these approved buildings are proposed. The following paragraphs summarize the modifications.

Condominium Buildings - Condominium Building 5 will be constructed as shown in the approved Site Plan with revisions that include the elimination of a surface parking area and replacing the parking area with two new townhouse lots.

Condominium Building 6 will be eliminated and the area previously shown for Building 6 will be developed with a new park and townhouses. The townhouses are designed to be four stories not to exceed 55 feet with the back of the first story below grade.

Manor Houses - Building 7 is substantially complete. It will be finished with modifications as shown on the approved Site Plan for the Manor Houses (approved by the Planning Board on February 10, 2005). The Plan of Compliance proposes revisions to the Building 7 parcel to provide for the addition of a curb cut, demolition and reconstruction of an existing parking garage, reconfiguration of surface parking areas, and a new dumpster location.

Manor House Building 9 will also be constructed in accordance with the approved Site Plan with modifications to the building facades. Building 9 is designed to be three stories not to exceed 45 feet. In addition, the following improvements will be provided for Building 9:

- The building façade will be finished with brick veneer on the front and sides only with a stone water table
- The porches will be redesigned
- Window patterns will be adjusted to be consistent with the floor plans

Manor House Buildings 10 and 11 will also be constructed in accordance with the approved Site Plan with modifications. These buildings are designed to be up to four stories and not to exceed 55 feet. In addition, the Plan of Compliance proposes the following improvements to Buildings 10 and 11:

- The buildings will be rotated 90 degrees to face the west to improve the view of these buildings from the retail core area
- The elevations will be adjusted to locate the first floor below grade at the back of the buildings and at grade along the street façade
- Each building façade will be finished in brick veneer on the front and sides only with a stone water table
- The porches will be redesigned
- Window patterns will be adjusted to be consistent with the floor plans

Building 12 will be constructed in accordance with the approved Site Plan with modifications to the building facades. This building is designed to be three stories and not to exceed 45 feet. The modifications include the following:

- The building façade will be finished with brick veneer on the front and sides only with a stone water table
- The porches will be redesigned
- Window patterns will be adjusted to be consistent with the floor plans

8. Parking Requirements

Final off-street parking layouts will be shown in the future Site Plans. On-street parking will be modified as recommended by the Department of Fire and Rescue Service. A parking plan will be included in the Plan of Compliance that meets the required number of spaces. The Plan of Compliance includes the following standards:

Parking for Commercial Core Area - At least two parking structures will be provided for the retail area. Land will be also available for another parking garage to serve the future library. On-street parking will be a key feature of the core area. The combination of on-street and off-street parking will meet the requirements of the Zoning Ordinance.

Parking for Dwelling Units - Each dwelling unit will include the required number of parking spaces for residents and guests. The combination of on-street and off-street parking will meet the requirements of the Zoning Ordinance.

9. Street "O" and the Pedestrian Mews near the Adjacent Church

A new, grand stairway and an access ramp for the handicapped will be provided to connect to the Town Center to the adjacent church. A vacant lot will also be transferred to the church at no cost to provide additional parking, and a potential vehicular connection. Additional landscaping will also be provided.

10. Additional Landscaping and Streetscaping

Additional street trees will be provided adjacent to Sinequa Square; two stages of landscaping will be provided for the Murphy's Grove Pond area. Landscaping and fences will be added to reduce the visibility of the alleys from adjacent residences. The landscaping shown in the approved Site Plans will be augmented in the amount not to exceed \$1,000,000 above the approved streetscape system.

11. Sequence of Development Including the Amenities and Facilities

The Plan of Compliance proposes to increase the number and enhance the quality of amenities and facilities. The proposed town plaza and green, the significantly improved swimming pool and recreation area, and improvements to Sinequa Park represent three examples of improvements to the number and quality of amenities and facilities. In general, all phasing of amenities and landscaping will occur during the construction of the adjacent structures. During the review of the Project Plan, Preliminary Plan, and Site Plan, the applicant will provide a detailed phasing plan.

First Stage: Begin Construction – If the Plan of Compliance is approved, construction could commence immediately in parts of Section 2D (located east of Overlook Park Drive near the elementary school) and in parts of Section GG (located south of Clarksburg Square Road near the retail core). The stop work orders should be lifted in only these two sections upon approval of the Plan of Compliance for all lots platted in accordance with the approved site plans and construction can proceed. These sections (see Plan of Compliance, Exhibit R) include both single-family units and townhouses. The almost completed Manor House Buildings 7 and 9 are also included in the first stage.

Second Stage: Approval of a Revised Site Plan for Section 2G and GG - The remaining portions of Section 2D and Section GG will proceed to construction as soon as the Planning Board approves Site Plan modifications related to these areas. Because the Site Plans for these areas have been fully designed and approved, modified Site Plans will be submitted before the new Project Plan and Site Plans for the overall development are presented for approval. The Site Plan for Manor House Buildings 10, 11, and 12 will be included in this Site Plan submittal.

Third Stage: Approval of a Revised Project Plan, Preliminary Plan and Site Plan - The modifications to the existing Project Plan, Preliminary Plan, and Site Plans, as well as a new Site Plan for the retail area, will need to be submitted for review and approval before the remaining development can proceed. A new phasing plan will be included as part of the review of the amended Project Plan, Preliminary Plan, and Site Plans. Work to expand the pool area will not begin until after the summer 2006 season so that residents will not be inconvenienced by these changes.

12. Economics of the Plan of Compliance

The staff recommends that the enhancements proposed in the Plan of Compliance be accepted as an appropriate alternative to imposing fines or monetary penalties. The enhancements provide significant improvements to the planning and design features of the future Clarksburg Town Center. The value of the enhancements proposed in the Plan of Compliance appears to substantially exceed the value of the initially proposed fines. In addition, an extended period of time would be needed to hold hearings and process additional violations and assess fines. Because the proposed Plan of Compliance exceeds the potential value of the initially proposed fines, proposes significant enhancements to the overall Town Center development, and eliminates the extensive time that would be needed to continue to hold violation hearings, the staff finds that acceptance of the Plan of Compliance is in the public interest and offers the best resolution of all outstanding concerns.

The following paragraphs compare the estimated costs of enhancements with the estimated cost of potential fines or penalties. The staff has estimated the costs, and they are not part of the Plan of Compliance. They are intended to provide an order of magnitude for comparison purposes.

Estimated Costs of Enhancements - The Plan of Compliance includes enhancements to the approved Project Plan, Preliminary Plan, and Site Plans. The costs of enhancements estimated by staff follow:

Table: Cost of Enhancements

• Additional landscaping	\$1,000,000
• Improvements to Redgrave Place/Clarksburg Square Road	\$500,000
• Additional landscaping for Street "O"	\$50,000
• Two parking garages for the retail core (840 spaces X \$10,000 additional cost per space)	\$8,400,000
• Indoor lap pool	\$2,000,000
• 1,200-square foot civic building	\$180,000
• 800-square foot building for community uses	\$120,000
• Market building	\$240,000
• Civic plaza	<u>\$2,200,000</u>
Total	\$14,690,000

These costs do not include the elimination of one condominium building, the modifications to the Manor Houses, or the costs incurred as a result of the lengthy work stoppage.

Fines and Penalties – The intent of the Plan of Compliance is to address all of the violations approved by the Planning Board and the identified concerns. The intent is also to enhance existing approved plans for the Clarksburg Town Center with specific and higher quality improvements instead of fines.

To compare the cost of improvements identified in the Plan of Compliance with the cost of the initial fines, the staff has compared the costs established in the above list of Improvements with a list of potential fines. The staff report dated November 25, 2005 provided a potential list of fines against builders for failure to comply with the requirements of an approved Site Plan. The following items identify the estimated fines that could be assessed for the violation of the standards for building height and setback:

Table: Violations Approved by the Planning Board and Potential Fines:

• Building Height: 433 Townhouse and 56 Multi-family Violations (489 X \$1,500 each = \$733,500)*	\$733,500
• Building Setback: 102 Violations (102 X \$1,500 each = \$153,000)*	\$153,000
• Phasing of Amenities and Facilities*	\$250,000
Note: * Specific amounts for the fines have not been determined	

Table: Staff Recommendations of Fines for Violations not Approved by the Planning Board (Recommended in the November 25, 2005 Memorandum):

• Recording lots before approval of Phase II Signature Set	\$140,000
• Obtaining building permits before approval of record plats	
• Phase II Signature Set	\$1,930,000
• Seeking building permits not in conformance with signature sets (Bozzuto)	\$20,000
• Beginning construction before signature set approval (Bozzuto)	<u>\$20,000</u>
Total	\$3,246,500

On December 2, 2005, the Planning Board suspended the discussion of violations and fines to give the developers and builders, and the Clarksburg Town Center Advisory Committee time to address issues and resolve any differences. The Plan of Compliance is the result of the mediation efforts during the Planning Board suspension of the discussion of violations and fines. Staff understands that the amount of fines shown in the above table could be less than the fines that might be imposed by the Planning Board if the discussion of violations continues. Since the enhancements proposed in the Plan of Compliance seem to significantly exceed the value of the fines, the staff recommends that the Plan of Compliance be accepted.

PUBLIC OUTREACH

Before the mediation team met to discuss issues, the Planning Board held a hearing in Clarksburg. After a tour of the Town Center area, the Planning Board received testimony from the staff and the general public. The hearing produced an extensive list of amenities, facilities, and requests for improvements to the Town Center. The list of improvements formed the initial list of items to be addressed during the mediation process.

The mediation group met to resolve differences between December 2005 and May 2006. The Plan of Compliance is the result of the joint effort of the mediation group that included representatives of the Clarksburg Town Center Advisory Committee and the developer and builders (developer: Newland Communities, and builders: Bozzuto, Craftstar, Miller and Smith, NV, and Porten Homes). During the meetings held by the mediation group, the staff of the Community-Based Planning Division and the Development Review Division served as observers and, upon request, as a primary resource for the group including the retained architects, landscape architects and engineers. Other staff attended these meetings, including representatives of the Countywide Planning Division, representatives of the Park Planning Section, and staff from the County Executive, including representatives of the Department of Permitting Services and the Department of Public Works and Transportation. During the meetings, the staff did not participate in the specific negotiations between the Clarksburg Town Center Advisory Committee and the developer and builders.

After the Plan of Compliance was prepared, the Planning Board held a second hearing to receive testimony and comments from the Clarksburg community. This hearing produced a generally favorable response from the community concerning the items included in the Plan of Compliance. The community seemed especially pleased with respect to the new design and the enhancements proposed for the future development.

Since this second hearing, staff has held a series of meetings with numerous County agencies. Meetings have been conducted with representatives of the Parks Department, the Montgomery County Public Libraries, the Department of Permitting Services, the Department of Public Works and Transportation, and the County Executive's office. Comments from these agencies have been incorporated into the analysis section of this report.

CONCLUSION

The staff recommends approval of the Plan of Compliance. The staff finds that the mediation efforts have produced significant improvements and enhancements to the Clarksburg Town Center. The Plan of Compliance conforms to the guidelines in the Master Plan, and the development standards in the RMX-2 Zone. It provides significant civic spaces and recreation facilities, and a new mixed-use center.

Approval of the Plan of Compliance will end the discussion of violations and allow the applicant to proceed with development in accordance with the staging plan described in the above paragraphs. Approval of the Plan of Compliance will render the alleged violations moot. The staff finds that the Plan of Compliance is sufficient to remediate and resolve all categories of violations at this time.

JAC:RK:ha: j:\2006 staff reports\Clarksburg Plan of Compliance

Attachments:

1. Clarksburg Town Center - Submission of Plan of Compliance (Letter from Linowes and Blocher, dated May 3, 2006)
2. Clarksburg Town Center - Plan of Compliance Design Concepts, dated April 20, 2006
3. Correspondence Received

Exhibit D

Resolution No.:	15-1505
Introduced:	June 20, 2006
Adopted:	June 27, 2006

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: Payment for Clarksburg Town Center Mediation

Background

1. On January 17, 2006 the Council agreed to fund one-third of the costs of the Clarksburg Town Center (CTC) mediation, including the costs of the mediator, retired Baltimore County Circuit Court Judge Barbara K. Howe, and planners to assist the Clarksburg Town Center Advisory Committee (CTCAC), subject to review of costs.
2. On January 27, 2006 the following parties entered into a mediation agreement: CTCAC; Newland Communities, LLC and NNP II – Clarksburg, LLC (collectively “Newland”), the development manager and developer of CTC; and six builders of homes in CTC (Miller and Smith at Clarksburg LLC, NV Homes, Craftstar, Porteri Companies, Inc., BA Clarksburg, LLC and Clarksburg Two, LLC). The mediator, Judge Howe, and representatives of two architectural and urban design firms, Duany Plater Zyberk & Company, LLC (“DPZ”) and Torti Gallas and Partners, Inc. (“Torti Gallas”), also executed the mediation agreement.
3. The mediation agreement confirmed that the fees and expenses of the mediator, the rental of rooms for the mediation, and the expenses of DPZ, the firm selected by CTCAC to advise it, would be borne one-third by Newland and one-third by the builders collectively. The parties had previously requested that the County assume the remaining one-third of the mediation costs because CTCAC was not in a position to pay these costs and the impartiality of the mediator and the CTCAC adviser might be questioned if the developer and builders were solely responsible for payment of their fees. The mediation agreement also confirmed that the fee for the rental of the rooms and related expenses would not exceed \$5,500.00, the fee and expenses of Judge Howe would not exceed \$70,000, and the fee for DPZ would not exceed \$60,000. The mediation agreement did not include a ceiling on DPZ’s expenses, but DPZ stated that its expenses would not exceed \$10,000.
4. Mediation sessions were conducted on January 24, 25, and 31; February 16; March 9, 14, and 28; and April 3, 4, and 5, 2006. The mediation resulted in a settlement agreement that set forth the terms of a detailed proposed plan of compliance for consideration by the Planning Board. The plan of compliance included a new design for a neo-urban town center, substantial improvements to parks and recreation areas, including the construction of an indoor lap pool and community buildings, and \$1 million in additional funding over the established budget for landscaping and streetscaping.

5. On June 1, 2006 M-NCPPC staff recommended that the Planning Board approve the plan of compliance and find that the plan's approval resolves all findings of violations in CTC, including alleged violations that have not yet been resolved by the Planning Board. On June 15, 2006 the Planning Board approved the staff recommendations.
6. The settlement agreement called for establishment of new architectural and design guidelines for areas of the Town Center that have not yet been constructed, including the retail area. The parties had hoped to address these matters in the context of the mediation, but there was insufficient time to do so. CTCAC requested that DPZ continue to serve as its adviser in the formulation of the new guidelines, with additional fees and expenses for these services not to exceed \$50,000. Judge Howe has also performed additional services in connection with obtaining regulatory approval of the plan of compliance, including presenting it on behalf of the parties to the Planning Board on June 15, 2006. Judge Howe stated that her fees and expenses for these additional services would not exceed \$10,000.
7. Costs billed to date include fees and expenses totaling \$66,419.76 for DPZ and \$69,674.59 for Judge Howe. (As noted above, costs for the additional services of DPZ and Judge Howe will not exceed \$50,000 and \$10,000, respectively.) Other costs are \$4,875, paid to the City of Gaithersburg, owner of the Kentlands mansion, where initial mediation sessions were held, and \$1,130, paid to Elite Reporting Service, which transcribed the parties' assent to the settlement agreement and related agreements.
8. The County's one-third share of the \$142,099.35 in CTC mediation costs billed to date is \$47,366.45. The County's one-third share of the additional services of DPZ and Judge Howe will not exceed \$20,000. Thus the County's total one-third share of CTC mediation costs will not exceed \$67,366.45.

Action

The County Council for Montgomery County, Maryland approves the following resolution:

The Council authorizes payment of the County's one-third share of CTC mediation costs, subject to review of costs. Payment must be made from the FY06 and FY07 budgets of the Council Office to DPZ and Judge Howe in a total amount that does not exceed \$67,366.45. Payment of this total amount discharges the County's entire obligation with respect to the County's share of CTC mediation costs.

This is a correct copy of Council action.

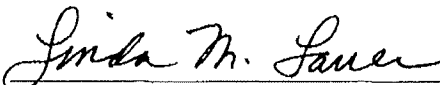
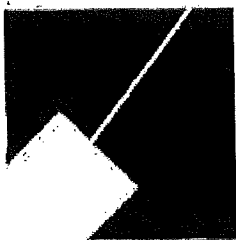

Linda M. Lauer, Clerk of the Council

Exhibit E

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Date of Mailing: AUG 17 2006

MCPB No. 06-20

**RESOLUTION OF
MONTGOMERY COUNTY PLANNING BOARD**

PROJECT: Compliance Program: Clarksburg Town Center

PROJECT PLAN NO: 9-94004

SITE PLAN NO: 8-98001; 8-02014

DATE OF HEARING: June 15, 2006

RESPONDENTS: Newland Communities, LLC and NNPII-Clarksburg, LLC
Bozzuto Homes, Inc., BA Clarksburg, LLC and
BA Clarksburg Two, LLC
Craftstar Homes, Inc. and its LLC affiliates
Miller and Smith at Clarksburg, LLC
NVR, Inc., t/a NV Homes
PCI Clarksburg LLC

COMPLAINANT: Clarksburg Town Center Advisory Committee

RESOLUTION OF THE PLANNING BOARD: APPROVAL OF THE STAFF RECOMMENDATIONS WITH MODIFICATIONS. A motion to approve with certain modifications was made by Commissioner Robinson, seconded by Commissioner Wellington, and carried by unanimous vote (4-0) in the affirmative; Chairman Berlage and Commissioners Perdue, Robinson, and Wellington voting in the affirmative, with Commissioner Bryant being absent for the vote.

§1. EFFECTIVE DATE

The effective date of this written resolution (the "Resolution") is the date this document is mailed to all parties of record. Any party entitled by law to make an administrative appeal must initiate the appeal within thirty days of the date of this Resolution according to the procedural rules for judicial review of administrative decisions under applicable law and the Maryland Rules of Court.

§2. PURPOSE AND NATURE OF RESOLUTION: APPROVAL OF COMPLIANCE PROGRAM

The purpose of this Resolution is to memorialize the decision of the Montgomery County Planning Board (the "Board") to approve a certain Plan of Compliance (the "Compliance Program") in the matters heard upon and including those elements, terms and conditions as set forth herein. This Resolution is adopted pursuant to the authority of the Board to enforce the elements, terms and conditions of its previous actions in this matter, in accordance with the enabling provisions of Article 28 of the Annotated Code of Maryland at Section 7-116(h) and the implementing provisions of Section 59-D-3.6 of the Montgomery County Zoning Ordinance.

The terms and conditions of the Compliance Program approved by this Resolution are intended by the Board as remedial measures that shall be legally required in order to address certain violations (such violations both found or known to be alleged as of the effective date of this Resolution) (collectively, the "Violations") with respect to the Project Plan, various site plans and certain amendments thereto, whether or not those site plans and amendments were approved under lawful authority to do so.

The elements, terms and conditions of the Compliance Program approved under this Resolution are the result of a voluntary mediation and negotiation process undertaken by and on behalf of the Complainant and Respondents; and, as expressed in this Resolution, such elements, terms and conditions of the Compliance Program shall be deemed and constitute the knowing and voluntary proffer of the Respondents tendered for the purpose of settling and disposing of the Violations in accordance with the lawful authority of the Board.

The Respondents have acknowledged that the Compliance Program set forth in this Resolution shall be given effect in lieu of any proposed amendment previously filed but approval of which remains pending as of the effective date hereof (collectively, the "Pending Amendments"). The Pending Amendments are enumerated as follows:

- That certain proposed amendment to the subject Project Plan filed on May 9, 2005;
- That certain proposed amendment pertaining to Section 1A4 of Site Plan No. 8-98001 filed on June 22, 2004; and
- That certain proposed site plan pertaining to the retail area shown on Site Plan No. 8-04034 filed on June 3, 2004.

Because said pending amendments are inconsistent with certain elements, terms, conditions of the Compliance Program, the Respondents have voluntarily agreed to withdraw each and every of the Pending Amendments and, upon issuance of this Resolution, such withdrawal of those Pending Amendments by Respondents shall be

deemed approved by the Board. Hereafter, the Board shall deem the Pending Amendments withdrawn, a legal nullity and of no further force or effect with respect to the project.

§3. COMPOSITION (ELEMENTS, TERMS AND CONDITIONS) OF THE COMPLIANCE PROGRAM

For the purpose of this Resolution, the Compliance Program consists of the Staff Recommendations, Board Modifications, Certain Deadlines, and Certain Waivers described in this section.

A. Staff Recommendations. As set forth in the staff report issued by memorandum dated June 1, 2006, executed by John Carter and Rose Krasnow (the "Staff Report"), and as presented during the Board's hearing on June 15, 2006, the Compliance Program consists of and expressly incorporates by reference each of the elements, terms, and conditions as contained in the following documents:

1. The following Exhibits:

- a) Applicant's Exhibit 1 — Units/Lots to be released at the time of Plan of Compliance approval ("Attachment 1" hereto)
 - b) Applicant's Exhibit 2 — Plan of Compliance Parking Exhibit ("Attachment 2" hereto)
 - c) Staff's Exhibit 1 — Units/Lots to be released at time of Plan of Compliance (bluelined) ("Attachment 3" hereto)
2. The staff report, without attachments, dated June 1, 2006 (pages 1-16) ("Staff Report") and circle pages 17-91 attached to the Staff Report, but excluding Section "S" on circle pages 29-30 titled "Outcome/Effect of Plan of Compliance" (collectively, "Attachment 4" hereto);
 3. Staff's handout at the June 15, 2006 hearing ("Attachment 5" hereto) which consists of a one-page addition of paragraph 4 ("Status of the Plan of Compliance") to the Staff Report ("June 15, 2006 Errata");
 4. First Stage Development Standards Clarksburg Town Center ("Attachment 6" hereto), consisting of Table 1: Manor House Building 7 and 9 (Multi-Family Units), and Table 2: Proposed Development Standards from Exhibit R of the Plan of Compliance, June 30, 2006.

B. Board Modifications. The Compliance Program also includes and expressly incorporates by reference each of the following elements, terms, and conditions:

1. **Future Review Process.** - The Compliance Program proposes certain amendments to the approved Project Plan and the certified Site Plans as

indicated in the "Description of Major Elements Making Up the Plan of Compliance," and the "Plan of Compliance Design Concepts" (see attached Staff Report). The future approvals include the interim review of Site Plan amendments for Sections 2D, and GG and for Manor House Buildings 10, 11 and 12, to be followed by the review of the overall modified Project Plan, Preliminary Plan, the existing Site Plans, and a new Site Plan for the retail core, as described in the phasing discussion below.

2. **Phasing and Next Steps** – As a condition of the Compliance Program, the Board approved the following phasing of development:
 - a. **First Stage: Begin Construction - Construction** - At the current time, stop work orders imposed voluntarily, by or on behalf of the Planning Board are in place in certain designated areas of the community. The Planning Board declares that said stop work orders shall be dissolved, and does hereby dissolve those orders, so as to authorize Respondents to proceed with the first stage of the development with respect to the 78 Units/Lots enumerated on "Attachment 6" hereto; provided, that Respondents shall proceed and construct each and every such Unit/Lot in strict compliance with any building permit or other governmental approval for their construction as may be issued and applicable thereto. Construction of Stringtown Road between MD 355 and Overlook Park Drive, and Clarksburg Road between MD 355 and Spire Street can also continue in this First Stage.
 - b. **Second Stage: Approval of a Revised Site Plan for Section 2D and GG** - The Respondents must apply for an amendment to the October 14, 2004 Certified Phase II Site Plan for the remaining portions of Sections 2D and GG, as well as the Site Plan for Manor House Buildings 10, 11 and 12. Construction of these units will only proceed if and when the Planning Board approves these Site Plans amendments. It is understood that the Respondents may apply for these amendments before any other amendment applications to the Project Plan, Preliminary Plan, or Site Plans for the entire development are submitted for approval.
 - c. **Third Stage: Approval of a Revised Project Plan, Preliminary Plan and Site Plans** - The approved overall Project Plan, Preliminary Plan, and Site Plans will need to be revised, and a new site plan for the retail core will need to be approved before the remaining development in the Clarksburg Town Center will be able to proceed. This step is intended to incorporate all of the elements of the Compliance Program into an amended overall Project Plan, Preliminary Plan, and the newly approved or amended Site Plans. A new phasing plan for the entire development will also be included as part of this third stage review.

C. Certain Deadlines. The Project Plan, Preliminary Plan, Site Plan amendments and new Site Plan to be submitted for approval must reflect the elements of this Compliance Program and must be submitted before October 26, 2006. These plans must also include an amended Phasing Plan for the entire development, including all facilities and amenities. The entire project must be completed by June 15, 2010 unless the Planning Board approves an extension.

D. Certain Waivers. By their attendance and respective proffers expressed in connection with the several Planning Board proceedings convened to consider the matters addressed in this Resolution, and as subsequently confirmed by the written and oral binding representations of their respective legal counsels, Respondents and Complainant consented and conceded to the jurisdiction of the Board for the purpose of the taking of this action. Respondents and Complainant further voluntarily consented and agreed to the various elements, terms and conditions expressed herein for purposes of the Compliance Program, and knowingly waived any and all right to appeal or contest the action taken by the Board hereunder, and thereby agreed to be estopped from contesting any portion of the Compliance Program, or asserting any compensable damage or cost by way of any cause of action against the Board related in any way to the matters resolved herein. It is expressly understood, however, that the aforesaid waiver does not apply to, or in any way impair, waive or otherwise affect (i) any parties' right to defend an appeal of this action filed by persons other than Respondents or Complainant; (ii) any parties' appeal rights and/or cause(s) of action that might accrue with respect to any future action taken by the Board, other governmental agency or individual including, without limitation, any action concerning subsequent Project Plan, Preliminary Plan and/or Site Plan applications, including any amendment(s) thereto, and further including any subsequent permitting and development processes related thereto, which are intended to implement the Compliance Program. The waivers expressed under this Section 3(d) are considered by the Planning Board to be a material predicate and inducement for the issuance of this Resolution.

§4. FORMAL DISPOSITION OF THE VIOLATIONS AND RELATED FINDINGS

FINDING 4.1: The Board finds that the public interest will be served by "grandfathering" (holding harmless) all dwelling units that are already constructed, under contract by, and/or occupied by innocent third-party purchasers, as of June 15, 2006 (the "Grandfathered Units"); provided, however, that the Grandfathered Units do not include any unit for which a contract was entered into after November 23, 2005, the date by which all stop work orders had been issued. The Board finds that the purpose and scope of such grandfathering by the Board is to remediate and resolve all findings of Violations as to the Grandfathered Units.

In accordance with Finding 4.1, the Board hereby orders that each of the Grandfathered Units that was the subject of any Violation shall be, and hereby is, deemed to be constructed and occupied in compliance with the County Zoning Ordinance notwithstanding such Violation, provided that nothing under this order or Resolution shall be construed to cure any violation of the Zoning Ordinance that either (a) is not grounded within the lawful jurisdiction of the Planning Board or (b) is not directly related to the Violations that fall within the scope of this Resolution.

FINDING 4.2: In accordance with the recommendations of staff, the Board finds that the public interest will be served by completion of the Compliance Program according to its terms because it provides substantial enhancements to community amenities and facilities planned for the area designated as the Clarksburg Town Center project and Montgomery County as a whole.

FINDING 4.3: In accordance with the recommendations of staff, the Board finds that, subject to its completion according to its terms and in accordance with this Resolution, the Compliance Program constitutes a lawful and appropriate alternative to imposing fines or monetary penalties in accordance with Section 59-D-3.6 (a)(4) of the Montgomery County Zoning Ordinance. The Board is persuaded that implementation of the Compliance Program will remediate and resolve all Violations.

FINDING 4.4: In accordance with the recommendations of staff, the Board finds that the modifications to the street network approved by the Fire Marshal of Montgomery County for purposes of public safety are in the public interest and are, therefore, incorporated into the approved Compliance Program.

In accordance with Findings 4.2, 4.3 and 4.4, the Board hereby orders the Respondents to comply strictly with each of the elements, terms and conditions of the Compliance Program and expressed otherwise under this Resolution. The Board further instructs the Planning Staff to undertake all reasonable measures to detect and report to the Board the Respondents' compliance and non-compliance as the applicable case may be.

§5. PLANNING BOARD AUTHORITY EXPRESSLY RESERVED

Except as expressly provided in this Resolution, nothing provided in this Resolution is intended, nor shall it be construed, to cede, relinquish or otherwise impair the discretion, authority or jurisdiction of the Board to consider any future applications, plans or approvals pertaining to the project according to the terms of this Resolution, law and merits applicable. Without limiting the generality of the foregoing, it is understood that the Respondents shall be required in the future to obtain Board approval for one or more amendments to the Project Plan, Preliminary Plan, and Site Plans relating to the project.

The Planning Board recognizes that the Compliance Program is conceptual in nature, and that additional review of more detailed plans may involve modifications. Except as otherwise required by or relating to physical project conditions unforeseen by the Board, or applicable law (including the requirements of the Montgomery County Zoning Ordinance, Subdivision Regulations, or other legal requirements applicable to any future Board action pertaining to the project), the Planning Board intends to require only such modifications that are reasonably consistent with the Compliance Program. Subject only to such unforeseen project conditions, applicable law and regulations, express terms of this Resolution and the Compliance Program, the Board expressly reserves all lawful discretion to consider, approve, approve subject to conditions or disapprove any such future application according to the law and merits presented at the time. Further, the Board expressly retains jurisdiction to consider and act upon any violation in the future that is unrelated to the Violations resolved according to the terms of this Resolution, alleged on the basis of this Resolution, or any act or omission by the Respondents (their successors or assigns) that accrues after the effective date hereof.

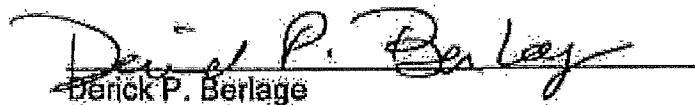
CONCLUSION

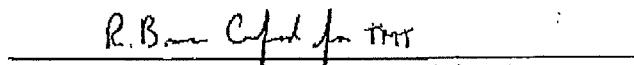
The Planning Board accordingly approves this Resolution according to elements, terms, and conditions stated above.

* * * * *

At its regular meeting, held on Thursday, August 3, 2006, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, with Motion by Commissioner Robinson, seconded by Commissioner Perdue, by vote of 4 to 1, with Commissioners Berlage, Robinson, Perdue and Bryant voting in favor and Commissioner Wellington opposed, ADOPTED the above Resolution which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for this Resolution.

Adopted by the Planning Board this 3rd day of August 2006.


Derrick P. Berlage
Chair, Montgomery County Planning Board


Trudye M. Johnson, Executive Director


APPROVED AS TO LEGAL SUFFICIENCY

M-NPPC LEGAL DEPARTMENT

Exhibit F



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**Staff Report: Project Plan Amendment 91994004B, Preliminary Plan 11995042A,
Final Water Quality Plan and Site Plan 820070220 Clarksburg Town Center**

ITEM #: 5

MCPB HEARING

DATE: November 6, 2008

REPORT DATE: October 22, 2008

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief *RK*
Development Review Division

FROM: Robert Kronenberg, Supervisor *RAK*
Development Review Division

Catherine Conlon, Supervisor *CC*
Development Review Division



REVIEW OF: Compliance Program: Clarksburg Town Center Project Plan #919940040, Preliminary Plan #119950420 and Comprehensive Site Plan #820070220 which incorporates Site Plan #819980010 and #820020140. The application has been submitted to fulfill Stage III of the Compliance Plan which calls for all of the elements agreed to by the parties to the mediation to be incorporated into an amended overall Project Plan, Preliminary Plan, and a new site plan that covers the entire development. Requests approval for 194,720 gross square feet of commercial development, (including up to 48,000 sf of specialty retail within live/work units); and 1,213 residential dwelling units, including 152 MPDUs, and a waiver to permit a reduction of parking spaces for the west side; on approximately 270 acres. Located at the southeast quadrant of the intersection with Clarksburg Road and Snowden Farm Parkway in the Clarksburg Master Plan

APPLICANT: NNPII Clarksburg, LLC

RECOMMENDATION: Approval with conditions

EXECUTIVE SUMMARY

The plans being presented herein represent the third and final stage of the Compliance Plan for Clarksburg Town Center. In 2005, a group of residents known at the Clarksburg Town Center Advisory Committee alleged numerous violations associated with the build out of their community by the Developer, NNPII Clarksburg LLC (Newlands). The Board held several hearings and scheduled others on many of the violations, but the parties agreed to go to mediation before a final determination had been made with respect to all of the allegations or the size of the fines that should be assessed. The mediation resulted in the Compliance Plan, which was approved by the Planning Board on June 15, 2006. The Compliance Plan called for significant improvements to the Town Center. These improvements were put forth by the developer, Newlands, in lieu of fines that either had been or were about to be imposed as penalties for the many violations. The Plan consisted of three Stages. Stages I and II allowed the construction of small portions of the development to move forward once they received Board approval. Stage III called for amendments to the Project and Preliminary Plans and a new site plan for the entire Clarksburg Town Center project (including changes to the previously approved Phase I and Phase II site plans and initial approval of the retail component) that would incorporate the specific elements set forth in the Compliance Program. These improvements, which staff estimated to be worth at least \$14.4 million, included items such as two structured parking garages containing 840 spaces in the retail area, an expanded and enhanced community pool facility, a grand staircase to connect the town center to Clarksburg United Methodist Church, and one million dollars for enhanced landscaping.

When the Compliance Plan was approved, it was understood that it was conceptual in nature, but only to the degree that the plans still had to be reviewed by all appropriate agencies to ensure compliance with applicable laws and regulations. Staff received the Plans for Stage III in April of 2007. These were reviewed by all of the agencies, and comments were given at a DRC meeting on July 9, 2007. After a year of what Staff perceived as inactivity, the Applicant resubmitted revised plans on May 19, 2008. Surprisingly, these new plans were not really a response to the DRC comments but instead presented significant changes from the April 2007 submittal. Apparently, the parties had not remained in complete agreement over the best way to move forward and had submitted a number of items to binding arbitration. The changes that came about as a result of the arbitrator's rulings made it necessary for all of the agencies to review the plans anew and to issue revised comments. Staff recognized that the new plans had to be evaluated not only for compliance with the code but also for conformance to the previously approved Compliance Program, which was particularly important since that program had been offered to resolve the many violations.

Unfortunately, the Applicant has been unwilling or unable to provide sufficient and adequate responses to many of the concerns raised by Staff and the other agencies, claiming that "we are bound by the order and direction of the Judge and ruling made for the Plan of Compliance." This had made it difficult for staff to resolve many issues prior to bringing the application to the Board. Staff could have simply recommended denial but did not wish to do so in light of the fact that more than three years have elapsed since the violations were first uncovered, and it is of the utmost importance to bring these hearings to a close so that construction of the community can

once again move forward. Therefore, staff has chosen to recommend approval of the plan but with numerous and lengthy conditions accompanied by a significant discussion of the major issues related to this project. Furthermore, Staff has developed a new phasing plan, providing timing mechanisms for the provision of certain site elements and infrastructure to assure the timely completion of all required amenities and features and provide some certainty for residents of the town center and the rest of Clarksburg.

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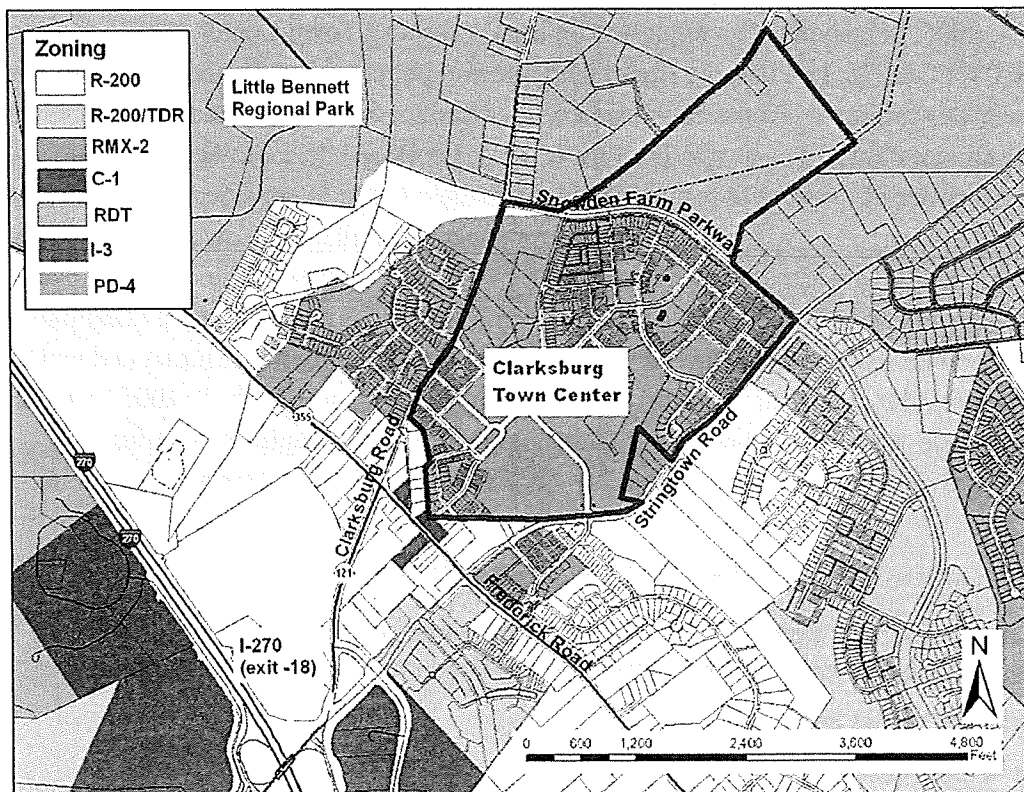
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SITE DESCRIPTION

The subject property is bounded by Snowden Farm Parkway (formerly Piedmont Road) to the north, Clarksburg Road (121) to the west and Stringtown Road to the south and east. Frederick Road (MD 355) is located toward the southwest, incorporating the historic district of Clarksburg. The town of Clarksburg and properties along MD 355 consist of R-200, C-1 and RMX-2 zoned properties. RDT zoned properties are located to the north and east of Snowden Farm Parkway.

The surrounding land uses consist of one-family residential dwellings on the west side of Clarksburg Road within the neighboring developments of Parkside (82003000), Clarksburg Ridge (20020310), and Catawba Manor (819980290). Further west and adjacent to Little Bennett park is the Woodcrest (82005009A) development, which incorporates the remainder of the western leg of Snowden Farm Parkway. Additional one-family residences pepper the road frontage along MD 355, Stringtown Road and Clarksburg Road. The proposed Piedmont Woods Park will make up a majority of the road frontage along the north side of Snowden Farm Parkway while Cedarbrooke Church maintains the remainder of the frontage at the intersection of Snowden Farm Parkway and Stringtown Road.

The larger communities of Clarksburg Village and Aurora Hills, zoned R-200 and PD-2, respectively, engulf a major portion of the property from Stringtown Road east and north to MD 27.



PROJECT DESCRIPTION

Background and Previous Approvals

The Clarksburg Master Plan and Hyattstown Special Study Area (“Master Plan”) was approved by the County Council in June of 1994. It called for the creation of a Town Center in Clarksburg, which would include the Historic District as a focal point and would be surrounded by a mix of uses, including office, residential, and retail.

In December of 1994, both a Project Plan (#919940040) and a Preliminary Plan (#119950420) were submitted for review by Piedmont and Clarksburg Associates. Using the optional method of development under RMX-2 zoning, the plan envisioned what is now known as a neo-traditional community and called for the construction of a maximum of 1300 residential units, 100,000 square feet of office, and 150,000 square feet of retail, to be constructed in phases. The Project Plan was approved in June of 1995 and the Preliminary Plan was approved in March of 1996.

The first site plan for Phase I (#819980010) was approved in 1998 and is situated primarily on the East side of the Town Center. The Phase II Site Plan (#820020140) was approved in 2002. By June of 2006, approximately 725 units of the approved 1,300 dwelling units had been built or were under construction in Phase I and II of the project. A Site Plan covering the Phase III (#820040340) retail portion was submitted but never approved.

On April 14, 2005, in response to a request from the Clarksburg Town Center Advisory Committee (“CTCAC”), the Planning Board held a hearing to consider alleged height violations at Clarksburg Town Center. At the conclusion of the hearing, the Board voted 4 -1 to approve a motion that no violation had occurred. On July 7, 2005, the Board held another hearing to reconsider its earlier decision with respect to height violations and to consider whether or not violations had also occurred with respect to front setbacks at Clarksburg Town Center. With respect to both height and setback, the Board voted 5 – 0 that violations had occurred. The Board then held a hearing on the same day to determine Sanctions and/or Plan of Compliance. The Board members unanimously agreed that units that were either under contract and under construction, or under contract but construction had not yet begun as of July 7, 2005 would be grandfathered. However, the remainder of the Sanctions/Plan of Compliance hearing was postponed to provide an opportunity for staff to correctly determine the number of units in violation.

CTCAC continued to allege additional violations as listed below:

- 1) Setback violations with respect to side and rear yards, as well as the minimum space required between end buildings for townhomes and multi-family dwellings;
- 2) Minimum net lot area;
- 3) Lot Width Minimum at Building Line;

- 4) Lot Coverage Standards for Accessory Buildings;
- 5) Elimination, Rerouting and/or Reduction in Size of Alleys and Roadways;
- 6) Changes to Blocks with respect to unit types and configuration without Planning Board Approval;
- 7) Changes in Grading from Signature Site Plan to Actual;
- 8) Modification of Environmentally-related Features;
- 9) Reduction in required green space;
- 10) Record Plat Irregularities;
- 11) Issues related to the Manor House Amendment;
- 12) Parking Requirements;
- 13) Elimination of "O" Street and the Pedestrian Mews;
- 14) Discrepancies regarding the Site Plan for Phase II;
- 15) Alteration of certain Clarksburg Town Center Documents;

In response, the Board held a series of violation hearings on some but not all of the above in the Fall of 2005. However, on November 25, 2005, the Applicant and CTCAC asked that the entire matter be referred to mediation. On December 2, 2005, the Planning Board suspended all violation hearings in the hope that the parties could come to an agreement that could be submitted to the Board for review and approval. The parties selected the Honorable Barbara Howe to serve as the mediator and worked, over the next five months, to reach a comprehensive Plan of Compliance.

Plan of Compliance

The Plan of Compliance that resulted from the mediation between CTCAC and Newlands was approved by the Board on June 15, 2006 (resolution mailed August 17, 2006). The Plan sought to remediate violations of the approved project plan and site plans while providing for additional amenities and significant improvements to the Clarksburg Town Center. The Plan was divided into three stages as follows: The first stage included those residential units in Phases I and II on which construction was allowed to proceed immediately, without further review by the Board. Stage II called for an interim review of certain units in Sections 2D and GG, and of Manor House Buildings 10, 11 and 12. Stage III called for an overall review of the entire site, including the modified project and preliminary plans, and a new site plan for the entire development including the as yet unapproved retail component. The Plan of Compliance represented a joint effort by CTCAC, the developer (Newland Communities) and builders (Bozzutto, Craftstar, Miller and Smith, NV and Porten Homes).

As shown in the excerpts below, the Plan was specific as to the elements to be provided:

“Mixed-Use Core including the Retail Center. This area will be substantially revised and improved. The majority of the retail will be located along pedestrian friendly streets instead of adjacent to a surface parking lot...The existing town green will be modified to include a plaza area, an open-air market building, and a smaller green area to serve as the central gathering area for the Clarksburg community....Structures adjacent to the grocery store will include retail or office space on the first floor with residential uses on the second and third floor.”

“Transportation and Mobility Plan – The Plan of Compliance retains the emphasis on constructing sidewalks, bikeways, and natural surface trails as proposed in the approved Project Plan. In addition, the Plan of Compliance will improve the balance of parking throughout the entire development. It includes a minimum of two parking structures with the retail core.”

“Compatibility Features – The landscaping plan will be augmented by \$1,000,000 to establish compatibility and improve the appearance of the development. These funds, in addition to other features, will be used to mitigate the impact of height and setback on existing units.”

FORMAL DISPOSITION OF VIOLATIONS AND RELATED FINDINGS IN THE PLAN

The following findings were approved by the Planning Board and included in the Plan of Compliance. Staff responds to the findings as they relate to the current applications.

FINDING 4.1

The Board finds that the public interest will be served by “grandfathering” (holding harmless) all dwelling units that are already constructed, under contract by, and/or occupied by innocent third-party purchasers, as of June 15, 2006 (the “Grandfathered Units”); provided, however, that the Grandfathered Units do not include any unit for which a contract was entered into after November 23, 2005, the date by which all stop work orders had been issued. The Board finds that the purpose and scope of such grandfathering by the Board is to remediate and resolve all findings of Violations as to the Grandfathered Units.

In accordance with Finding 4.1, the Board hereby orders that each of the Grandfathered Units that was the subject of any Violation shall be, and hereby is, deemed to be constructed and occupied in compliance with the County Zoning Ordinance notwithstanding such Violation, provided that nothing under this order of Resolution shall be construed to cure any violation of the Zoning Ordinance that either (a) is not grounded within the lawful jurisdiction of the Planning Board or (b) is not directly related to the Violations that fall within the scope of this Resolution.

This finding recognized that the units which had been built too tall or too close to the street would be “grandfathered” because most were now occupied by private homeowners, which made any remediation difficult. However, staff believes that the grandfathering applied only to the privately owned lots and only with respect to the many violations alleged. It did not apply to the common areas. Many of these common areas have not been completed as required by the originally approved plans. Because these areas have not been grandfathered, conditions have

been added to require additional landscaping as well as new materials such as brick paving in order to augment areas currently constructed. These modifications to the common areas are in addition to the \$1 million allotted to CTCAC for enhancement plantings.

FINDING 4.2

In accordance with the recommendations of staff, the Board finds that the public interest will be served by completion of the Compliance Program according to its terms because it provides substantial enhancements to community amenities and facilities planned for the area designated as the Clarksburg Town Center project and Montgomery County as a whole.

As amended by the conditions of approval, the Applicant will provide substantial enhancements to community amenities and facilities planned for the Town Center, including but not limited to the Residents' Club/Community Center, Murphy's Grove Pond, the Retail and Commercial Center, Piedmont Woods Park, Sinequa Square Park and additional landscaping and recreational facilities. However, Staff is concerned that several amenities, most notably parking, are not being provided as envisioned in the approved Plan of Compliance.

FINDING 4.3

In accordance with the recommendations of staff, the Board finds that, subject to its completion according to its terms and in accordance with this Resolution, the Compliance Program constitutes a lawful and appropriate alternative to imposing fines or monetary penalties in accordance with Section 59-D-3.6 (a)(4) of the Montgomery County Zoning Ordinance. The Board is persuaded that implementation of the Compliance Program will remediate and resolve all Violations.

The Application as submitted does not fully comply with all of the terms as specified in the Compliance Program, specifically with respect to the parking structures, amenities and materials associated with the retail center, playgrounds and the proposed phasing. Since this application is a continuance of the violation hearings, further penalties could result if the Applicant does not adhere to the new conditions, including the timing associated with the Phasing Plan presented herein, if these are approved by the Planning Board as part of this action.

FINDING 4.4

In accordance with the recommendations of staff, the Board finds that the modifications to the street network approved by the Fire Marshall of Montgomery County for purposes of public safety are in the public interest and are, therefore, incorporated into the approved Compliance Program.

As amended by the Applicant and in conjunction with the recommendations by the Fire Marshall, the Plan and modifications will satisfy public safety standards and is in the public interest. The modifications include the widening of some streets, establishing allowable on-street parking areas in the retail core, accounting for building heights with respect to the location of on-street parking, proper pavement material and signage.

Status of the Town Center

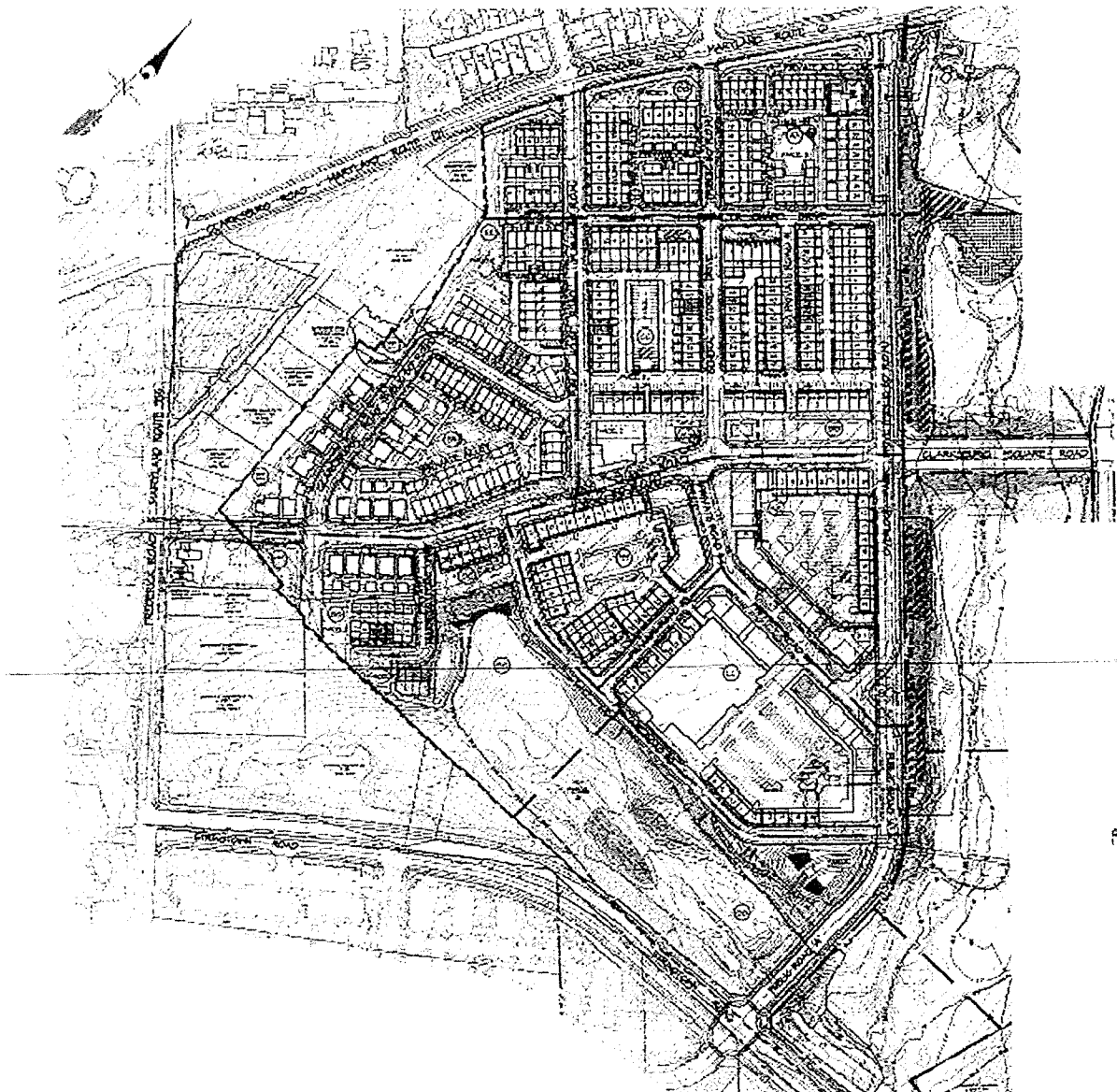
The original town center plans were approved for a total of 1,300 dwelling unit, 150,000 square feet of retail uses, and 100,000 square feet of commercial retail. A total of 725 dwelling units were built or under construction at the time the Plan of Compliance was approved. Subsequent to the Plan of Compliance, only 53 building permits have been released, bringing the total number of units/permits to 778. No retail has been approved or constructed in the Town Center. An elementary school was built in 2003 near the intersection of Clarksburg Road and Snowden Farm Parkway.

Currently, three vehicular access points (Public House Road, General Store Drive and Overlook Park Drive) exist from Clarksburg Road to the “West Side” of the Town Center and align with the developments on the west side of Clarksburg Road. No additional access is proposed to Clarksburg Road; however, a future road connection to MD 355 through the historic district and Stringtown Road is proposed with the current application. Public House Road is complete and connects with Clarksburg Square Road. Clarksburg Square Road will eventually be the primary east-west connector from MD 355 to Snowden Farm Parkway, but at this time it is only partially complete. Overlook Park Drive is constructed to the intersection with Ebenezer Square Drive. The remainder of the infrastructure east of Ebenezer Square Road is not complete, including the connection across the Greenway to the East Side.

Access to the “East Side” is comprised of two existing public roads from Stringtown Road (Clarks Crossing Drive and Brightwell Drive) and four points from Snowden Farm Parkway, including Clarks Crossing Drive, Burdette Forest Road, which provides frontage to the school, Murphy Grove Terrace and Catawba Hill Drive.

Required improvements to roads surrounding the community, most notably Stringtown Road and Clarksburg Road, have not yet been completed by the applicant.

Piedmont Woods Park is a new addition to the plans that was added as part of the Plan of Compliance. It is located on the north side of Snowden Farm Parkway. Under the original approvals, the parkland would have remained passive, with the responsibility for maintenance and liability falling on the Clarksburg Town Center HOA. As part of the Compliance Plan, it was agreed that an active recreational park would be created and dedicated to MNCPPC. The Park facilities, including basketball and tennis courts, multi-age playgrounds, picnic/seating areas a dog park and parking would be built by the applicant.



Applicant's image of the West Side development

DISCUSSION OF ISSUES

The current applications present various issues and concerns, some of which conflict with the approved Plan of Compliance, while other issues posed challenges to the design practices and the interpretation of the Montgomery County zoning Ordinance. The following discussion presents each issue, not necessarily in order of importance, including the positions taken by the Applicant, agencies and community, followed by Staff's position and recommendation.

I. Parking

Parking for the Town Center, specifically the retail component, is of great concern. The primary issues associated with the parking requirements include: either satisfying the zoning ordinance requirement for each use or incorporating a waiver if appropriate, satisfying the condition in the Plan of Compliance that clearly envisioned two structured parking garages in the retail core; correctly applying the provisions of the previous approvals for on-street parking; and ensuring that all on-site parking meets the highest standards relating to safety, functionality and design.

The Master Plan calls for the creation of a walkable, transit oriented community, which is a desirable goal, but, in reality, the Corridor Cities Transitway will not be built any time in the near future. Combine this with the fact that Clarksburg is situated in the northern part of the county in an area that is still primarily rural and it becomes clear that Clarksburg residents will continue to be somewhat car dependent for some time. At the same time, the neo-traditional, walkable nature of the Town Center's design should encourage residents within the community to walk or bike. Determining the appropriate level of parking has been challenging. Clearly, providing an overabundance of surface parking is problematical at best in a Special Protection Area, but a dearth of parking could lead to the failure of the retail core. The Board, in previous approvals, had already agreed that the code requirement of 5 spaces per thousand square feet of retail space could be reduced to 4.3 spaces per thousand square feet. The Board had also found that the required parking for the development could be met, in part, through the use of on-street parking spaces. When taken as a whole, the community does not have a parking shortage. 3,284 spaces are required by all of the uses; 3,572 spaces are provided. However, this figure includes 927 on-street parking spaces, a significant percentage since it represents more than 28 percent of the total.

If the East and West sides are analyzed separately, it quickly becomes apparent that the East Side, which is entirely residential except for the Residents Center/Pool Complex, easily meets its parking requirement because almost all of the residential units have two car garages. The only exceptions are the MPDU's which have a parking pad instead of a garage, and the four, multi-family manor houses. Of the more than 500 on street spaces available on the east side, only 17 are being counted toward the minimum parking requirement.

However, parking on the West side, which includes the retail center, is substantially deficient. If one looks at the West side alone, the number of parking spaces required for all uses is 1789

while the number being provided is 1605, a deficiency of 184 spaces. This number includes 372 on-street parking spaces and would require a waiver of more than 10%. If one figures the parking based on a ratio of only 4.3 spaces/1000 sq. ft. of retail space (a concept that the Board approved with the original project plan, but never confirmed for the retail area because no site plan for the area had come before the Board), then only 1653 parking spaces would be required on the West side and the necessary waiver drops to 3%, but this would actually constitute a waiver on top of a waiver since a reduction from 5 spaces per 1000 to only 4.3 spaces per thousand already constitutes a reduction of 14 percent of the required spaces.

Furthermore, if one looks just at the retail core, which the Board originally expected to approve as a separate site plan that would have to meet its own parking requirement, the deficiency becomes even greater. The retail core, as defined by staff¹, has a requirement of 1,257 spaces for both the residential and retail uses if one calculates the retail requirement at 5 spaces per 1000 sq. ft. of retail space and adds in the spaces required for the residential units. If the retail is calculated at 4.3 spaces per 1000 sq. ft., 1,120 spaces are required (a difference of 137 spaces). The applicant is providing only 903 spaces, including 183 on street spaces. This represents a waiver of almost 28 percent or 20% respectively. Moreover, those who live in the multi-family, live/work or attached units in the core need to have at least one designated space in which to park (even though 2 are required by code for single-family attached including the live/work units; 1.5 for multi-family). If one subtracts an additional 137 spaces (98 multi-family units, 22 live/work units, and 17 liner townhouses) from those available in the retail core, only 766 spaces, including those on street, would remain available for 194,720 square feet of retail. This is the equivalent of a 39 percent waiver at 5 spaces per thousand or a 32% waiver at 4.3 spaces per thousand.

Several other matters further complicate the parking issue. The first is that the numbers above do not take library parking into account at all. The applicant is dedicating the land for a two story structure that would accommodate 90 spaces, but the Department of Libraries does not expect to have the funds available to build a structured garage. If the library just builds a surface lot, it would contain only 45 spaces, so some library patrons would have to resort to either the parking lots in the retail core or on-street parking. Moreover, if the applicant is only required to designate one space for each of the residential units in the retail core, an additional 85 spaces on the street or in the garages may well be taken up by residents, not by shoppers. Finally, there is always the possibility that the number of available on street parking spaces will be reduced, either by Fire & Rescue or by DOT through permitting.

Community's Concerns

The community is concerned that the parking structures are integral to the pedestrian oriented, urban design of retail center and were an essential part of the Compliance Plan. Changing the

¹ Includes 194,720 square feet of retail (non-commercial), 51 live/work units, 98 multi-family units and 17 one-family attached units (in-line). The self-parked one-family attached units are not included.

parking structure in front of the grocery store from three levels to two and replacing the other parking structure with a surface lot has also significantly impacted the design of the retail core by reducing the depth of the retail stores from 60 to 50 feet, increasing the need for retaining walls, and causing the retail street to be designated “private” rather than “public” to allow the use of angled, rather than parallel parking. The community is also concerned that a shortage of parking will have an impact on the success of the retail area.

Applicant’s Position

The Applicant cites the Urban Land Institute’s SmartCode (Ver. 9.2) to argue that its plan meets the proper and practical parking requirement for a mixed-use center. The SmartCode espouses a concept known as the “Pedestrian Shed” which suggests that any parking within a five minute walk of one’s destination is acceptable. The exhibit provided by the Applicant indicates the 5-minute walking distance for residents within the town center. Based on the exhibit, a total of 1,464 parking spaces are required within the 5-minute walking distance described as the “Pedestrian Shed” and 1,791 spaces are provided, although some of these spaces are on the east side of the community.

The Applicant has stated that they sent out an RFP for development of the Retail Core to 30 possible builders, and that none of them expressed an interest in the project as proposed because of the cost of providing the two structured garages. According to the applicant, the retail will only move forward if one of the garages is eliminated.

The Applicant has indicated that if Staff does not allow credit for on-street parking on the East Side, then a waiver of the parking requirements is both necessary and appropriate to ensure a viable retail center and community.

The applicant is willing to designate one space for each of the multi-family units, live/work units, and liner townhouses within the retail core.



Applicant's exhibit of the parking allocated within the retail core (Blue -on-street spaces, Green - surface parking spaces, Red -garage spaces for the units and -garage for the grocery)

Staff Position

Staff does not support the Applicant's assertions that on-street parking on the East side should be credited to meet the parking required for the retail on the West side. Unfortunately, the greenway, while an attractive amenity, visually divides the two sides of the community, and it would not occur to shoppers coming from outside the town center to cross the land bridge traversing the greenway to find additional parking. Moreover, a five-minute walk is considerable if one is carrying groceries and other heavy packages. Staff even has concerns as to whether it is reasonable to expect patrons of the retail core to park on the nearby residential streets on the west side, and, if this occurs, whether it will limit parking for West side residents and the guests.

Below shows the Staff's Opinion (and understanding from the Board) as to the requirement for all elements of the Plan of Compliance to be provided. Later in time, Rose Krasnow left the Staff and others who followed in her place allowed elements to be eroded from the plan (comment by Amy Presley).

Moreover, it is clear that the Plan of Compliance required a minimum of two parking structures to accommodate parking needs in the retail core area. The estimated cost of Enhancements which was included in the Compliance Plan to show that the amenities being provided are sufficient to substitute for the fines that could have been collected specifically identifies:

Two Parking Garages in the Retail Core \$8,400,000

(840 spaces x \$10,000 additional cost per space)

Furthermore, although the applicant states that it may not be possible to find a developer for the retail if two structured garages are required, staff points out that the Plan of Compliance anticipated that Newlands would be responsible for the construction of the two garages as part of the amenities being provided in lieu of fines. The feasibility of developing the retail changes dramatically if the cost of constructing the two garages does not rest with the ultimate retail provider.

Staff analyzed numerous scenarios in computing the parking requirements for the mixed-use center, with an acknowledgement that some on-street parking should be used to foster pedestrian activity within the neighborhood and provide for a more urban setting within the retail core. However, Staff is concerned that insufficient parking will be a burden on the residents of the West Side and create a bad situation for residents and retailers living in the core area.

Staff Recommendation: Staff recommends providing a two-level parking structure in Parcel MM (presently indicating 163 surface parking spaces) for a minimum of 100 additional spaces within the parking structure. This structure is in addition to the 2-level parking garage currently comprised of 376 parking spaces. Staff further recommends providing one dedicated and reserved space for each live/work, multi-family and in-line unit within the retail core to be signed and marked for use solely by the resident of that space.

Staff supports a waiver of 20% with the understanding that 176 on-street spaces can be used for the retail core, one space is reserved for the residential component and the second garage is constructed with the additional 100 spaces.

II. Retail Center

The first plans submitted (but never approved) for the retail center were for a more suburban-style commercial development on the West Side of the Town Center. A large grocery store would be fronted by a sea of parking, with pads sites for uses such as a bank and a dry cleaner placed around the perimeter of the lot. As a result of the mediation, the retail center emerged as a more urban, pedestrian-oriented development that included a smaller grocery store with in-line multi-family and live/work units, street-level retail and a pedestrian friendly main street with wide sidewalks. These plans, submitted in April 2007, conformed to the approved Plan of Compliance. However, the plans for the retail center were revised as resubmitted in May 2008,

which, in turn, caused changes to the retail store widths, surface paving material, number and size of retaining walls and parking, among others.

The major changes to the respective plans include: 1) the elimination of one structured parking garage (replaced by a surface lot with a larger footprint) and reduction of the three-level garage associated with the grocery store to two levels (providing 6 more spaces than the 3 level structure because the footprint grew larger and ramps were eliminated) ; 2) reduction in the depths of the retail stores from 60 feet to 50 feet; 3) changing Road A through the retail core from public to private and replacing parallel parking with angled parking to capture a few more spaces; 4) revised building heights and 5) elimination of streetscape details such as brick paving.

Some of the changes to the retail component had a reciprocal effect on other site plan elements, such as widths of sidewalks, increased stream valley buffer encroachment, additional or expanded retaining walls and site dimensions.

Community's Concerns

The Clarksburg Town Center residents have expressed frustration about the lack of retail and shopping opportunities provided to them and the amount of time the process has taken to get approval for the remaining portion of the Town Center so that it can move forward. None of the residents of Clarksburg, including those who live in the Town Center, Clarksburg Village, Arora Hills and other new developments, have a commercial center nearby for shopping, eating and services to satisfy daily needs. The closest center is located in the Neelsville Shopping Center at Milestone in Germantown. Although Commercial Centers are currently planned for Clarksburg Village and Cabin Branch, they cannot move forward due to language in the Master Plan that envisioned "establishment" of a retail core in the Town Center prior to the start of the other centers. Therefore, several residents have urged that the Board accept the new plans.

Others have voiced concerns about the changes that have occurred in the retail core area as a result of the modifications to the parking structures. The shorter depth of the retail stores will make it harder to accommodate certain stores and restaurants. The larger footprints for the garage and new surface lot cause the retail core to extend into an area of greater slopes, leading to the need for retaining walls that will have to be maintained by the HOA. Sidewalks along the pedestrian street were altered as well, changed, becoming narrower in places. These residents feels strongly that these changes do not conform to the Compliance Plan.

Applicant's Position

The Applicant believes that the plans as submitted reflect, in concept, what was envisioned by the Planning Board and are consistent with the rulings handed down by the Judge during arbitration of the Plan of Compliance. The Applicant views the originally approved Compliance Plan primarily as a sketch that is conceptual in nature, and believes that the plan as modified should be approved.

Staff Position

Perhaps one of the most poignant statements that, legally, should still hold true today:

Staff does not view the Plan of Compliance as purely conceptual, but rather as a binding document that provides specific requirements for implementation. Indeed, when approving the Compliance Plan, the Board expressly ordered the Applicant “to comply strictly with each of the elements, terms and conditions of the Compliance Program.” Although plan details can change as an applicant responds to comments from reviewers during the site plan review process, that is not what has occurred here. The plans as proposed are not minor modifications to the plans, but significant deviations from the approved Plan of Compliance. Staff has recommended numerous changes, not all of which have been addressed, and has provided conditions that compensate for both the inadequate responses by the Applicant and lack of conformity with the approved Plan of Compliance.

The primary concerns with the current application include the lack of parking provided for the retail core, changes to the depths of the stores, poor pedestrian access to the grocery store, and changes to the retail center streetscape. .

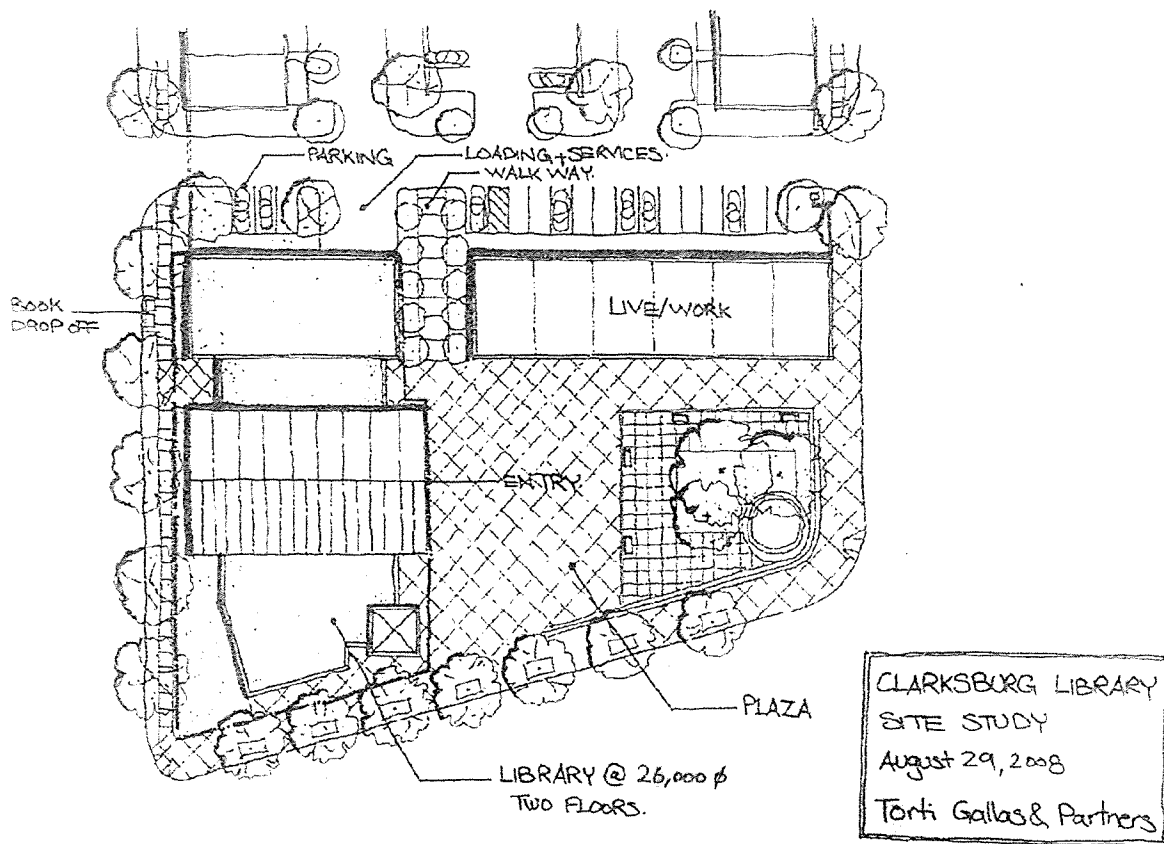
Staff Recommendation: Staff recommends that a secondary access to the grocery store be provided from Public Road ‘A’ (currently shown as Private Road #1) to offer increased visibility and assistance with activating the street-level retail; changing the proposed asphalt sidewalks to brick as found in other town centers; and restoring the two parking structures envisioned in the approved Plan of Compliance.

Landscaping (Grandfather provisions)

Landscaping and related amenities associated with the previously approved Landscape Plans for Phases I and II included features such as brick sidewalks, retaining walls, recreation equipment and landscaping. A number of the residents, as well as Staff from DPS and M-NCPPC have field verified discrepancies between the previously approved plans and the May 2008 as built plans submitted for review, and find that many of the elements were never constructed as required.

Community’s Concerns

The originally approved site plans required brick sidewalks, retaining walls and extensive landscaping, among other amenities. As demonstrated in the pictures that follow, many of the areas on the east side, such as Snow Hill (near Clarks Crossing and Clarksburg Square Road) lack the features originally required. The plans called for “special paving”; however, the recreation area was installed with concrete rather than brick paving, and the required retaining walls and much of the planting are nowhere to be found. Other areas, such as the alleys serving the townhouses, are devoid of plantings and the stamped asphalt treatment originally approved, providing little or no character to the common areas.



Location as submitted in September, 2008

Community's Concerns

The community as a whole has supported the location of the Library shown in the Plan of Compliance. Although recognizing that the site might be too small to provide a full service library, the alternative would require the removal of four 4 live/work units, which was seen as contrary to the Plan of Compliance.

Staff Position

The Library is a key feature to the success of the town center and should be designed in a manner that complements the future retail center, civic plaza and Town Green. Staff supports a larger library site with a revised building layout to better accommodate MCPL's needs. Staff does not support a surface parking lot immediately adjacent to the library because it would break up the street wall and would require reorientation of a number of the one-family attached units.

Staff Recommendation: Dedicate the area associated with the library site to include land originally proposed for 5 live/work units and area shown as "future parking structure by others" (total square footage of approximately 40,000 square feet), The applicant

should create a shareholders group consisting of MCPL, representatives of M-NCPPC, the Applicant and community members should be organized by the Applicant to address the best siting of the structure on the dedicated land, as well as the operational needs and design of the future library site.

IV. Clarksburg Square Road Connection

This proposal provides for the extension of Clarksburg Square Road from its current terminus at the western boundary of Clarksburg Town Center, through the Clarksburg Historic District to MD 355. The road connection will align with Redgrave Place opposite MD 355 and will require the relocation of the Horace Willson House (#13/10). This was the original alignment called for in the 1995 project plan approval. However, the Applicant did not own the portion of land that included the Horace Willson House, so could not commit to being able to complete the connection as indicated by the language below:

"If the ROW is available, construct Main Street to MD 355 within the Historic District prior to completion of Stage 3. At such time when the land is made available, share direct moving expenses only for relocating an existing house within the Historic District, and if the applicant and property owner agree, make available the identified outlot to be merged with a portion of the adjacent parcel so as to create another lot."

Initial efforts to secure this piece of property were unsuccessful, so the Plan of Compliance reflected a new configuration that showed the road, rather than the Willson house, being moved to the south, closer to the Clarksburg Store/Grill.. However, as a result of further discussions between DOT, the Applicant and the property owner, the latest plans once again reflect the original configuration, which is advantageous because the road connection will align with Redgrave Place.

Community's Concerns

Members of the Clarksburg Historic Society have voiced concern about the potential vehicular connection, the need to relocate the Horace Willson House, and the possible disruption to the historic setting and environment that could result from the traffic that will be generated by the new retail center. Some residents of the Town Center are also upset about the traffic that would be generated in front of their homes. They prefer a pedestrian connection in-lieu-of the vehicular access that was approved in the original Project Plan. Alternatively, if a decision is made to relocate the Horace Willson House, the community wants the entire house moved, not just the front portion that faces MD 355.

Applicant's Position

The Applicant is coordinating with the adjacent property owner of the Clarksburg Store/Grill because relocating the Horace Willson House so that the straight road alignment can be made does impact the store's gas pumps, parking and possible access associated with the store. The

Applicant has submitted a concept that indicates the realignment of the road, relocation of the house and reconfiguration of the site elements on the Clarksburg Store/Grill site.

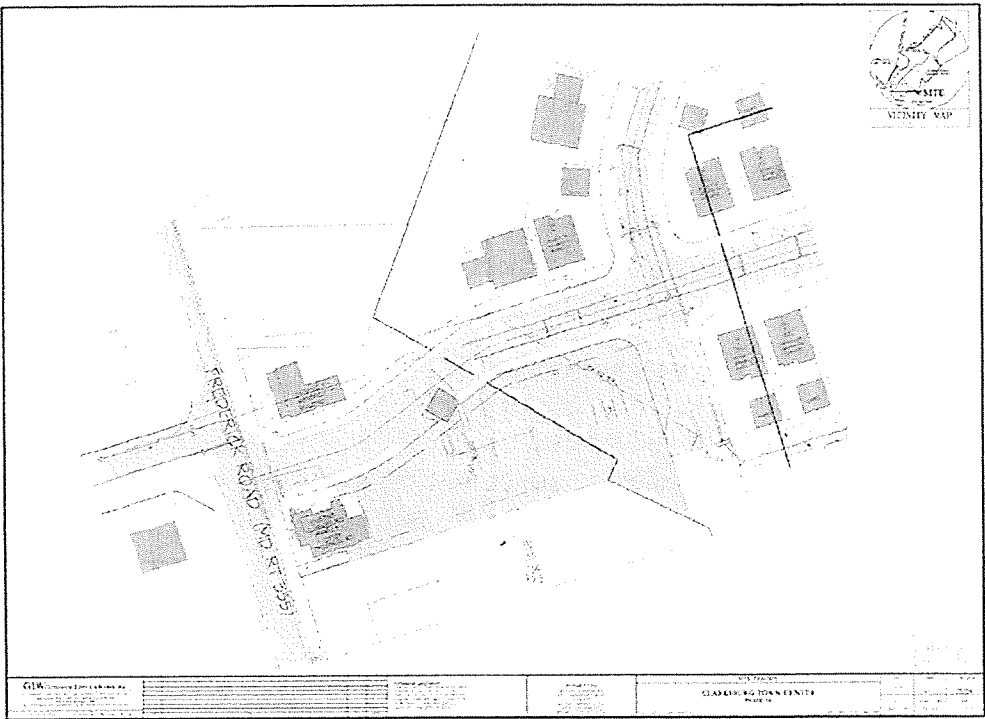
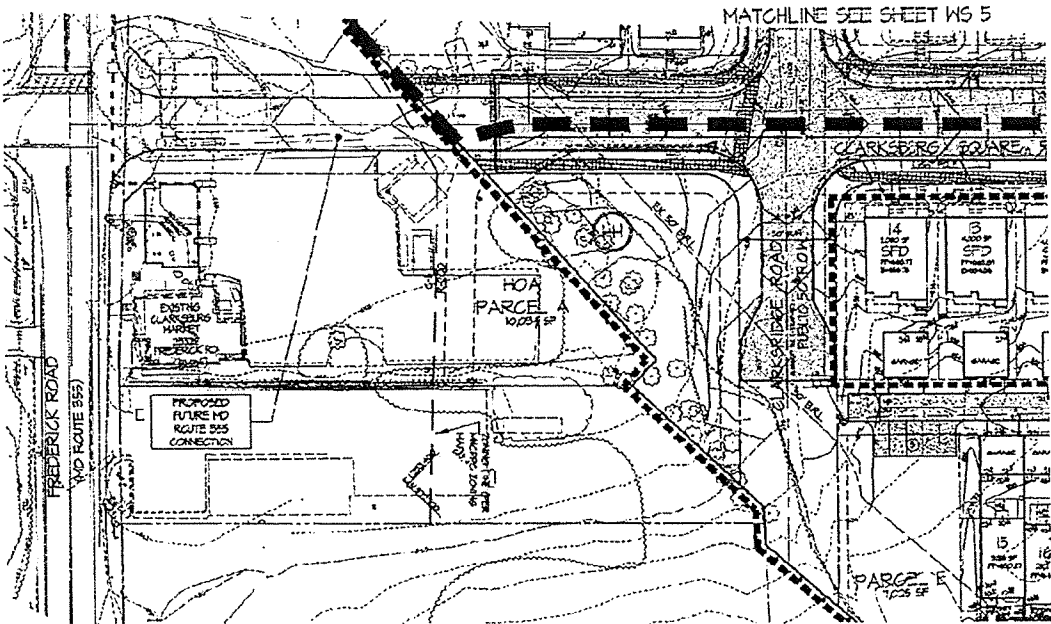


Image above indicates the previous concept showing the house to be retained and the road alignment moving to the south of the house. The image below indicates the current proposal.



Position of Historic Preservation Commission

The Historic Preservation Commission (“HPC”) received a briefing by Staff on August 13, 2008 to discuss the possible extension of Clarksburg Square Road and any potential issues with the relocation of the Horace Willson house. The alignment requires the relocation of the entire Horace Willson house from its present location to the south, adjacent to the Clarksburg Store/Grill. The house would retain its orientation to MD 355; however, the setback would be slightly reduced from the road. The HPC supported the relocation of the house and the straight configuration of the road to connect with MD 355, finding that it is consistent with the Vision of Clarksburg: A Long Range Preservation Plan, the Approved and Adopted Clarksburg Master Plan, Chapter 24A and the Secretary of the Interior’s Standards for Rehabilitation.

Staff Position

Staff supports the road connection and relocation of the Horace Willson house as now being proposed, even though it is not technically consistent with the Plan of Compliance, because it results in a better alignment of the road yet keeps the house in the Historic District in a similar location facing Rt.355. It is staff’s understanding that the Applicant will enter into a participation agreement with the Department of Transportation regarding this project, however DOT is not responsible for the relocation of the house.

Staff Recommendation: To permit the alignment of the future connection of Clarksburg Square Road to MD 355 so that it aligns with Redgrave Place and provides a vehicular connection through the Clarksburg Historic District. The Applicant shall relocate the entire Horace Willson house in order to accommodate the vehicular connection. The Applicant will be required to obtain a Historic Area Work Permit (HAWP) for the infrastructure and relocation of the house.

V. Location of Bike Path

The location of the 8-foot-wide hard surface bike path was submitted and approved on the east side of Overlook Park Drive and adjacent to the Greenway during the site plan review for Phase I (819980010). The trail is intended to provide an important bicycle and pedestrian link through along the north south access from MD 121 to Stringtown Road and will connect in the future to the planned Greenway trail throughout Clarksburg. Originally, this hardscape path was going to be located within the greenway in Clarksburg Town Center, but environmental staff found this to be environmentally unsound, so the trail was moved to its current site along Overlook Park Drive. Although DOT had agreed to this location with the earlier site plan approvals, they no longer want to be responsible for maintaining the trail. This resulted in a recommendation to narrow the right-of-way for Overlook Park Drive from 60 feet to 53 feet and to place the bike path within a separate HOA parcel or make it part of the Greenway to be owned and maintained by the M-NCPPC.

PROJECT ANALYSIS

Master Plan

The town center is located within the Clarksburg Master Plan and Hyattstown Special Study Area. The Master Plan outlines ten policies that were intended to transform Clarksburg into a transit and pedestrian-oriented town surrounded by open space. The Master Plan provides eight policy objectives that offered guidance on the shaping of the Town Center, which are outlined in the Staff Memorandum [Attachment D]. The following is a summation of how the Plans as revised meet the policy objectives of the Master Plan:

➤ **Policy 1: Create a Town Scale of Development**

The proposed plan provides opportunities to reinforce the Master Plan's vision by proposing a transit- and pedestrian-oriented community located in a natural setting with the Town Center as the focus of community life. It also conforms to the Master Plan's vision by proposing a traditional neighborhood designed with street facing residential units.

➤ **Policy 2: Natural Environment**

The proposed plan retains a forested buffer along all streams. Existing mature trees will be preserved and augmented, and a "no net loss" of wetlands policy has been established. The plan replaces one large condominium building with townhouses and a green area. Additional landscaping is being provided around the Murphy's Grove stormwater management pond, along Overlook Park Drive adjacent to the retail core and around stormwater management pond No. 2, and adjacent to the single-family detached units located near stormwater management pond No. 3. In addition to landscaping, a seating area and a trail connecting to the town plaza are provided in the proposed plan.

➤ **Policy 3: Greenway Network**

The proposed plan provides a natural surface trail system within the Master Plan greenway and recreational bikeway facilities that will connect to major parklands surrounding Clarksburg.

➤ **Policy 4: Transit System**

The proposed plan includes the Master Plan alignment for Redgrave Place Extension (Clarksburg Square Road) and the relocation of the Horace Willson House from its current location to a site slightly to the south, adjacent to the Clarksburg Store/Grill. This plan provides pedestrian and vehicular access between the Clarksburg Town Center and the Town Center Transit Station, as recommended in the Master Plan.

➤ **Policy 5: Hierarchy of Roads and Streets**

The proposed plan includes an extensive network of interconnected streets to provide local access within neighborhoods. The road layout offers an appropriate transitional mix of roads.

➤ **Policy 6: Town Center**

The proposed plan establishes a strong identity for the new mixed-use core with a traditional town character as recommended in the Master Plan. The neo-traditional layout of the community compliments the character of the Historic District. The proposed plan combines civic uses, such as the new Clarksburg Library, with a community plaza and open-air market building, a Town Green for civic and community use, upgrades to Murphy's Grove Pond, a memorial to the Clark family, a redesigned Sinequa Square Park, and the creation of Piedmont Woods Park as an active amenity for Clarksburg residents.

➤ **Policy 7: Transit- and Pedestrian-Oriented Neighborhoods**

The proposed plan includes a mix of retail, residential and civic uses all clustered within the mixed-use core. The proximity and density of the various uses encourages pedestrian travel and increases the potential for nearby employment as recommended in the Master Plan. Mixing retail and residential uses in the same buildings means that residents will have easy access to goods and services and furthers the Master Plan goal that discourages the separation of uses.

Streets interconnected to create a network of sidewalks will allow pedestrian movement from the developed residential portions of the Town Center to the new retail core, to the Clarksburg Historic District and to Clarksburg United Methodist Church. Also, a diverse mix of housing is being provided to foster a strong sense of community for a variety of incomes and households. Finally, a pedestrian friendly environment is achieved by creating human scale streetscapes. To provide a pedestrian-oriented community, buildings are clustered with their facades pushed toward the street.

➤ **Policy 8: Employment**

The proposed plan incorporates additional retail within an interconnected five block area as envisioned in the Master Plan.

Master Plan Land Use Plan

The proposed plan meets the land use objectives of the Master Plan as follows:

- **Create a Town Center which will be a strong central focus for the entire Study Area.**

The proposed plan establishes a strong identity with a traditional town character as called for in the Master Plan by including the Clarksburg Library, civic plaza and open-air market building to serve as the central gathering area. The library located in the civic plaza area, will be a central feature of the community that will strengthen the Town Center concept by drawing other Clarksburg residents to the area, particularly if the construction of the library with nearby parking should be coordinated with the construction of the retail core. The Applicant should continue coordination with

Montgomery County Public Libraries to ensure that the library's design features coordinate with the look of the overall retail area. Since this would be a public/private effort, staff would like to retain site plan authority for the library site.

- **Encourage a mixed-use development pattern in the Town Center to help create a lively and diverse place.**

The proposed plan is generally consistent with the guidelines in the Clarksburg Master Plan for the mix of residential units. Although it provides more single-family attached units than the approved Project Plan, it provides for numerous live/work units and eliminates one multi-family condominium building on the East side. The proposed plan includes a variety of unit types, mixed-use buildings with residential above retail, live/work units (which will be conveyed as fee simple units), and street facing retail with structured and surface parking areas.

The Master Plan states in terms of commercial uses, "a retail designation is proposed east of the Historic District as part of a large-scale mixed-use neighborhood. By incorporating the retail center proposed into a larger planned development, there will be a greater opportunity to assure a strong integration of the retail center to adjoining residential and public uses and to assure a compatible relationship to the Historic District. A maximum square footage of the retail center is proposed (up to approximately 150,000 square feet)."

The proposed plan better achieves this goal by increasing the amount of retail space, improving the orientation of buildings to Overlook Drive, and reducing the size of the proposed grocery store. The proposed plan also provides live/work units along Clarksburg Square Road to serve as a transition between MD 355 and the retail area.

- **Assure that future development around the Historic District complements the District's scale and character.**

The proposed plan includes the Master Plan alignment for Clarksburg Square Road (Redgrave Road Extended) to MD 355 and the relocation of the historic Horace Willson House. The scale, character, and location of the connection will be carefully addressed to protect the Historic District by the Historic Preservation Commission through the Historic Area Work Permit (HAWP) process. Also, the proposed plan provides a much better pedestrian connection from the Town Center to Clarksburg United Methodist Church.

- **Provide a Variety of Open Space Features**

The proposed plan includes an improved design for the central greenway network with sidewalks, bikeways, and increased landscaping. It includes improved recreational facilities for the 70-acre Piedmont Woods Park, such as a dog park and hiking trails. It

[illegible]

April 2009

GENERAL DEVELOPMENT STANDARDS

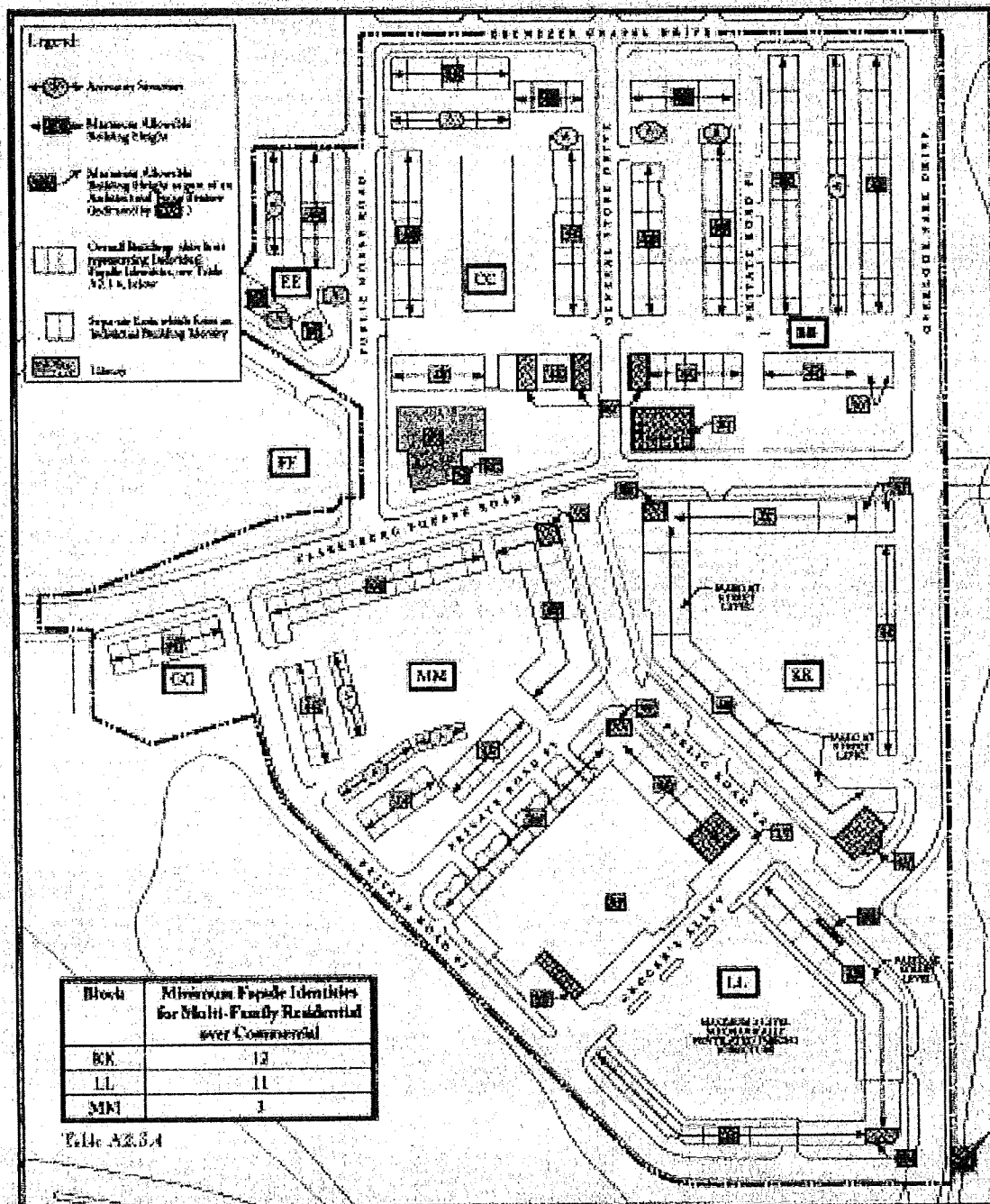
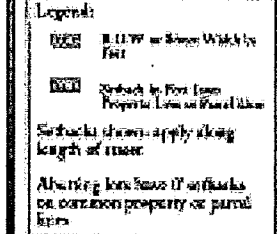


Figure 5.8.3.4 - Building Height

GENERAL DEVELOPMENT STANDARDS



July 2008



STAFF RECOMMENDATION FOR PROJECT PLAN: Approval of Project Plan 91994004B for 194,720 square feet of commercial, which includes up to 69,720 square feet of specialty retail; and 1, 213 residential dwelling units, including 152 MPDUs, and a waiver to permit a reduction in the number of parking spaces, and reconfirmation of a reduction in setbacks from adjoining properties, on approximately 270 acres, with the following conditions:

1. Development Ceiling

The proposed development shall be limited to the following uses:

- a. A maximum of 194,720 square feet of commercial including up to 69,720 square feet of specialty retail (125,000 sf street level, 14,000 sf mezzanine, 48,000 sf 1st floor live/work, 7,720 sf 2nd floor flex)
- b. A maximum of 1, 213 residential dwelling units to include 219 one-family detached, 656 one-family attached (includes the live/work units) and 338 multi-family dwellings.

2. Building Height/Mass

The height of the proposed buildings for the uses described shall not exceed the maximum permitted height as follows:

One-family detached	45 feet
One-family attached	44 feet
Liner Townhouses/Duplex Courtyards	44 feet (Architectural focus feature permitted to 55 feet)
Multi-family	44 feet
Live/Work Units	44 feet (Architectural focus feature permitted to 50 feet)
Retail/Commercial	44 feet (Architectural elements permitted to 55 feet)
Grocery	35 feet
Civic Building	45-65 feet
Parking Structure	2-level (35 feet)

3. Live/Work Units

- a. Live/Work units will be recorded as fee-simple. The first story must be built to commercial standards. Although the first floor may be used as residential space by the fee simple owner, it may not be leased as a second residential unit.

4. Moderately Priced Dwelling Units (MPDUs)

The Applicant shall provide 12.5 percent MPDUs on-site, consistent with the requirements of Chapter 25A.

5. Civic Space (Library Site)

- a. The Applicant shall comply with the letter dated October 7, 2008 from Montgomery County Department of General Services.

- b. Dedicate the originally associated with the library site, plus the area of the adjacent 5 live/work units (one of the five units will be relocated to the adjacent stick of live/work units) and the area shown as “future parking structure by others”. This concept, which was provided by the Applicant would satisfy many of the concerns voiced by the Department of General Services and should be implemented, although a study of the entire block for building layout, orientation, parking, access, design, function and operations is still needed. A shareholders group consisting of MCPL, representatives of M-NCPPC, the Applicant and community members should be organized by the Department of Libraries to determine the best way to address the location, operational needs and design of the future library site.

6. Clarksburg Overlook Connection

- a. The Applicant shall provide for the future connection of Clarksburg Square Road to MD 355 in order to align with Redgrave Place and provide a vehicular connection through the Clarksburg Historic District, if the right-of-way becomes available.
- b. The Applicant shall relocate the entire Horace Willson house in order to accommodate the vehicular connection. The Applicant will be required to obtain a Historic Area Work Permit (HAWP) for the infrastructure and relocation of the house.

7. Parking

- a. The Applicant shall provide a two-level parking structure in Block MM (presently indicating 163 surface parking spaces) for a minimum of 100 additional parking spaces within the parking structure. The Applicant is receiving a 20 percent waiver using a 4.3 ratio percent ratio of parking spaces per 1,000 square feet.
- b. The Applicant shall provide one dedicated parking space for each live/work, multi-family and in-line (one-family attached) unit within the retail core to be signed and marked for use solely by the resident of the space.

8. Staging of Amenity Features

- a. The proposed project shall be developed in accordance with the phasing plan outlined in the Site Plan section under Development Program-Phasing.
- b. A detailed development program shall be developed with the Site Plan to include installation of landscaping, lighting, recreation facilities and amenities.

9. Maintenance and Management Organization

The Applicant shall form a retail maintenance organization, separate from the residential Homeowner’s Association, but under the same umbrella, to provide for maintenance and operations of the retail core area, non-standard elements in the street right-of-way and on the private streets and amenities.

requirement, and if some alternative, lawful conditions or plan revisions related to the severed term, condition, or requirement are then required.

- 9) This Preliminary Plan will remain valid until March 26, 2011, and prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.
- 10) The Adequate Public Facility (APF) review for the preliminary plan will remain valid until March 26, 2014.
- 11) The Applicant must dedicate approximately 40,000 sq. ft. of land to Montgomery County for a library or other civic building site and related parking.
- 12) Record Plat and Certified Site Plan must reflect a public ingress/egress easement over Parcel F, Block EE to provide access from Clarksridge Road to Clarksburg United Methodist Church. This parcel may be conveyed by the Applicant to the Church or to the Homeowner's Association.
- 13) The following previous conditions of approval for Preliminary Plan 119950420 as contained in the Planning Board Opinion dated March 26, 1996, remain in full force and effect:
 - a. Agricultural areas within the environmental buffer will be taken out of production and stabilized with a suitable grass cover no later than Spring, 1996.
 - b. Dedication of the following roads as shown on plan must be provided as follows:
 - i. Clarksburg Road (MD RT 121) for ultimate 80' right-of-way.
 - ii. Piedmont Road (Master Plan A-305) for ultimate 80' right-of-way.
 - iii. Stringtown Road (Master Plan A-260) for ultimate 120' right-of-way.
 - c. Dedication of the proposed park/school, as shown on the Applicant's revised preliminary plan drawing, is to be made to M-NCPPC. In order to facilitate the implementation of the combined park/school facilities, the following provisions apply
 - d. M-NCPPC and the Applicant will enter into an agreement specifying that an exchange of land, identified as areas "B1" and "B2" on the park/school concept drawing set out on Circle Page 49 of the staff report, will occur prior to the execution of the Site Plan Enforcement Agreement.
 - e. Dedication of the approximately 8 acre area, identified as area "A" on the same park/school concept drawing identified above, will occur either at the time of recordation of the plats for the adjacent phase of the project or at such time as funds for construction of the future elementary school are added to the County CIP, whichever occurs first.

of reforestation and afforestation areas as well as through street tree credits. The planting is in addition to the existing forest being preserved on site.

Water quality plans are required as part of the Special Protection Area regulations. Under the SPA law, Montgomery County Department of Permitting Services (DPS) and the Planning Board has different responsibilities in the review of the water quality plan. DPS conditionally approved the elements of the final water quality plan under their purview on July 1, 2008. The Planning Board responsibility is to determine if the forest conservation requirements, environmental guidelines for special protection areas, and site imperviousness requirements have been satisfied.

The proposed stormwater management concept and final water quality plan consist of on-site channel protection measures via thirteen extended detention dry ponds. These structures will provide channel protection measures via existing stormwater management ponds; on-site water quality control via sand filters, Stormfilters, biofiltration, and infiltration trenches; and on-site recharge via recharge trenches and additional storage below the surface sand filters. Stormwater management in the RDT zone area, outside the Special Protection Area, consists of on-site water quality control and on-site recharge via the use of biofiltration and non-structural measures. Channel protection volume is not required because the one-year post development peak discharge is less than or equal to 2.0 cfs.

RECOMMENDATION AND CONDITIONS

Staff recommends approval of Site Plan 820070220, Clarksburg Town Center, for 194,720 square feet of commercial, which includes up to 69,720 square feet of specialty retail; and 1, 213 residential dwelling units, including 152 MPDUs, and a waiver to permit a reduction in the number of parking spaces, and reconfirmation of the previously approved reduction in setbacks from adjacent residentially-zoned properties, on approximately 270 acres. All site development elements shown on the site and landscape plans stamped "Received" by the M-NCPPC on September 15, 2008, are required except as modified by the following conditions:

1. Project Plan Conformance

The proposed development must comply with the conditions of approval for Project Plan 91994004B included herein.

2. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for Preliminary Plan 11995042A, or as amended by the Planning Board during the November 6, 2008 hearing.

3. Plan of Compliance

The proposed development must comply with the conditions of approval for the Plan of Compliance Resolution dated August 17, 2006, or as amended by the Planning Board during the November 6, 2008 hearing.

4. Retail Center

- a. The Applicant shall construct the proposed retail center as shown on the approved plans submitted to the Planning Board, or as amended by the Planning Board during the hearing.
- b. The cost of the parking structures associated with the retail center shall be incurred by the Applicant.
- c. A minimum of one parking space must be dedicated and signed for all live-work and multi-family units within the mixed-use core area, which includes Blocks KK, LL and MM. The dedicated spaces shall be signed and posted restricting parking to the retail tenants, unless the tenant and owner of the live/work and multi-family units are the same. These dedicated spaces must not include the on-street parking.
- d. A second pedestrian entrance to the grocery store must be provided near the intersection Private Road #2 and Private Road #1 to facilitate pedestrian traffic and visibility.
- e. Provide dedicated parking spaces for the one-family attached units, including the MPDUs in Block GG.
- f. Provide a disclosure statement to future residents/retailers that will be provided dedicated/reserved parking spaces. A copy of the disclosure statement must be provided to the M-NCPPC prior to the release of the building permits for those uses.

5. Recreation Facilities

- a. The Applicant shall meet the square footage requirements for all of the applicable proposed recreational elements and demonstrate that each element is in conformance with the approved M-NCPPC Recreation Guidelines.
- b. The Applicant shall provide the recreation facilities shown on the Overall Recreational Facilities Plan Exhibit.

6. Parking

- a. The Applicant shall provide a two-level parking structure in Block MM (presently indicating 163 surface parking spaces) for a minimum of 100 additional parking spaces within the parking structure. The Applicant is receiving a 20 percent waiver using a 4.3 ratio percent ratio of parking spaces per 1,000 square feet.
- b. The Applicant shall provide one dedicated parking space for each live/work, multi-family and in-line (one-family attached) unit within the retail core to be signed and marked for use solely by the resident of the space.

7. Environmental

The proposed development shall comply with the staff recommended conditions of approval for the final forest conservation plan, as per the letter dated October 6, 2008 and the conditions of approval from the Final Water Quality Plan dated October 8, 2006:

- a. Compliance with the conditions of approval of the Final Forest Conservation Plan dated December 27, 2004 and amended July 24, 2006.

Exhibit G

Resolution No.: 16-1487
Introduced: September 28, 2010
Adopted: September 28, 2010

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By County Council

SUBJECT: DOT Docket No. AB722
Abandonment – Portion of Clarksridge Road
Clarksburg Town Center Subdivision
Clarksburg, Maryland

Background

1. By letter dated October 15, 2008 from Linowes and Blocher on behalf of its client, NNP II-Clarksburg LLC, the Applicant, a request was made to the County to abandon a portion of Clarksridge Road, Clarksburg Town Center Subdivision, Clarksburg, Maryland.
2. A Public Hearing to consider the abandonment proposal was held on January 28, 2009 by the designee of the County Executive.
3. Washington Gas objected, unless granted easements.
4. Washington Suburban Sanitary Commission has facilities within the right-of-way and, therefore, will require easements.
5. Allegheny Power did not respond within sixty (60) days from receiving notice and, therefore, concurrence is presumed.
6. The Police Department did not respond within sixty (60) days from receiving notice and, therefore, concurrence is presumed.
7. Verizon did not respond within sixty (60) days from receiving notice and, therefore, concurrence is presumed.
8. The Montgomery County Planning Board recommended approval conditioned upon granting any necessary access and public utility easements.
9. The Department of Fire and Rescue Services had no objections.

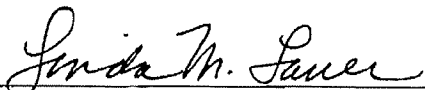
10. The Department of Transportation recommended approval with conditions for filing a new record plat: 1) record plat must refer to decisions of the County Council and the Planning Board; 2) right-of-way dedications and public utility easements for the reconfigured roadways must conform to the Planning Board's approved plan amendments; 3) the Applicant is responsible for relocating and/or adjusting any parts of the public storm drainage system and/or traffic signal system that might be impacted by the reconfiguration of the subject roadways.
11. ~~The County Executive recommends approval of the proposed abandonment with conditions.~~

Action

The County Council for Montgomery County, Maryland finds that the subject portion of Clarksridge Road within the Clarksburg Town Center Subdivision is no longer necessary for public use, pursuant to Section 49-63 of the Montgomery County Code, and approves the abandonment, subject to the following conditions:

1. Applicant must grant any necessary access and public utility easements and relocate any such public utility facilities, if necessary, at its expense and grant easements.
2. Applicant must file a new record plat: 1) record plat must refer to decisions of the County Council and the Planning Board; 2) right-of-way dedications and public utility easements for the reconfigured roadways must conform to the Planning Board's approved Plan of Compliance amendments; 3) the Applicant is responsible for relocating and/or adjusting any parts of the public storm drainage system and/or traffic signal system that might be impacted by the reconfiguration of the subject roadways.
3. The Applicant must bear all costs for the preparation and recordation of all necessary legal documents and plats.
4. The County Attorney must record among the Land Records of Montgomery County, Maryland a copy of this Resolution approving the abandonment of the subject area.
5. Any person aggrieved by the action of the Council for abandonment may appeal to the Circuit Court within 30 days after the date such action is taken by Council.

This is a correct copy of Council Action.



Linda M. Lauer, Clerk of the Council

CURVE TABULATION						
CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	Lt. 45.00'	30.71'	15.98'	30.12'	S 63°44'45" W	39°06'22"
C2	Lt. 18.00'	28.27'	18.00'	25.46'	N 89°11'34" E	90°00'00"
C3	Lt. 18.00'	28.27'	18.00'	25.46'	N 00°48'26" W	90°00'00"
C4	Rt. 105.00'	25.24'	12.68'	25.18'	N 51°04'48" E	13°46'27"
C5	Lt. 18.00'	21.85'	12.50'	20.53'	S 80°34'33" E	69°32'15"
C6	Rt. 105.00'	91.82'	49.08'	88.93'	N 89°42'30" E	50°06'21"

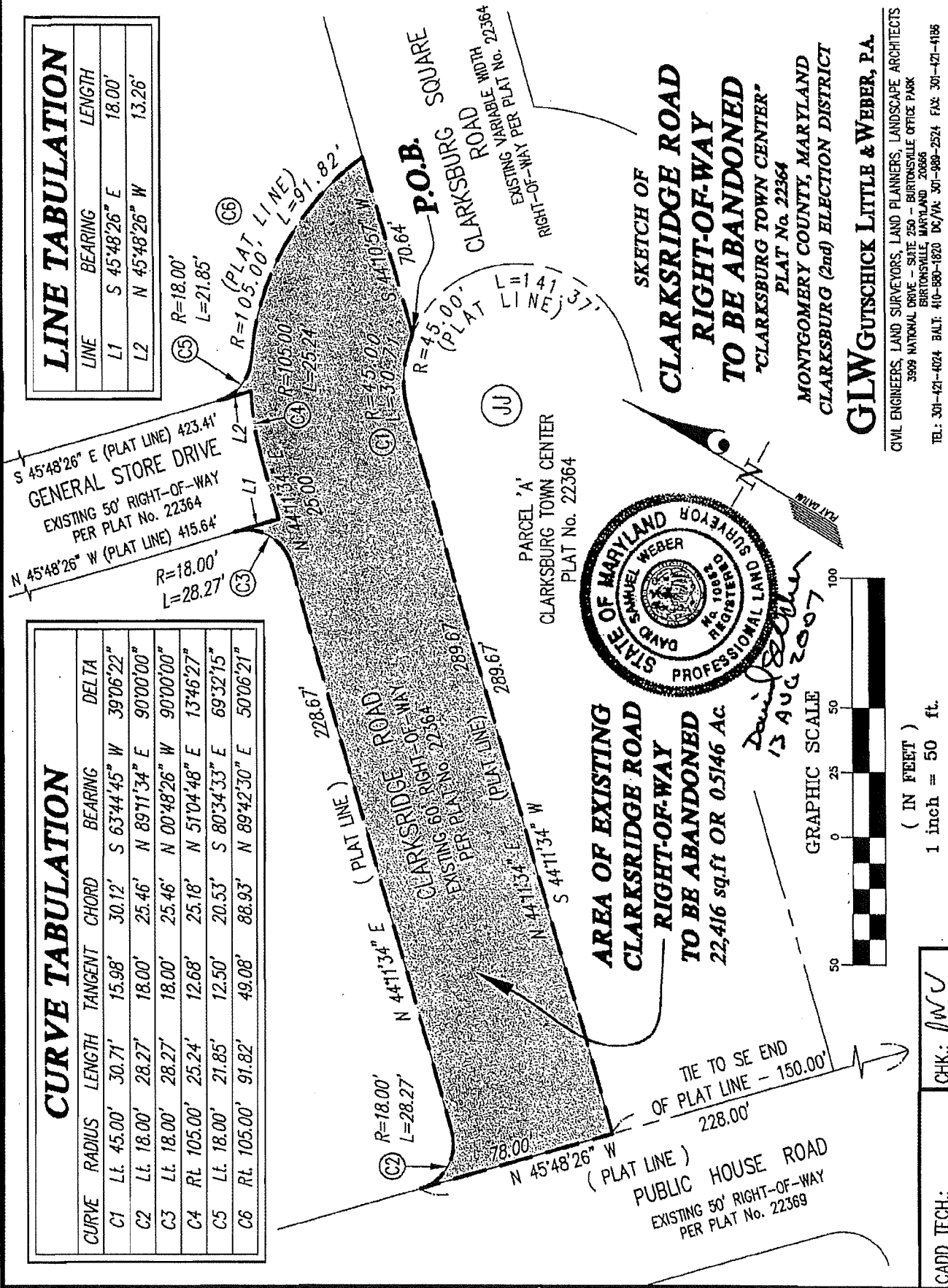


Exhibit H

42924 052

RETURN TO:

Fenton Title Company
18310 Montgomery Village Avenue
Suite 400
Gaithersburg, Maryland 20879

MONTGOMERY COUNTY, MD

APPROVED BY 10

DEC 23 2011

\$ - 0 - RECORDATION TAX PAID
\$ - 0 - TRANSFER TAX PAID

THIS DEED

Made this 19 day of December, 2011, by and between **NNP II-CLARKSBURG, LLC**, a Delaware limited liability company (formerly known as Terrabrook Clarksburg, L.L.C.) ("**Grantor**"), party of the first part, and **THIRD TRY, L.C.**, a Maryland limited liability company ("**Grantee**"), party of the second part:

WITNESSETH, that in consideration of the sum of **One Dollar (\$1.00)** and other good and valuable consideration, receipt of which is hereby acknowledged, the said party of the first part hereby grants and conveys unto the party of the second part in fee simple all that property situate in Montgomery County, Maryland described as:

**SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART
HEREOF DESCRIBING VARIOUS LOTS AND PARCELS OF LAND IN
TEN PARTS**

Subject to covenants, conditions and restrictions of record.

BEING the a portion of the property conveyed to Terrabrook Clarksburg, LLC, a Delaware limited liability company by Clarksburg Land Associates L.L.P., a Maryland limited liability limited partnership, and Piedmont Land Associates L.L.P., a Maryland limited liability limited partnership pursuant to a Special Warranty Deed dated February 4, 2000 and recorded among the Land Records of Montgomery County, Maryland in Liber 17685, folio 495.

IMP FD SURE	40.00
RECORDING FEE	75.00
TOTAL	115.00
Res# M006	Rcpt # 16988
LEK NVE	B1k # 6660
Dec 27, 2011	11:46 am

2011 DEC 27 AM 11:53

FILED
LORETTA E. KNIGHT
CLERK'S OFFICE
MONTGOMERY COUNTY, MD.

3075

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

TOGETHER with all right, title and interest of the Grantor in the land lying in the bed of any street, road, or highway (open or proposed) in front of, adjoining or servicing the Property.

TO HAVE AND TO HOLD the property described above, to the Grantee, its successors and assigns, in fee simple.

SUBJECT TO all easements, encroachments, rights of way, site plans, development plans and agreements, subdivision plats, and other matters of every kind and nature which are of public record or are discernible from a visual inspection of the Property.

AND the Grantor hereby covenants that it will warrant specially the property hereby granted, and that it will execute such further assurances of the same as may be requisite.

(signature appears on following page)

42924 054

SIGNATURE PAGE OF DEED FROM NNP II- CLARKSBURG, LLC
TO THIRD TRY, L.C.

IN TESTIMONY WHEREOF, the said **NNP II- CLARKSBURG, LLC**, a
Delaware limited liability company, hath on the 19 day of December, 2011,
caused these presents to be signed by Keith Hurand its Vice President

GRANTOR:

WITNESS:

NNP II - CLARKSBURG, LLC
a Delaware limited liability company
formerly known as Terrabrook
Clarksburg, L.L.C.

Tracy Z. Hauer

By:

[Signature]

(SEAL)

Name: Keith Hurand

Title: Vice President

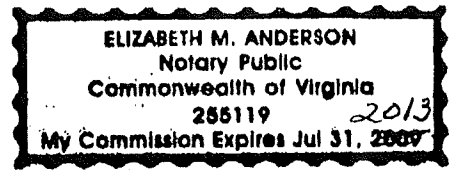
COMMONWEALTH/STATE OF Virginia
CITY/COUNTY OF Lancaster to wit:

I HEREBY CERTIFY, that on this 19 day of December, 2011,
before me, the subscriber, a Notary Public of the State aforesaid, personally
appeared Keith Hurand, the Vice President of **NNP II - CLARKSBURG, LLC**,
the within Grantor, known to me or satisfactorily proven to be the person whose
name is subscribed to the within instrument and he acknowledged that he, being
authorized so to do, executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Elizabeth M. Anderson
Notary Public

My commission expires: 7/31/13



42924

055

By the execution of the Deed, the party of the first part hereby certifies under the penalties of perjury that the actual consideration paid or to be paid, including the amount of any mortgage or deed of trust outstanding, is in the sum total of \$1.00.

I hereby certify this instrument was prepared under my supervision and that I am an attorney duly admitted to practice before the Court of Appeals for Maryland.



Louis S. Pettey

Tax ID: See Exhibit A

Title Insurer: None

Buyer: c/o Elm Street Communities, Inc.
1355 Beverly Road, Suite 240
McLean, VA 22101

Seller: c/o Newland Real Estate Group, LLC
16 Windy Knoll Circle
Chapel Hill, NC 27516

Return to: Fenton Title Company
Montvale Center
18310 Montgomery Village Avenue
Suite 400
Gaithersburg, Maryland 20879

EXHIBIT "A"
LEGAL DESCRIPTION

PART ONE OF TEN

A parcel of land containing 52,783 square feet or 1.21 acres of land more or less, formerly known and described as Land Unit numbered Two (2) in the condominium subdivision known as CLARKSBURG TOWN CENTER LAND CONDOMINIUM, as per plat thereof recorded as Condominium Plat No. 8468 among the Land Records of Montgomery County, Maryland;

and also

A parcel of land containing 22,139 square feet or 0.51 acres of land more or less, formerly known and described as Land Unit numbered Three (3) in the condominium subdivision known as CLARKSBURG TOWN CENTER LAND CONDOMINIUM, as per plat thereof recorded as Condominium Plat No. 8468 among the Land Records of Montgomery County, Maryland.

The foregoing described parcels were originally included in the condominium subdivision known as Clarksburg Town Center Land Condominium under a certain Declaration for Clarksburg Town Center Condominium dated December 12, 2003 and recorded among the Land Records of Montgomery County, Maryland in Liber 26147, at folio 169, *et seq.* however, said parcels were withdrawn from the Clarksburg Town Center Land Condominium by that certain Amended and Restated Declaration for Clarksburg Town Center Condominium dated March 15, 2007 and recorded among the Land Records of Montgomery County, Maryland in Liber 33969, at folio 441, *et seq.* and were instead included as a part of the "Expansion Area" as described in the Amended and Restated Declaration. The said parcels have not been annexed to the Clarksburg Town Center Land Condominium by Grantor (the Declarant under the Amended and Restated Declaration) and, therefore, the said parcels are no longer land condominium units under the condominium subdivision known as Clarksburg Town Center Land Condominium.

EXHIBIT "A"
LEGAL DESCRIPTION CONTINUED

PART TWO OF TEN

Lots numbered Twenty-six (26) through and including Thirty-two (32) and Parcels lettered E and F in Block lettered "GG" in the subdivision known as "CLARKSBURG TOWN CENTER" as per plat thereof recorded as Plat No. 23038 among the Land Records of Montgomery County, Maryland.

42924 058

EXHIBIT "A"
LEGAL DESCRIPTION CONTINUED

PART THREE OF TEN

Lots numbered Two (2) and Three (3) and Lots numbered Fifteen (15) through and including Twenty-five (25) and Parcel lettered A in Block lettered "GG" and Parcel lettered A in Block lettered HH in the subdivision known as "CLARKSBURG TOWN CENTER" as per plat thereof recorded as Plat No. 22766 among the Land Records of Montgomery County, Maryland.

EXHIBIT "A"
LEGAL DESCRIPTION CONTINUED

PART FOUR OF TEN

Parcel lettered B in Block lettered "H" in the subdivision known as "CLARKSBURG TOWN CENTER" as per plat thereof recorded as Plat No. 22535 among the Land Records of Montgomery County, Maryland.

EXHIBIT "A"
LEGAL DESCRIPTION CONTINUED

PART FIVE OF TEN

Parcel lettered D in Block lettered "GG" in the subdivision known as "CLARKSBURG TOWN CENTER" as per plat thereof recorded as Plat No. 23038 among the Land Records of Montgomery County, Maryland.

42924 061

EXHIBIT "A"
LEGAL DESCRIPTION CONTINUED

PART SIX OF TEN

Parcel lettered C in Block lettered "H" in the subdivision known as "CLARKSBURG TOWN CENTER" as per plat thereof recorded as Plat No. 22535 among the Land Records of Montgomery County, Maryland.

42924

062

EXHIBIT "A"
LEGAL DESCRIPTION CONTINUED

PART SEVEN OF TEN

Parcel lettered A in Block lettered "JJ" in the subdivision known as "CLARKSBURG TOWN CENTER" as per plat thereof recorded as Plat No. 22364 among the Land Records of Montgomery County, Maryland.

42924 063

EXHIBIT "A"
LEGAL DESCRIPTION CONTINUED

PART EIGHT OF TEN

Parcel lettered C in Block lettered "EE" in the subdivision known as "CLARKSBURG TOWN CENTER" as per plat thereof recorded as Plat No. 22368 among the Land Records of Montgomery County, Maryland.

42924 064

EXHIBIT "A"
LEGAL DESCRIPTION CONTINUED

PART NINE OF TEN

Tax Parcel 995 as shown on Tax Map EW32 and assessed as containing 58.14 acres of land more or less, being a remainder parcel of the land conveyed in the deed to Terrabrook Clarksburg, L.L.C. recorded in Liber 17865, folio 495 among the Land Records of Montgomery County, Maryland.

EXHIBIT "A"
LEGAL DESCRIPTION CONTINUED

PART TEN OF TEN

Tax Parcel 200 as shown on Tax Map EW42 assessed as containing 66.0900 acres of land being a remainder parcel of the land conveyed in the deed to Terrabrook Clarksburg, L.L.C. recorded in Liber 17865, folio 495 among the Land Records of Montgomery County, Maryland

Property owned by NNP II - Clarksburg LLC
as of 12/16/11

PROPERTY INVENTORY

Ref. #	Tax Acct#	Property Address	Description	Parcel	Legal Description	Blk	Lot	Plat No.	Note / Comment
THIRD TRY, LLC PURCHASE									
Entitled / Undeveloped Land									
1	00028776	13101 Piedmont Rd	future Piedmont Park	200					
2	03282935	Clarksburg Rd (Ebenezer ETC)	West Side vacant & Greenways	995					ac as reported by the Tax Assessors office
Paper Lot / Undeveloped									
3	03389898	Clarksburg Rd (Parcel A)	remnant HOA parcel	A	JU			22364	
4	03391061	Clarksbridge Road (Parcel C)	future C/JMC conveyance parcel	C	EE			22365	
5	03431737	Harness Point Way (Parcel A)	remnant 200 SF HOA parcel	A	GG			22766	
6	03432014	Clarksbridge Road (Parcel A)	future MD365 conveyance parcel	A	HH			22766	
7	03469488	Harness Point Way (Parcel D)	HOA private road	D	GG			23038	
8	03431772	13102 Clarksburg Square Road			GG	2		22766	
9	03431783	13104 Clarksburg Square Road			GG	3		22766	
10	03469411	13100 Clarksburg Square Road			GG	26		23038	
11	03469422	13106 Clarksburg Square Road			GG	27		23038	
12	03469433	13108 Clarksburg Square Road			GG	28		23038	
13	03469444	13110 Clarksburg Square Road			GG	29		23038	
14	03469455	13112 Clarksburg Square Road			GG	30		23038	
15	03469466	13114 Clarksburg Square Road			GG	31		23038	
16	03469477	13116 Clarksburg Square Road			GG	32		23038	
17	03408127	Clarks Crossing Drive (Parcel B)	HOA private alley	B	H			22535	
18	03408138	Clarks Crossing Drive (Parcel C)	former SWM facility	C	H			22535	
19	03431692	Clarksburg Square Road (UN2-CTC)			H			8468	
20	03431704	Clarksburg Square Road (UN3-CTC)			H			8468	
21	03469490	Clarksbridge Rd (Parcel E)	HOA - green space	E	GG			23038	
22	03469502	Harness Point Way (Parcel F)	HOA - Harness Point Tot Lot	F	GG			23038	
Developed									
23	03431908	23400 Harness Point Way			GG	15		22766	
24	03431910	23402 Harness Point Way			GG	16		22766	
25	03431921	23404 Harness Point Way			GG	17		22766	MPDU
26	03431932	23406 Harness Point Way			GG	18		22766	MPDU
27	03431943	23408 Harness Point Way			GG	19		22766	MPDU
28	03431954	23410 Harness Point Way			GG	20		22766	
29	03431965	23412 Harness Point Way			GG	21		22766	
30	03431976	23413 Harness Point Way			GG	22		22766	MPDU
31	03431987	23411 Harness Point Way			GG	23		22766	MPDU
32	03431998	23409 Harness Point Way			GG	24		22766	MPDU
33	03432003	23407 Harness Point Way			GG	25		22766	MPDU

42924 066

42924 067

2011

MARYLAND
FORM

Certification of Exemption from Withholding Upon Disposition of Maryland Real Estate Affidavit of Residence or Principal Residence

Based on the certification below, Transferor claims exemption from the tax withholding requirements of §10-912 of the Tax-General Article, Annotated Code of Maryland. Section 10-912 provides that certain tax payments must be withheld and paid when a deed or other instrument that affects a change in ownership of real property is presented for recordation. The requirements of §10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

1. Transferor Information

Name of Transferor

NNP-II CLARKSBURG LLC

2. Reason for Exemption

Resident
Status

- ☐ I, Transferor, am a resident of the State of Maryland.
☒ Transferor is a resident entity as defined in Code of Maryland Regulations (COMAR) 03.01.12.02B(11), I am an agent of Transferor, and I have authority to sign this document on Transferor's behalf.

Principal
Residence

- ☐ Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in IRC 121 and is recorded as such with the State Department of Assessments and Taxation.

Under penalty of perjury, I certify that I have examined this declaration and that, to the best of my knowledge, it is true, correct and complete.

3a. Individual Transferors

Witness

Name

Signature

3b. Entity Transferors

Witness/Attest

NNP-II Clarksburg LLC

Name of Entity

By:

Name

Title

KEITH HURAND

VICE PRESIDENT

42924 068

LIST OF PARCEL IDENTIFIER NUMBERS

TAX ACCT #	LOT OR PARCEL #	BLOCK
28776	200	
3282935	995	
3389898	A	JJ
3391061	C	EE
3431737	A	GG
3432014	A	HH
3469488	D	GG
3431772	2	GG
3431783	3	GG
3469411	26	GG
3469422	27	GG
3469433	28	GG
3469444	29	GG
3469455	30	GG
3469466	31	GG
3469477	32	GG
3408127	B	H
3408138	C	H
3431692	Land Condo Unit 2*	H
3431704	Land Condo Unit 3*	H
03469490	E	GG
03469502	F	GG
03431908	15	GG
03431910	16	GG
03431921	17	GG
03431932	18	GG
03431943	19	GG
03431954	20	GG
03431965	21	GG
03431976	22	GG
03431987	23	GG
03431998	24	GG
03432003	25	GG

* Formerly

42924 069

State of Maryland Land Instrument Intake Sheet

[] Baltimore City [X] County: Montgomery
 Information provided is for the use of the Clerk's Office and State Department of
 Assessments and Taxation, and the County Finance Office only.
 (Type or Print in Black Ink Only All Copies Must Be Legible)

1	Type(s) of Instruments	<input type="checkbox"/> Deed <input type="checkbox"/> Deed of Trust <input type="checkbox"/> Mortgage Lease <input type="checkbox"/> Other <input type="checkbox"/> Other																																																															
2	Conveyance Check Box	<input type="checkbox"/> Improved Sale Arms-Length [1]	<input checked="" type="checkbox"/> Unimproved Sale Arms-Length [2]	<input type="checkbox"/> Multiple Arms Length [3]	<input type="checkbox"/> Not an Arms-Length Sale [9]																																																												
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MONTGOMERY COUNTY CIRCUIT COURT (Land Records) LEK 42924, p. 0069, MSA_CE63_43061, Date available 01/10/2012, Printed 02/07/2025

Exhibit I

https://www.somdnews.com/archive/news/clarksburg-town-center-prepares-for-new-owner/article_db9fb847-d155-5c4f-ae6e-aaa368920842.html

Clarksburg Town Center prepares for new owner

by Susan Singer-Bart Staff Writer
Dec 7, 2011

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Sidewalks are being torn up and streets are being repaved in the Clarksburg Town Center as Newland Communities prepares to turn over the community to another developer. The sale did not close Dec. 1, as originally expected, but it is still pending, said David Flanagan of Elm Street Development of McLean. Elm Street will buy 306 unfinished residential lots and the land slated for a retail district for \$1, he said. The community has Planning Board approval for more than 1,200 houses and close to 200,000 square feet of retail space. Some 850 houses have been built or are under construction. "We will close in a couple of weeks," Flanagan said last week. He characterized the delay as nothing serious. Elm Street Development is the developer of Clarksburg Village and has received county approvals to build Clarksburg's first shopping center in that development. Newland had been looking unsuccessfully for months to sell its interest in the troubled community when it struck its deal with Elm Street. Construction in the town center and its retail area stalled for five years after the Montgomery County Planning Board found Newland had not built the community according to the specifications of its approved plans. Instead of paying a multimillion-dollar fine, the developer and a group of residents hashed out a settlement agreement that included a vision for the retail center and added landscaping and other amenities to the residential portions of the community. The Planning Board used that agreement as a basis for the retail plan it approved in February 2010. Residents question whether in its haste to finish its obligations, Newland is adhering to the agreed upon standards. They see portions of sidewalks on Clarksburg Square Road and Clarks Crossing that are to be brick being poured in concrete. Newland responded to questions about the work with a prepared statement, "Newland is current with all its obligations based on the stage of the project and has even exceeded its obligations in some areas." Newland or its successor will be held responsible for meeting all requirements of approved plans,

said Rose Krasnow, chief of the Planning Board's development review division. "They will be cited with a violation if they are not putting in brick where they are supposed to," she said. A Department of Permitting Services inspector will check on the work, Krasnow said. Flanagan has told the community that building the approved retail plan will not be economically feasible for 20 or more years. "We're not pretending to be the white horse guys," Flanagan said. "We're saying it is what it is." He plans to talk to the community to figure out what elements are important and what can be eliminated. Flanagan will not be able to change the approved plan without community support, Krasnow said. ssingerbart@gazette.net

