

# EXHIBIT A

Exhibit 64(a)  
OZAH Case No: CU 25-02



CLARKSBURG

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# Clarksburg Town Center

## Plan of Compliance Design Concepts

April 6, 2006



## CLARKSBURG

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Charrette Mediator -- Judge Barbara Howe

### Stakeholders

- Clarksburg Town Center Advisory Committee
- Land Developer – Newland Communities
- Builders – Bozzuto, Craftstar, Miller & Smith, NV, Porten Homes

### Design Team

Architects and Town Planners

- Torti Gallas and Partners
- Duany Plater-Zyberk & Company

Landscape Architect

- Michael Verguson Landscape Architects
- Land Design

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The Clarksburg Mediation began with a three-day Charette, a process where the existing Town Center and the plans for future construction were examined and redesigned through the eyes of world-renowned design professionals, based on the vision of the Master Plan. The focus was on reaffirming the connection between old and new Clarksburg, incorporating a pedestrian-oriented retail core; expanding recreational opportunities; and establishing a strong Civic core for the town. The heart of the resulting plan addresses many of the issues that have been identified over the past year. All the parties to the Clarksburg Mediation (CTCAC, Newland Communities, and the CTC builders) are proud of the mediation results and endorse the resulting plan.

A brief tour of the redesigned Clarksburg Town Center, A New American Classic Town:

Turn off of the Great Road (MD 355) in the historic core of Clarksburg toward the new Town Center, past the historic Horace Willson house and the Clarksburg Grille and Grocery. The small-town environment is immediately apparent as a drive down Clarksburg Square Road leads past small shops and businesses in live/work units to the Library and town plaza, where civic gathering places serve as the heart of the Town Square.

The new library, a 20,000 square-foot building, sits at one end of the town plaza, nestled among a bosque of trees with seating for reading or enjoying the adjacent shops and cafes. A fountain with a seating wall anchors the opposite end of the plaza. Across General Store Drive sits the open-air Market building (2,000 square feet), which will shelter farmers' markets, craft shows, and other civic events.

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Situated among shops, live/work units, and restaurant space are two parking garages and a 51,000 square foot grocery store, lined by additional core retail and residences to maintain the pedestrian scale and orientation of the Town Square area. Through the creative use of architecture, ample parking space is easily accessible yet concealed from direct view.

The historic Clarksburg United Methodist Church is integrated with the community via an elaborate stairway with landscaping features to create an attractive vista. Handicapped access and a vehicular driveway are also provided, along with the dedication of a parcel of land to the south of the Church.

Just beyond the retail area, at the head of the land bridge across the Greenway, is the Clarke family memorial. Clarksburg Town Center sits on land that was established by this founding family of Clarksburg. Family artifacts will be placed in the wall along the greenway, to frame a sitting area and small plaza.

Continuing along Clarksburg Square Road, the foot of the land bridge marks the transition to the heart of the community space for the Town Center neighborhood. Up the hill is the Sinequa Square recreational area, which features an outdoor amphitheater; bosque of trees sheltering a new plaza area with parking; supplemental, 1200 square foot community building with multimedia space; and expanded community pool complex with a slide, an indoor, heated lap pool and small concessions shop.

At the end of Clarksburg Square Road is Piedmont Woods, a 60-plus acre park that will be developed by Newland Communities and deeded over to The Maryland National Capital Park and Planning Commission for future maintenance. The park will feature two tennis courts, a basketball court, picnic areas, hiking trails, a "bark park," and convenient parking. It will provide recreational and gathering space for the entire Clarksburg community.

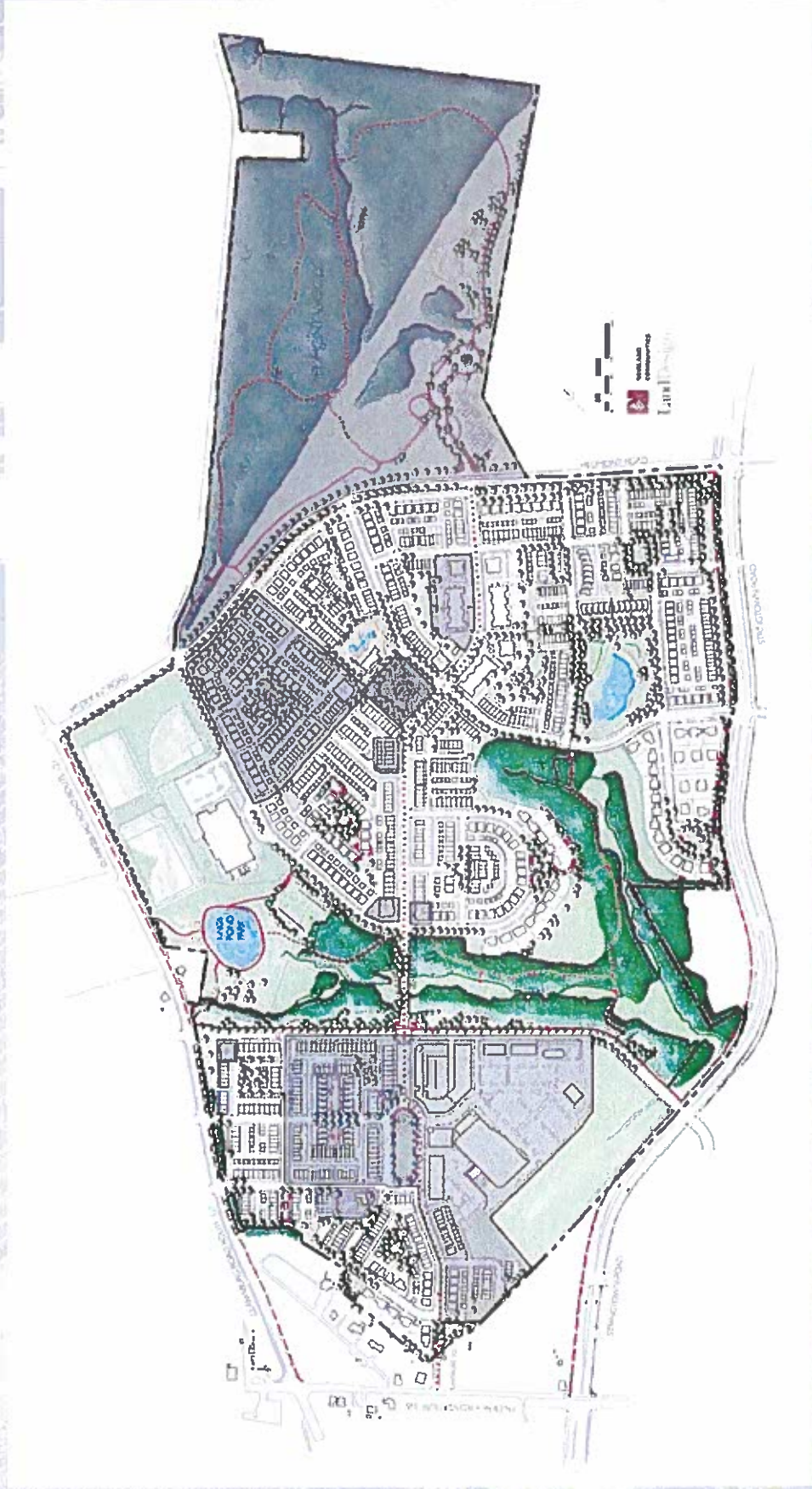


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The charette also focused on enhancing existing landscape-based amenities. Murphy's Grove Pond, in an area located near Stringtown Road at Clarks Crossing Drive, will be developed in stages, with the initial improvements bringing enhanced landscaping and the removal of the white picket fence that currently borders the parcel. The final plan calls for a fishing pier, walking trails and picnic areas. Storm Water Pond # 3, located behind Burdette Forest Road, will feature seating areas and a trail connecting to the Town Square. An additional new park where a large condominium building was scheduled to be built will now feature a lawn expanse, a grove of trees, and a seating wall along Clarksburg Square Road.

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Existing Plan showing Un-built Areas



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## Concept for Plan of Compliance

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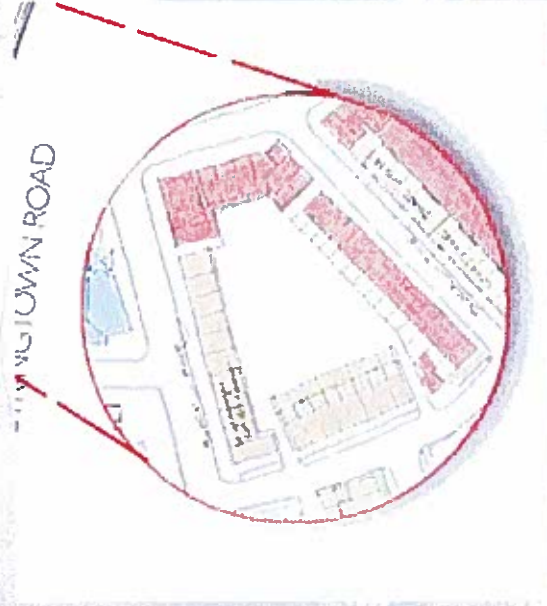
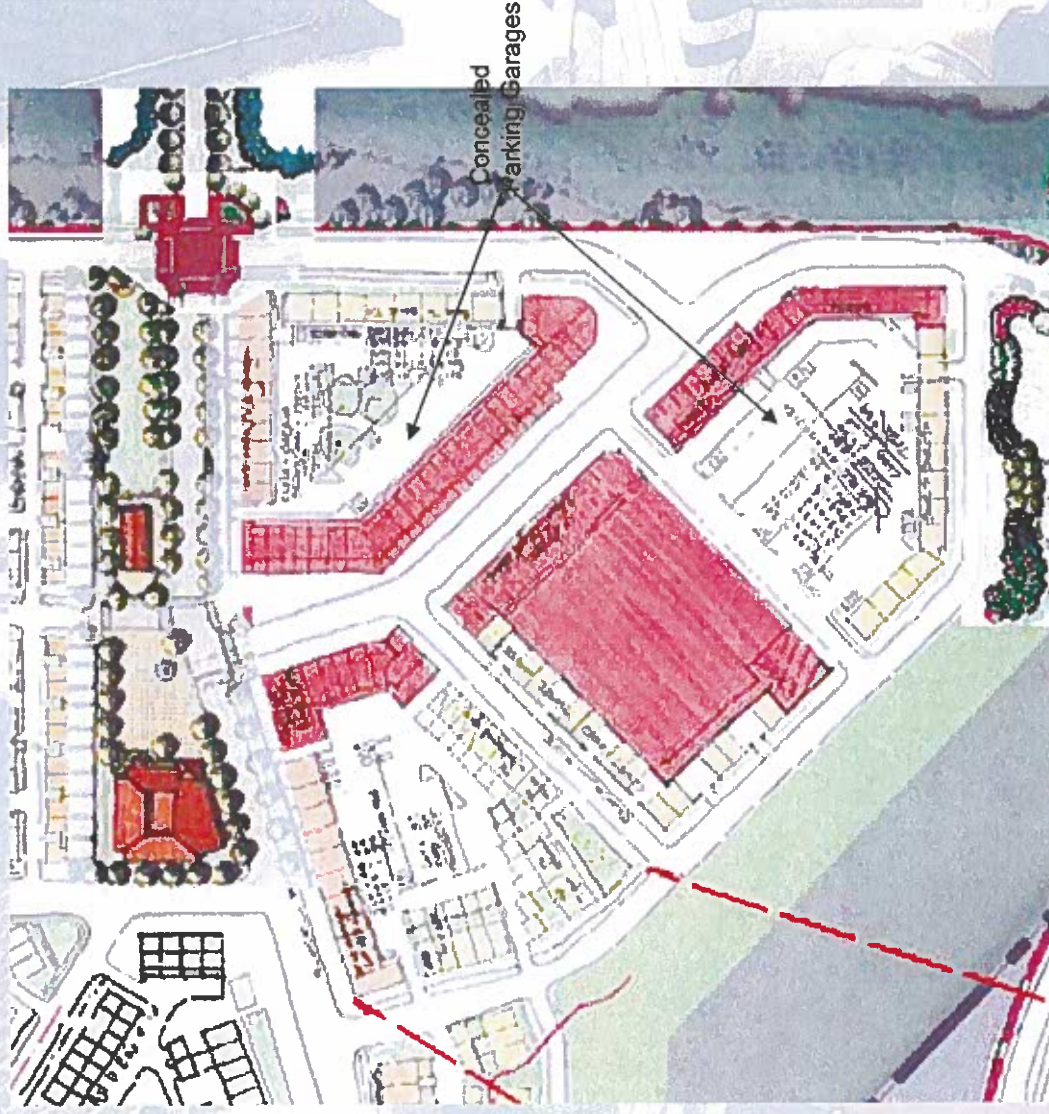


Depicts Library and Town Plaza. Units in background will be "live-work" units rather than condominiums. Live-work units are individually owned units consisting of two levels of residential above a retail/office space, with a townhouse configuration and appearance.

## Conceptual Perspective of Town Plaza



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Depicts the option for one block within the Town Center to allow either residential or retail buildout. (Determination to be made at Site Plan based on market drivers and optimal solution for the Town Center.)

## Concept for Blocks 3, 4 & 5



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## Conceptual Town Center Green

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## Concept for Special Pavement Sidewalks



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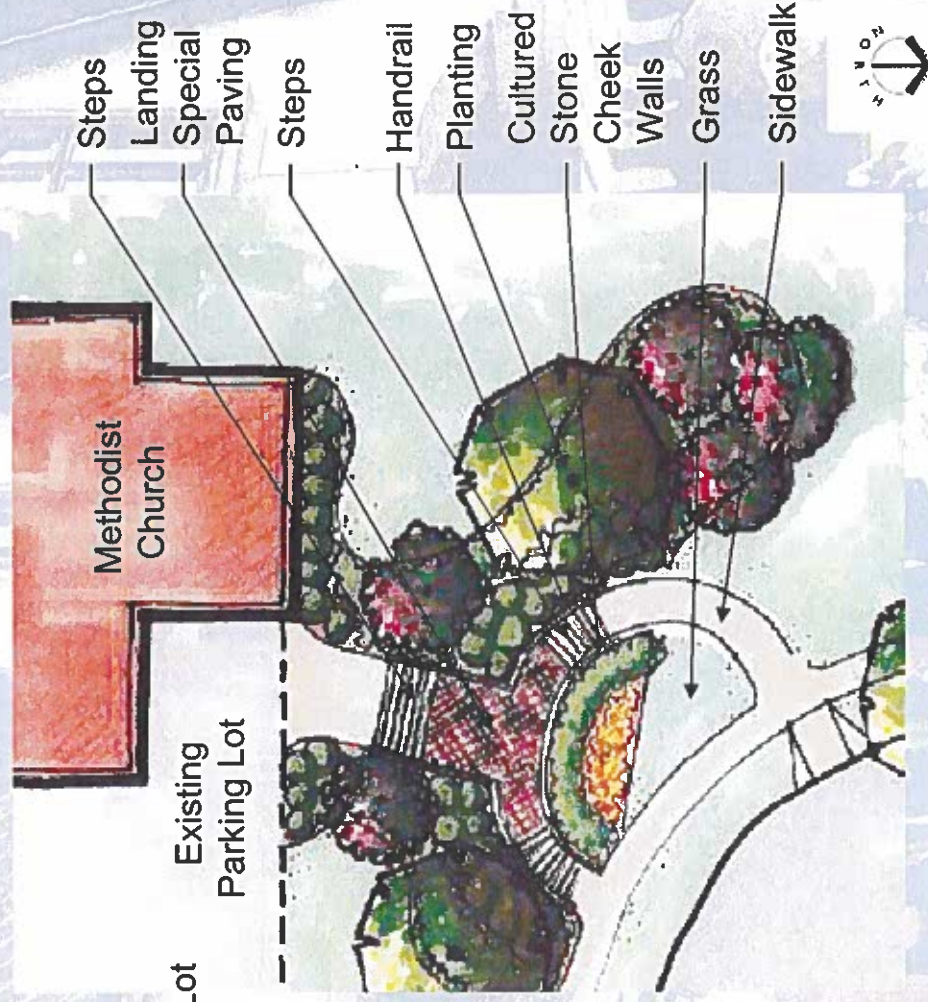
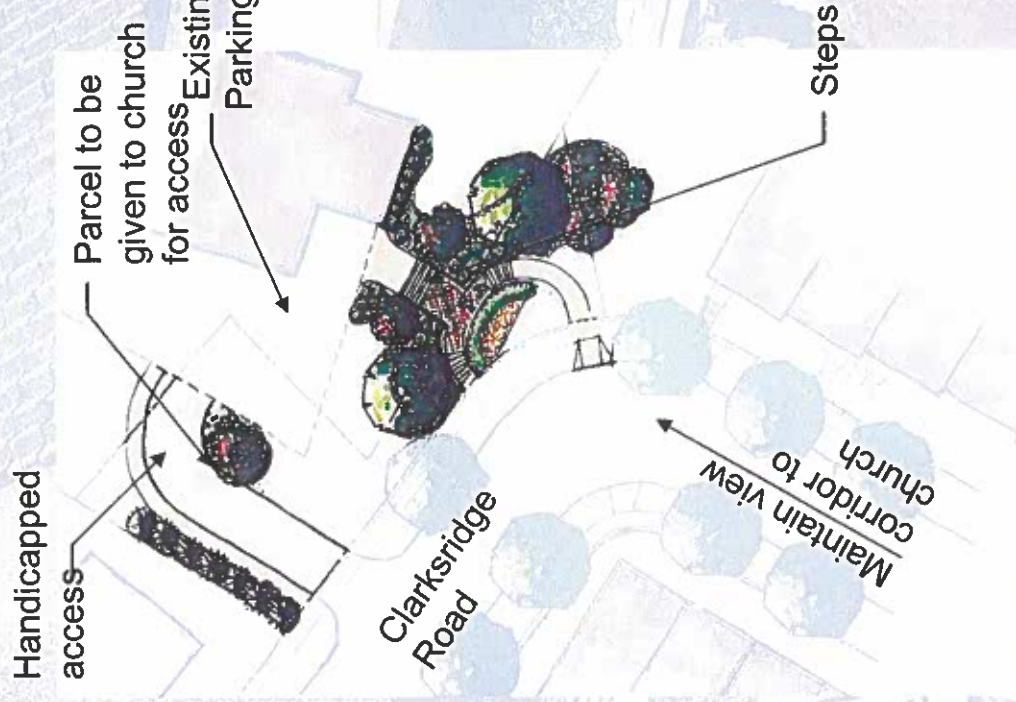
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## Clarksburg United Methodist Church





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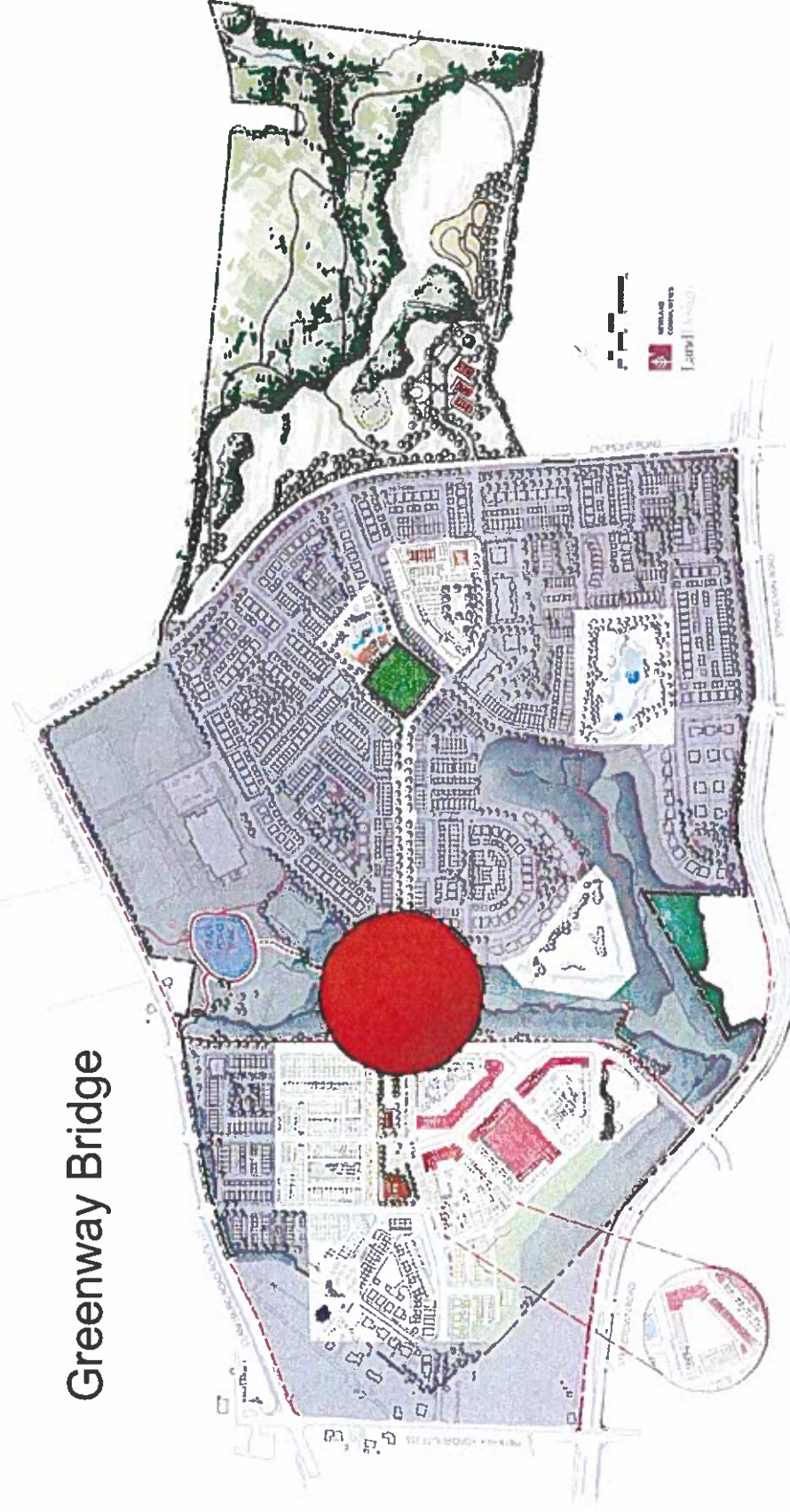


## Concept for the Grand Staircase at Clarksburg United Methodist Church



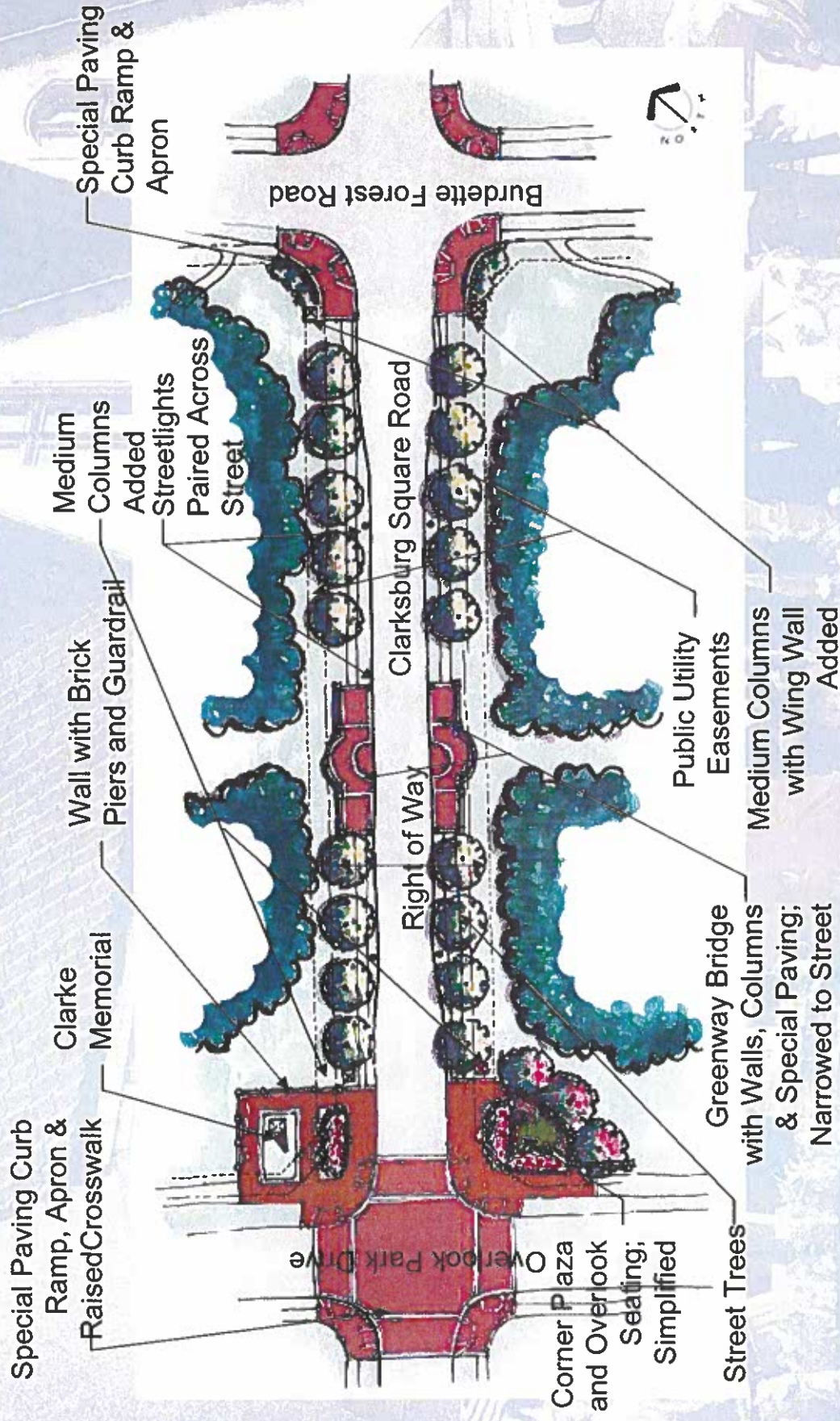
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## Greenway Bridge





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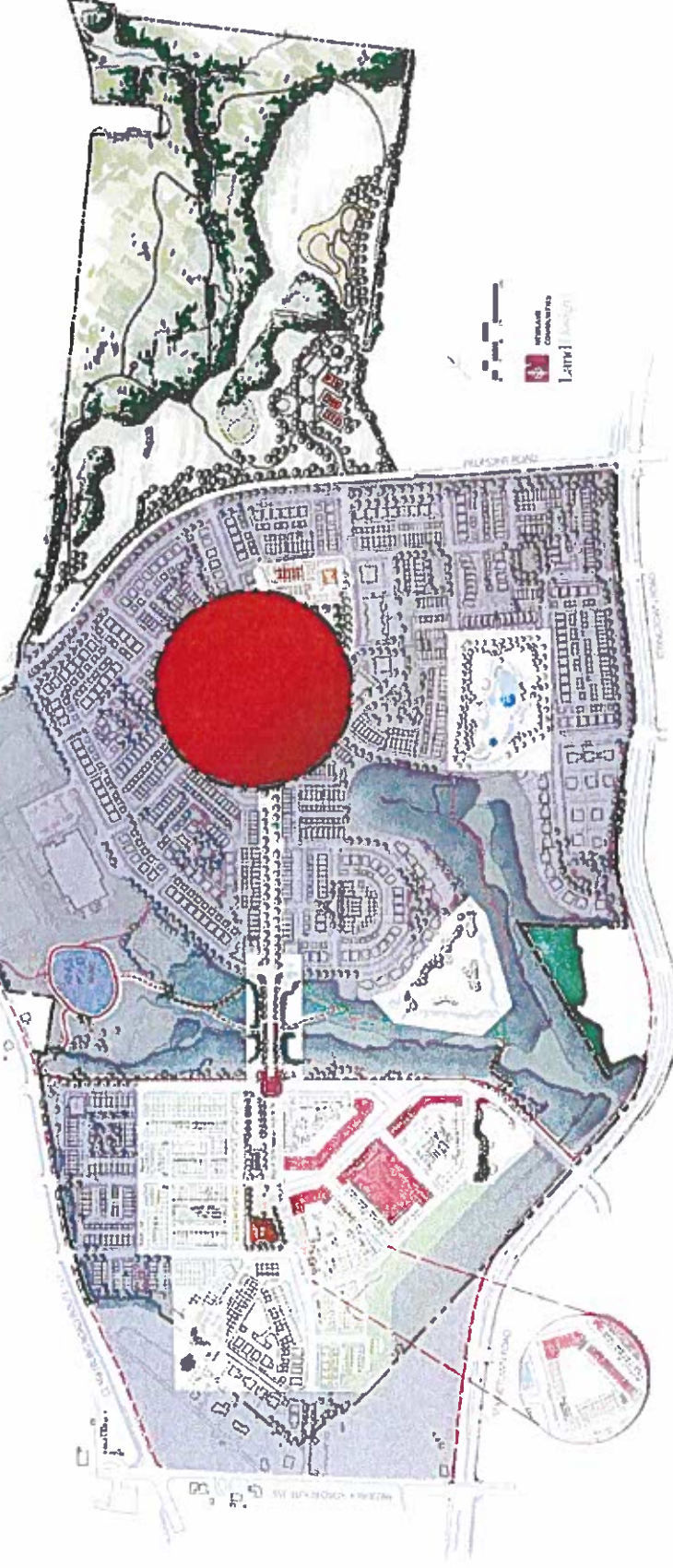


## Concept for the Greenway Bridge



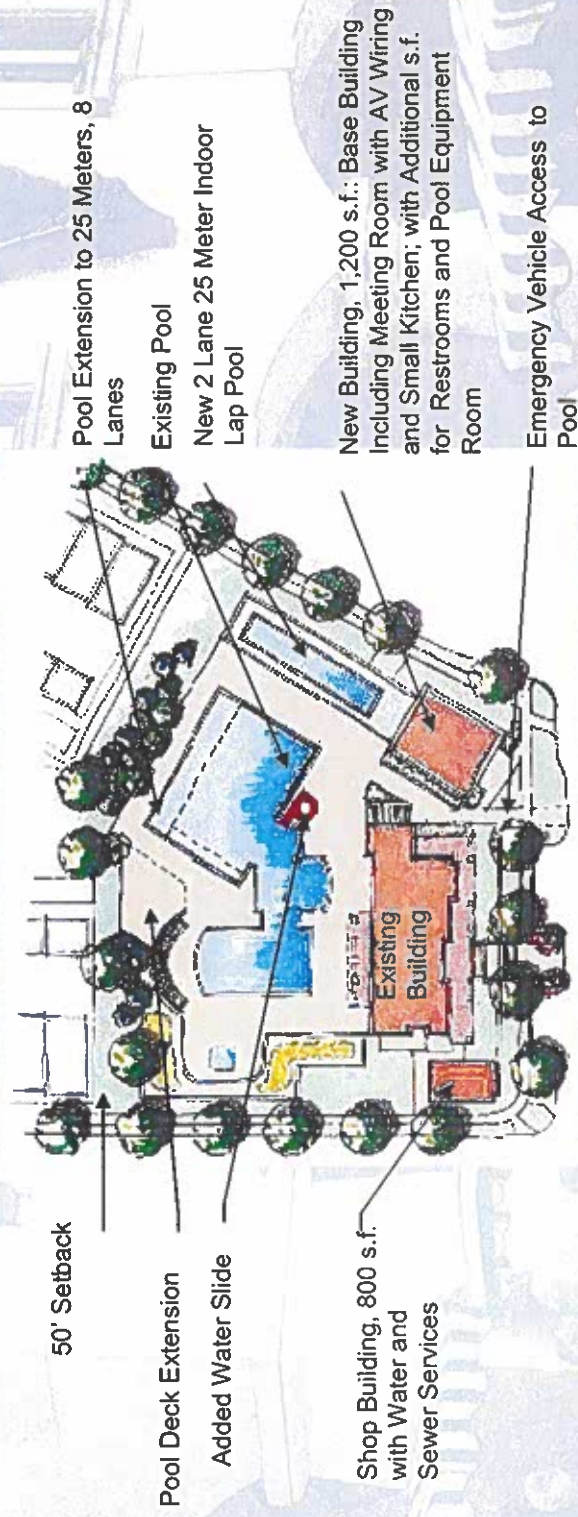
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## Sinequa Square and the East Side Pool



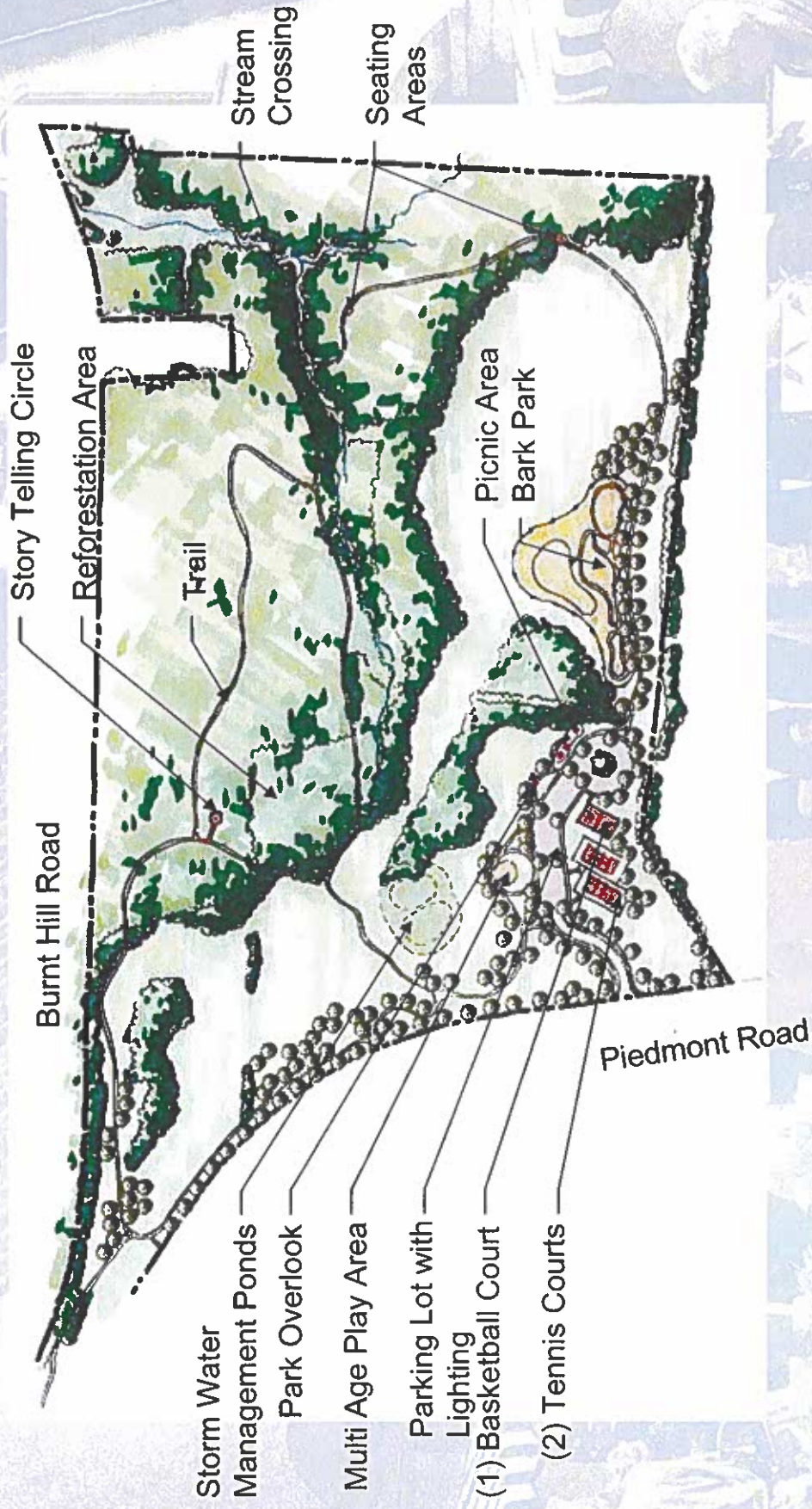


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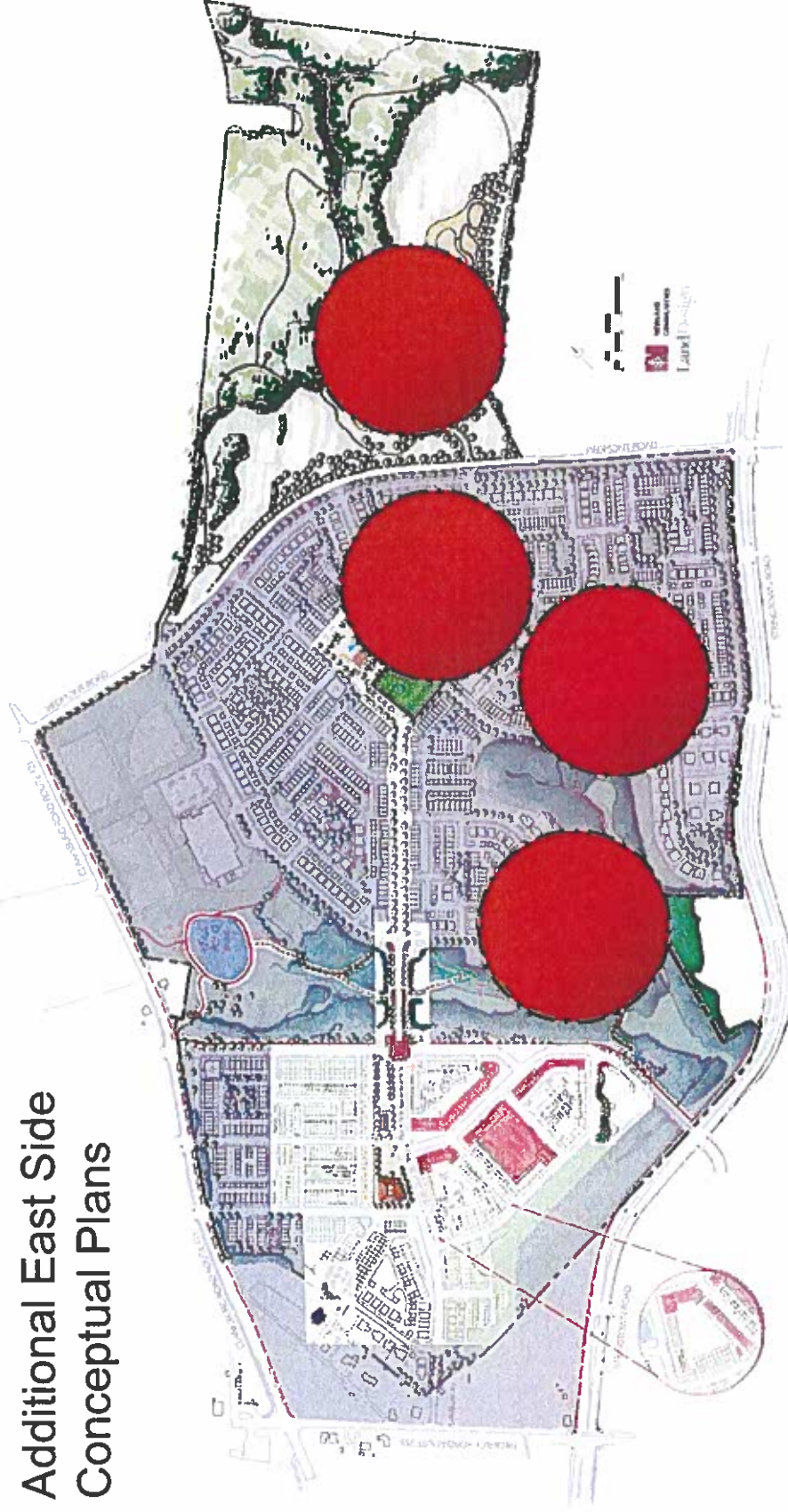


## Concept for Piedmont Woods



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## Additional East Side Conceptual Plans





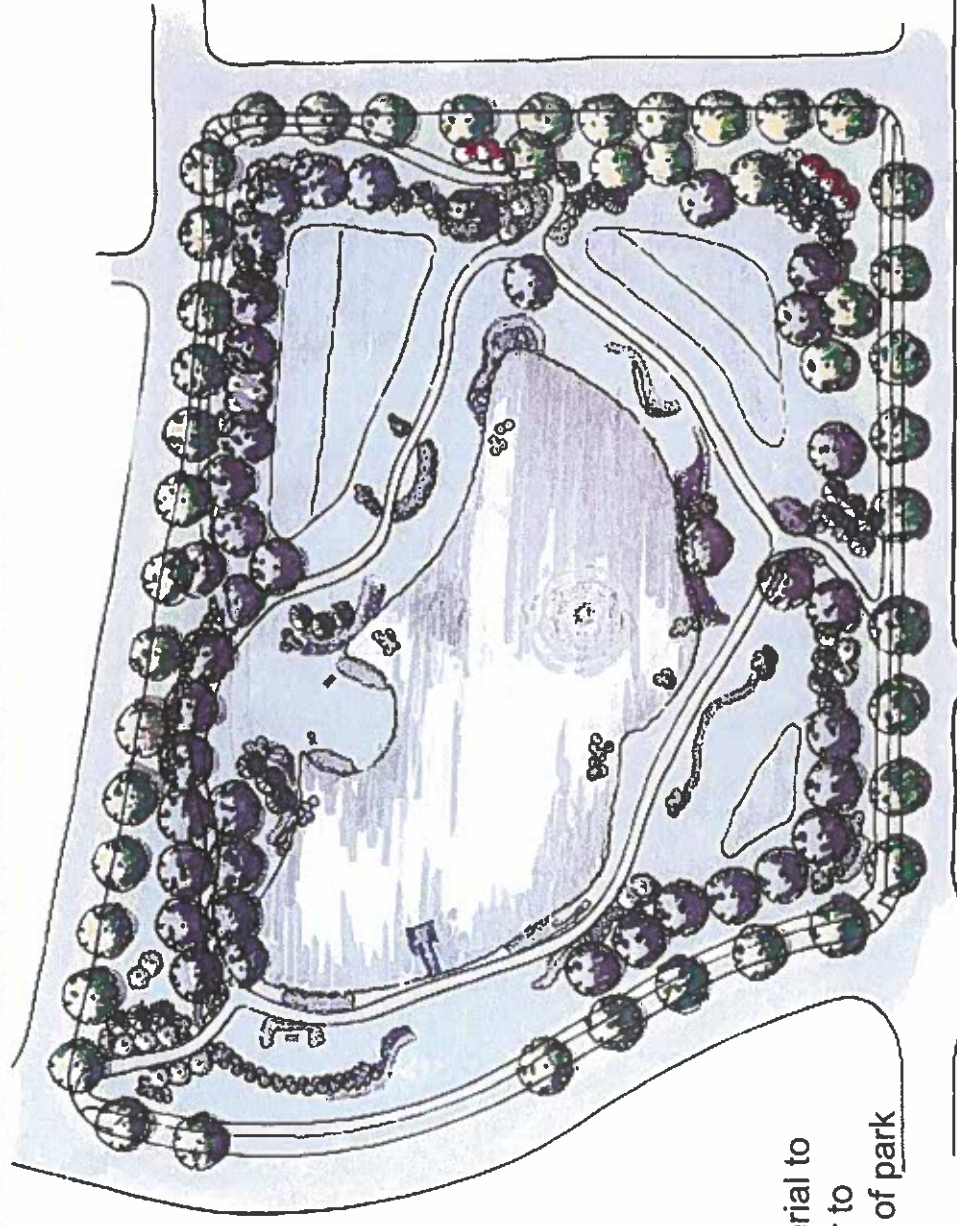
# CLARKSBURG



Block H



# CLARKSBURG



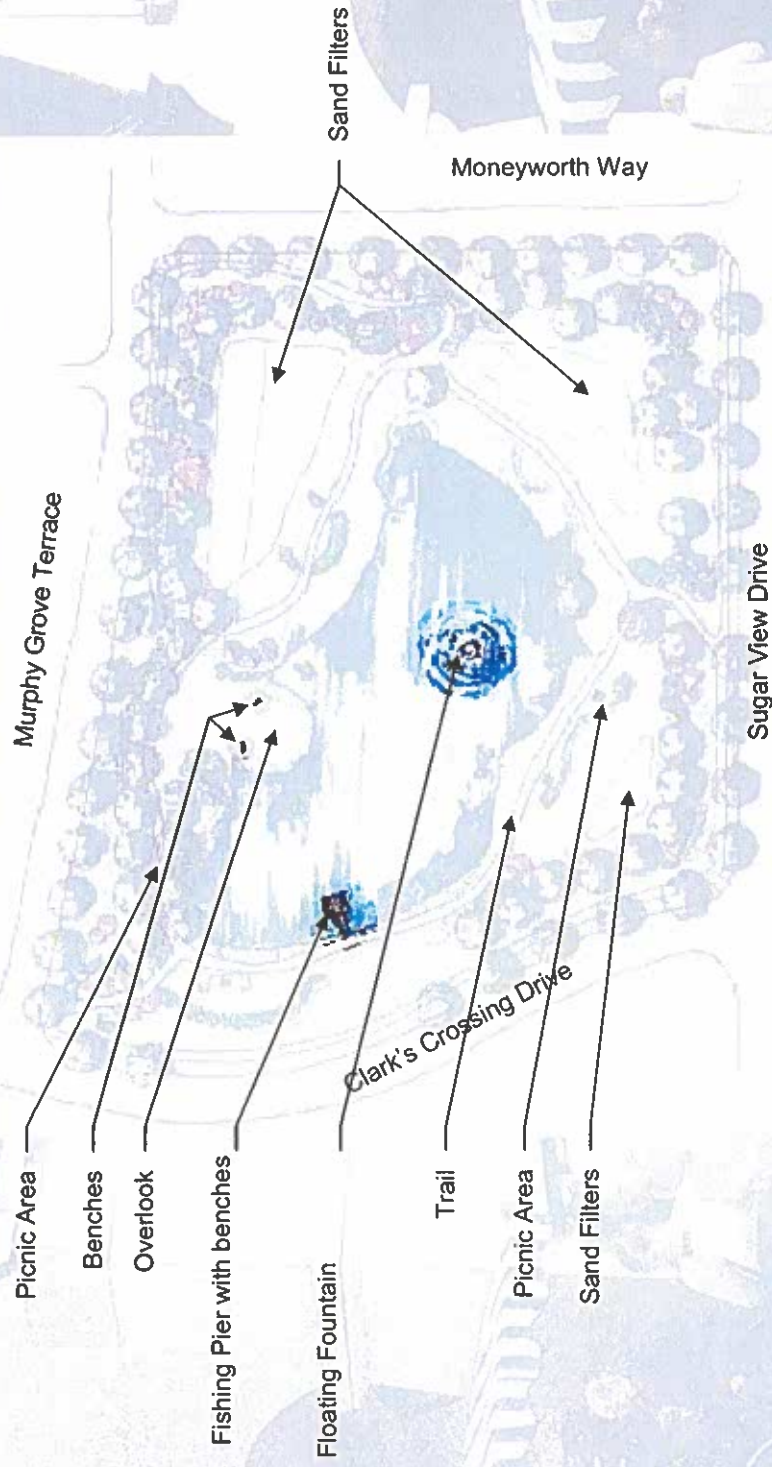
Note:

Color Indicates  
Landscape Material to  
be Installed prior to  
final conversion of park

## Interim Concept for Murphy's Grove Pond



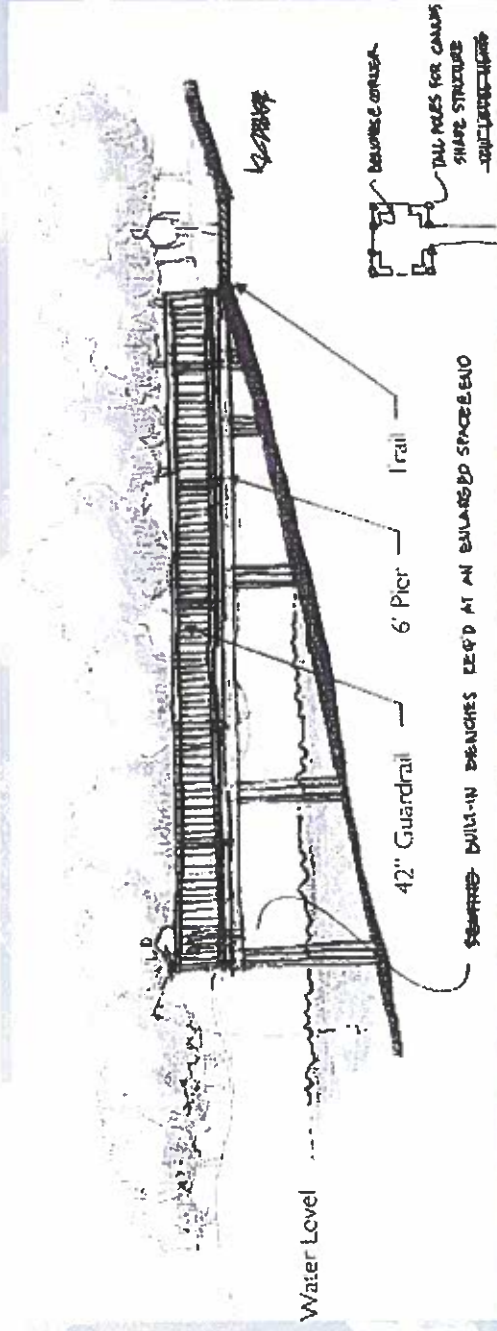
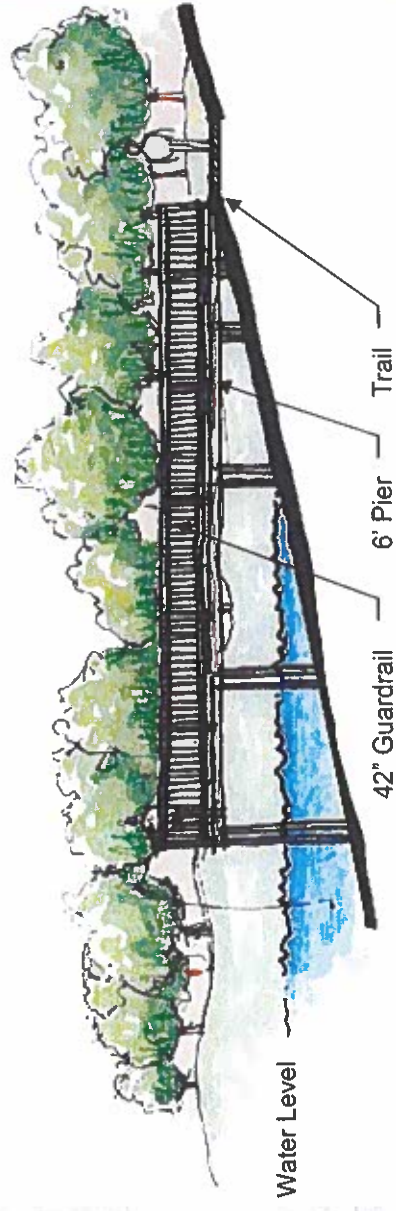
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## Ultimate Concept for Murphy's Grove Pond



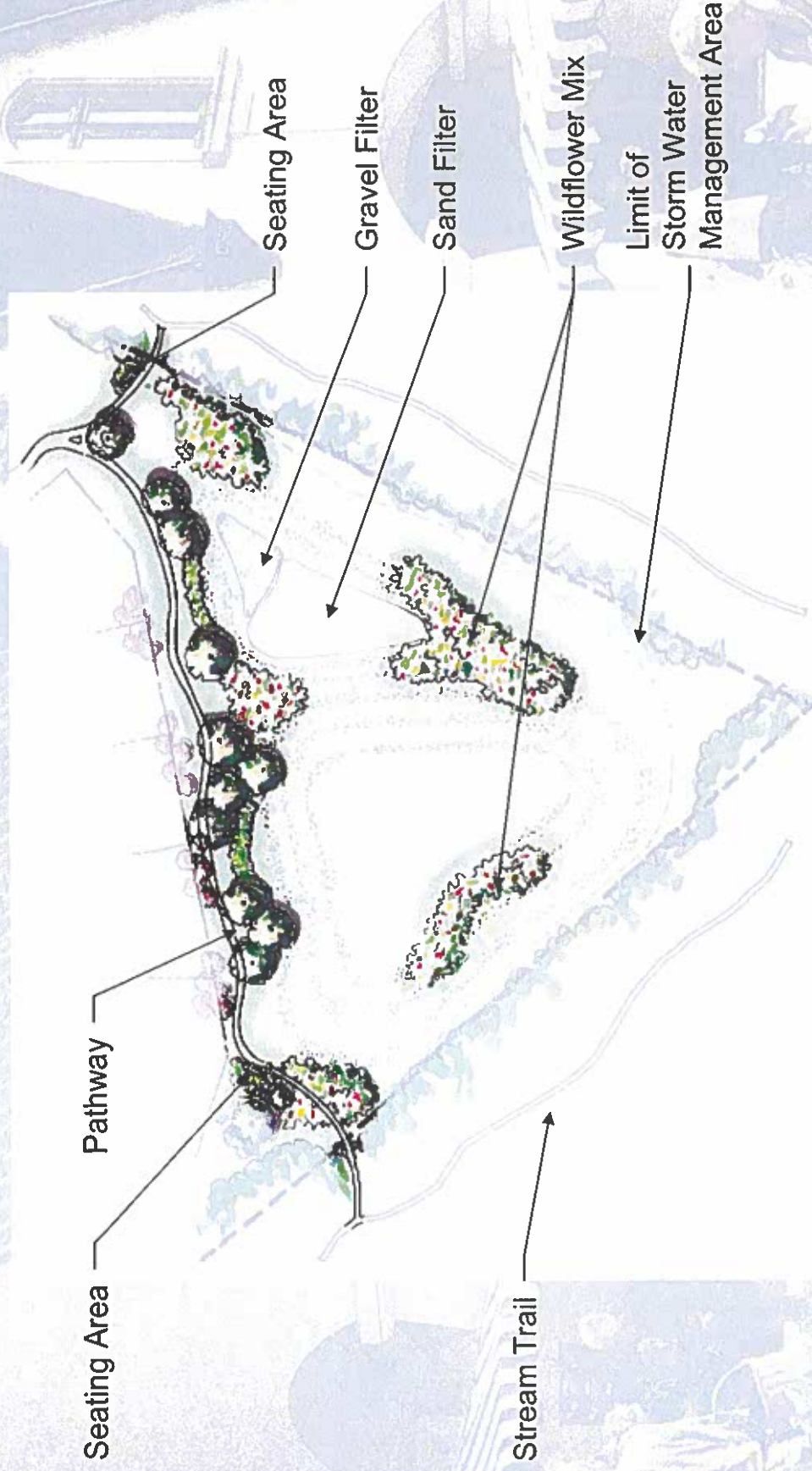
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## Concept for Murphy's Grove Pond Ultimate Fishing Pier

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## Concept for Storm Water Pond #3



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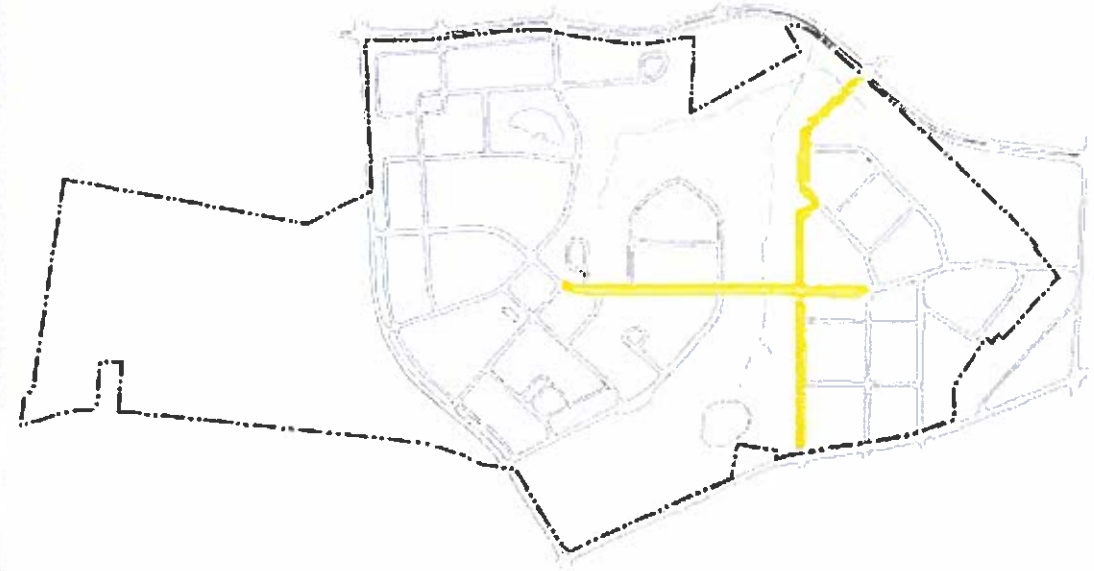
## Other Details





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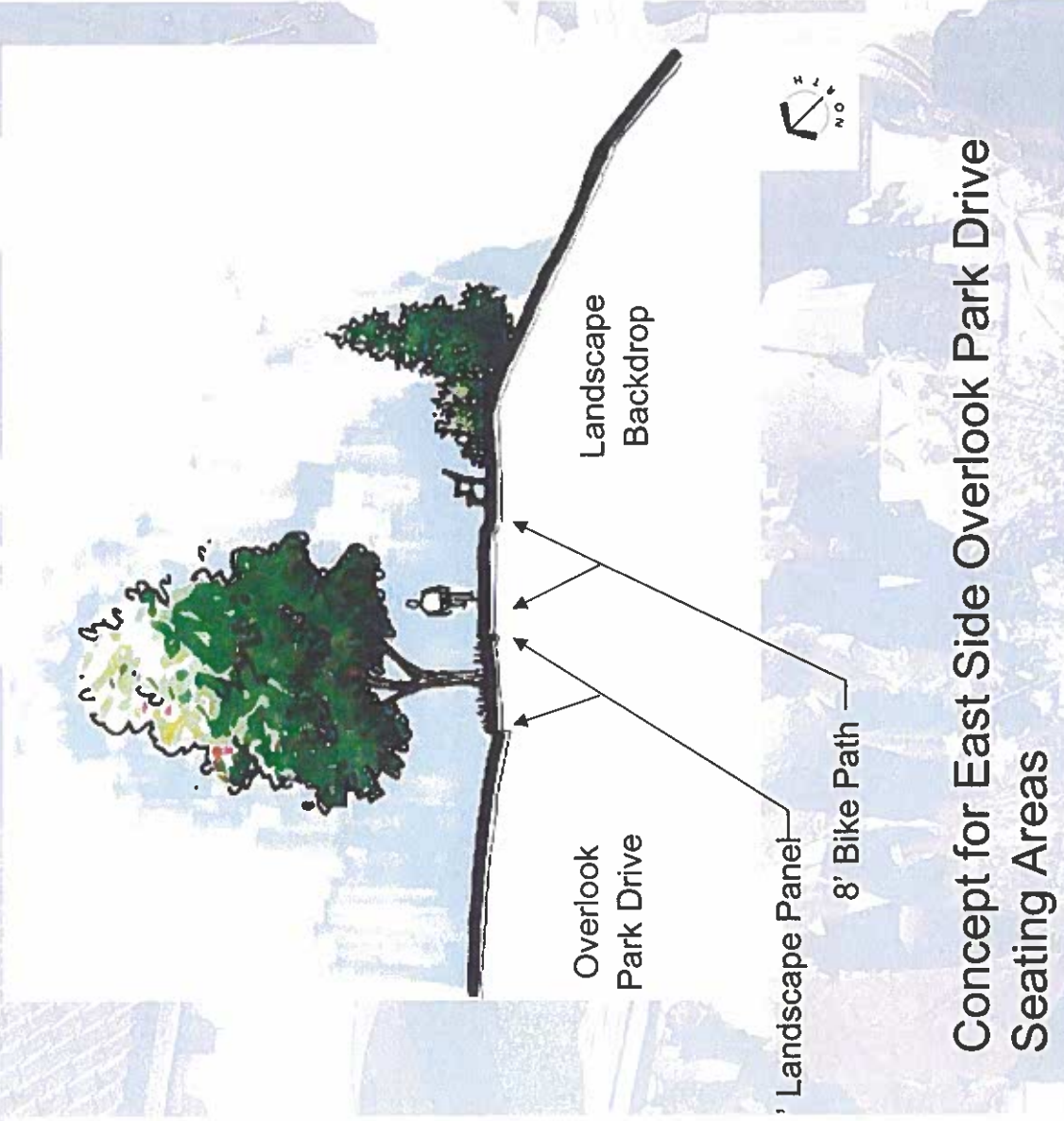
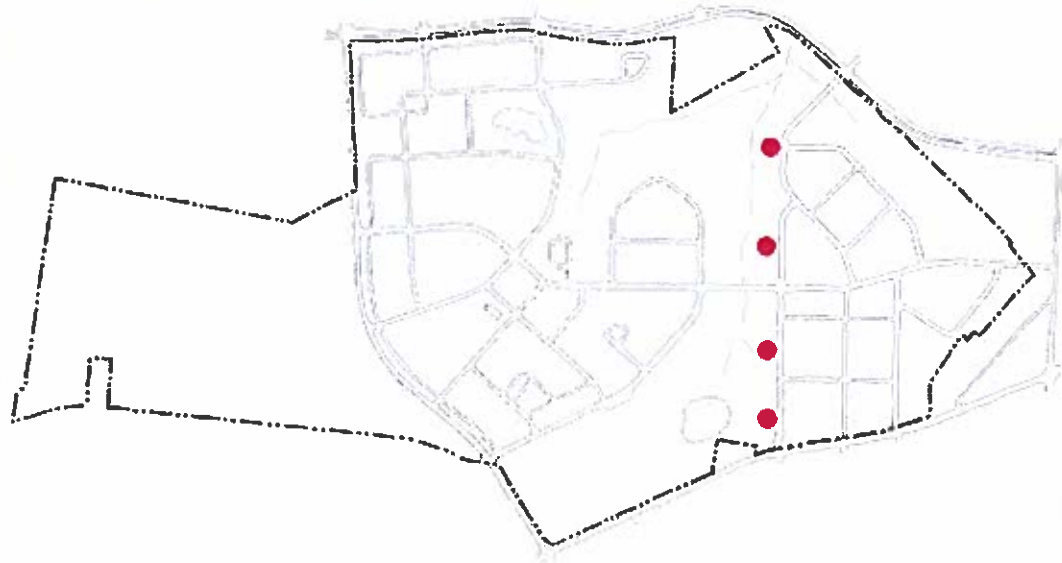
- Street tree selection to be London Plane Tree
- Increase size to 4" caliper
- Install trees at 30' on center +/-
- Continuous improved topsoil, 3' deep



## Concept for Enhanced Street Tree Plantings



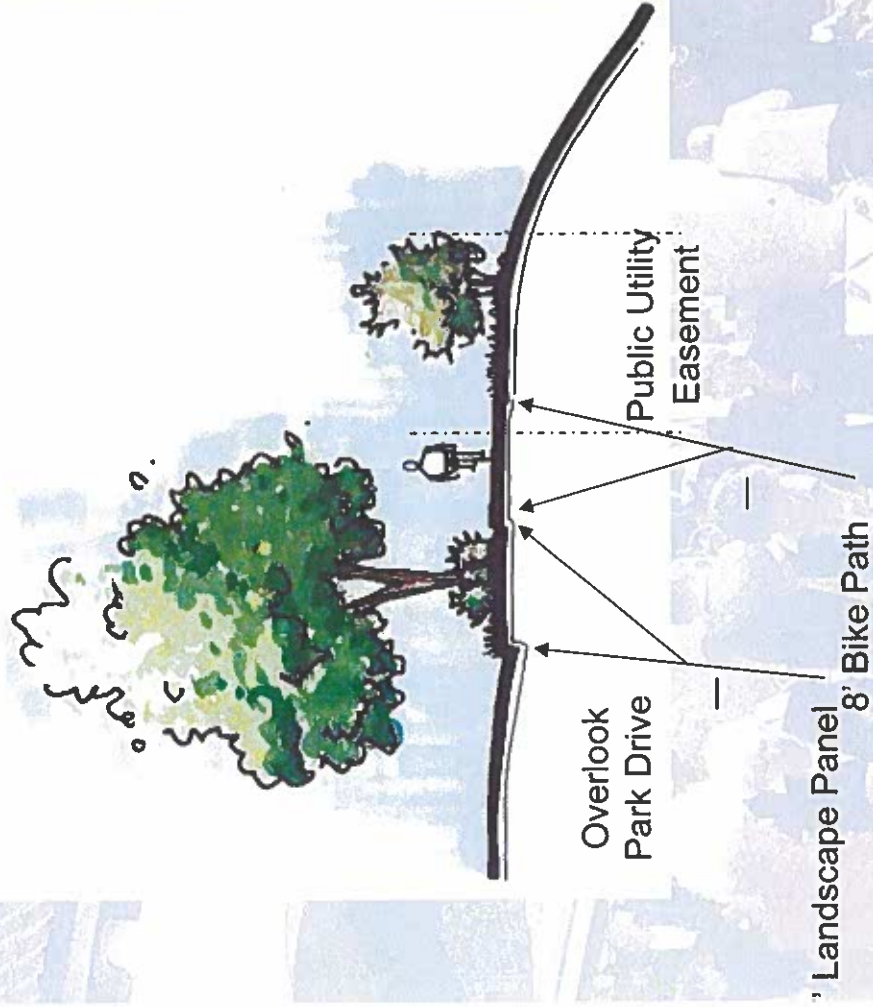
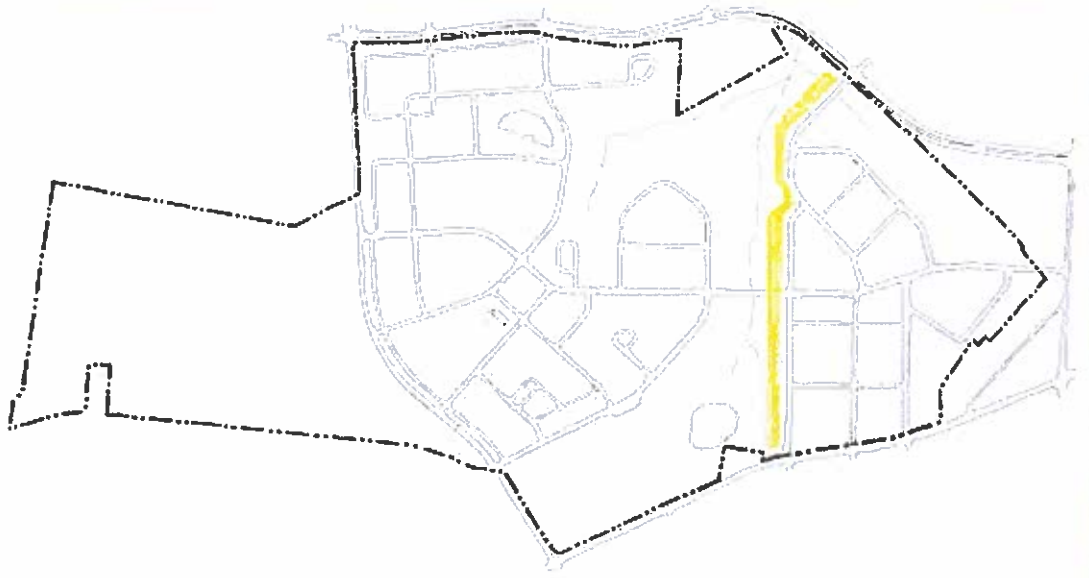
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## Concept for East Side Overlook Park Drive Seating Areas



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## Concept for East Side Overlook Park / General Store Drive Streetscape



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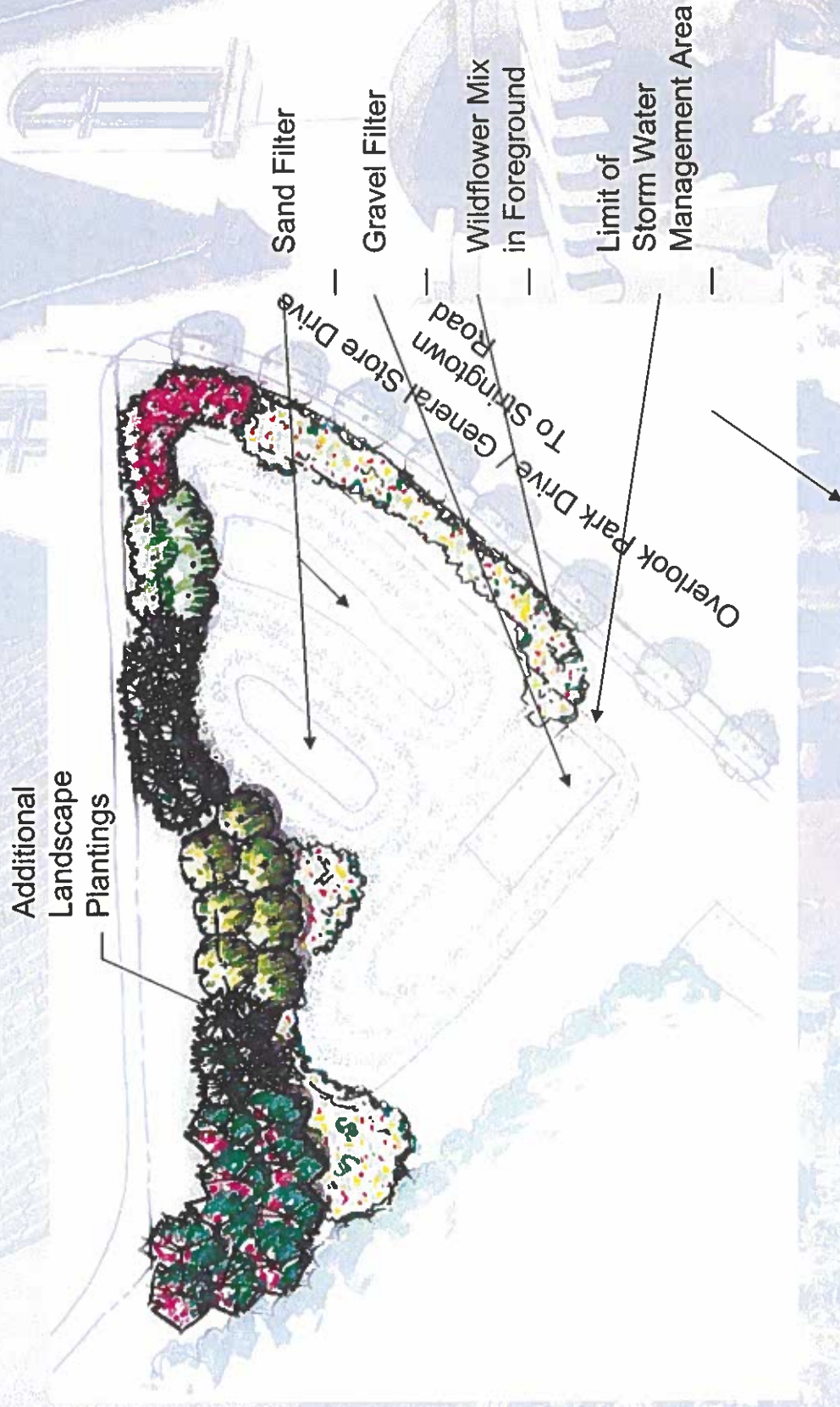


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# CLARKSBURG



## Concept for Storm Water Pond #2



# **EXHIBIT B**



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](http://www.mncppc.org)

*2245*  
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

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**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.

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**§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.

*Opp 1*



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## **§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.

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### **§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.

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#### **§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.

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## **§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 3<sup>rd</sup> day of August 2006.

  
Derrick P. Berlage  
Chair, Montgomery County Planning Board

  
Trudye M. Johnson, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY  
 8/3/06  
M-NCPPI LEGAL DEPARTMENT



# EXHIBIT C

Evolution of Clarksburg Town Center Approvals and Construction  
2008-Current  
(After the 2006 Plan of Compliance Approval)  
02.2025

Plan of Compliance Requirement	Subsequently Approved (and Built)	CHANGE from the Plan of Compliance	Planning Board Action County Council Action
Live/Work Units in the Clarksburg Town Center Retail Core. <ul style="list-style-type: none"> <li>The Plan of Compliance called for 50 Live/work units proposed in the retail core.</li> </ul>	All live/work units were eliminated.	All live/work units were eliminated.	Site Plan Amendment D (MCPB 15-86).
Parking Garages in the Clarksburg Town Center Retail Core. <ul style="list-style-type: none"> <li>Per the Plan of Compliance, a minimum of 2 and up to 4 parking garages, in the following locations: <ul style="list-style-type: none"> <li>Block 3</li> <li>Block 5 (grocery store)</li> <li>Library</li> <li>Potentially block 4</li> </ul> </li> </ul>	All parking garages that were originally proposed were eliminated.  Optional parking under building 9 (not in the Plan of Compliance) was approved in 2015.	3 of the 4 parking garages were eliminated in the 2008 approvals.  The parking garage for the grocery store was eliminated in 2015.  Parking (optional, 2015/ not optional, 2024) under building 9 proposed and approved.  The Grand staircase was eliminated.	Site Plan Amendment B (MCPB 09-15) Site Plan Amendment D (MCPB 15-86) Amendment I (MCPB 24-027)
Grand Staircase  The Plan of Compliance envisioned a "Grand Staircase at Clarksburg United Methodist Church with steps, special landing pavement, cheek walls, and landscaping."	Through conversations with feedback from, and agreement with the Clarksburg United Methodist Church, an ADA accessible path with appropriate landscaping was built.		Site Plan Amendment D (MCPB 15-86)
Retail Core  The Plan of Compliance called for a market plaza, green with fountain, open air market pavilion, and benches adjacent to a rectangular lawn.	An outdoor amphitheater with a lawn, seat walls, and covered stage has been built.  A splash fountain and community plaza, along with seating and landscaping were approved and will be constructed with the retail core.	<ul style="list-style-type: none"> <li>Original fountain deleted.</li> <li>Open air market deleted.</li> <li>Benches/lawn deleted.</li> </ul>	Site Plan Amendment D (MCPB 15-86) Site Plan Amendment I (MCPB 24-027)
Greenway Bridge/ Land Bridge. <ul style="list-style-type: none"> <li>Clark Memorial (Obelisk) at the intersection of Clarksburg</li> </ul>	<ul style="list-style-type: none"> <li>After more than a decade of no internal vehicular or pedestrian connection between the East Side and West Side of the community, a land bridge connecting the two sides was finally constructed in 2018.</li> </ul>	The Clark Memorial was completely redesigned and relocated (see below).	Site Plan Amendment D (MCPB 15-86)



Evolution of Clarksburg Town Center Approvals and Construction  
2008-Current  
(After the 2006 Plan of Compliance Approval)  
02.2025

Plan of Compliance Requirement	Subsequently Approved (and Built)	CHANGE from the Plan of Compliance	Planning Board Action County Council Action
<p>Square Road and Overlook Park Drive.</p> <ul style="list-style-type: none"> <li>• Special curb ramps and paving</li> <li>• Raised crosswalks in public right-of-way</li> <li>• Columns with wingwalls</li> <li>• Special fencing.</li> <li>• Specific lighting pattern.</li> </ul>	<ul style="list-style-type: none"> <li>• Aluminum fencing along the length of the land bridge installed.</li> <li>• Columns that matched the community's entry feature columns installed at both ends of the land bridge.</li> <li>• Brick pavers to match existing sidewalk installed</li> <li>• Landscaping and lighting installed.</li> </ul>	<p>The land bridge was redesigned and most of the design elements listed in the Plan of Compliance were changed or eliminated.</p>	
<p>The John Clark Memorial</p> <ul style="list-style-type: none"> <li>• Specific design</li> <li>• Obelisk</li> <li>• Raised Lawn</li> <li>• "History Wall" with Clark tombstones, special paving, memorial plaque, landscaping, columns, benches, etc.</li> <li>• Per the Plan of Compliance (2006), the Clark Memorial was a specific design located at the intersection of Clarksburg Square Road and Overlook Park Drive. The 2008 Site Plan showed a completely different design/location.</li> </ul>	<p>Through an extensive collaboration with the Clarksburg Historical Society over several years, the Clark Family Memorial moved.</p> <ul style="list-style-type: none"> <li>• It is now known as the Clark Memorial Cemetery.</li> <li>• Remaining tombstones were set into historically representative templates and installed in a fenced area.</li> <li>• A plaque commemorating John Clark and his family, was installed.</li> <li>• Landscaping and benches were installed.</li> </ul>	<p>The Clark Memorial was overhauled and moved from the Plan of Compliance's required location.</p> <p>Obelisk was eliminated.</p>	<p>Site Plan Amendment B (moved and redesigned the John Clark Memorial) (MCPB 09-15)</p> <p>Site Plan Amendment D (MCPB 15-86)</p>
<ul style="list-style-type: none"> <li>• The Pool</li> </ul> <p>The Plan of Compliance called for the following:</p> <ul style="list-style-type: none"> <li>• 800 square foot "shop building" to sell sundries.</li> <li>• Pool deck extension and pool extension.</li> <li>• Water slide.</li> </ul>	<p>Through extensive work effort with the Clarksburg HOA's Pool and Recreation Committee:</p> <ul style="list-style-type: none"> <li>• A new 3,100 square foot annex building to the Clarksburg Town Center Residents club was designed and built.</li> <li>• The annex building has a large open space that can be used for many things,</li> </ul>	<ul style="list-style-type: none"> <li>• 800 sq. foot Sundries shop building never built.</li> <li>• Indoor 25-meter pool never built.</li> </ul>	<p>Site Plan Amendment D (MCPB 15-86)</p>

Evolution of Clarksburg Town Center Approvals and Construction  
2008-Current  
(After the 2006 Plan of Compliance Approval)  
02.2025

Plan of Compliance Requirement	Subsequently Approved (and Built)	CHANGE from the Plan of Compliance	Planning Board Action County Council Action
<ul style="list-style-type: none"> <li>New 2 lane 25 meter indoor pool.</li> <li>New 1,200 SF building with meeting room and additional SF for pool equipment and restrooms.</li> </ul>	<ul style="list-style-type: none"> <li>including community meetings and exercise classes.</li> <li>Indoor catering kitchen constructed.</li> <li>Raised pool deck installed with window to kitchenette for outdoor eating area on pool area.</li> <li>Additional parking was added to pool parking lot.</li> <li>Previous developer addressed pool size, deck size, and slide.</li> </ul>	Per the HOA, these would be expensive to maintain, difficult to manage.	
<p>Sinequa Square.</p> <p>An amphitheater with "special pavers" was prescribed by the Plan of Compliance at Sinequa Square.</p>	By working with the community and MNCPPC, the amphitheater was relocated to the West Side retail core area, adjacent to the civic parcel and other public space in the community. Moreover, Sinequa Square is a lovely outdoor green with seating (benches and landscaping).	No amphitheater was built at Sinequa Square.	Site Plan Amendment D (MCPB 15-86)
<p>Piedmont Woods.</p> <p>The Plan of Compliance required specific design criteria, including a special sign and lighted parking lot.</p>	Piedmont Woods was completely redesigned per Montgomery County Parks requirements (via feedback collected from a community survey administered by the Montgomery County Parks Department around 2013-2015).	<p>Piedmont Woods was redesigned with many different design elements.</p> <p>The storytelling circle in the middle of the woods eliminated.</p>	Site Plan Amendment D (MCPB 15-86)
<p>Block H Plan</p> <p>The Plan of Compliance required non-standard units that did not work and did not have parking.</p>	Standard sized townhomes that front on a mews with benches with improved pedestrian and vehicular circulation were constructed.	Block H was redesigned and nonstandard units eliminated.	Site Plan Amendment D (MCPB 15-86)
<p>Buildings 10 and 11 –</p> <p>The Plan of Compliance required that the Manor Homes are built specific design requirements (and very limited parking).</p>	12 townhomes constructed instead.	Manor homes eliminated.	Site Plan Amendment H (MCPB 22-03)



Evolution of Clarksburg Town Center Approvals and Construction  
2008-Current  
(After the 2006 Plan of Compliance Approval)  
02.2025

Plan of Compliance Requirement	Subsequently Approved (and Built)	CHANGE from the Plan of Compliance	Planning Board Action County Council Action
<p>Clarksburg Library</p> <ul style="list-style-type: none"> <li>The Plan of Compliance called for the Clarksburg Library to be located in the Retail Core. The Plan also asserted that Montgomery County would pay for structured parking for the library.</li> </ul>	<p>The 2015 Amendment (82007022D) carved out a 1.1 acre parcel for a 20,000 square foot library and adequate parking for the library.</p> <p>We constructed the parking lot and subdivided the land for the library parcel. In 2022, we dedicated the library parcel, as required by the 2015 Site Plan Amendment.</p> <p>The Clarksburg Library was moved outside of Clarksburg Town Center Retail Core by Montgomery County in 2024.</p>	<p>The library has been relocated out of the Clarksburg Town Center Retail Core. The County is looking for other uses for the 1.1 acre parcel.</p>	<p>County Council Action- Amendment to FY23-28 CIP &amp; Supplementary Appropriate #24-53; CIP No. P710500 Approval of the FY 23-28 CIP</p>

# **EXHIBIT D**



**From:** [Amy Presley](#)  
**To:** [MCP-Chair](#)  
**Subject:** Fwd: Project Plan Amendment #91994004#, Preliminary Plan Amendment #11995042#, and Site Plan Amendment #820070221  
**Date:** Tuesday, February 27, 2024 2:33:43 PM

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**[EXTERNAL EMAIL]** Exercise caution when opening attachments, clicking links, or responding.

Attachments available until Mar 28, 2024

Honorable Chair,

Please find my revised submission in PDF format, including the Board Resolution referred to as an "Attachment" within the Testimony I sent yesterday. I inadvertently neglected to include the attachment. My apologies for any inconvenience.

Sincerely,

Amy

Amy Presley, REALTOR®

301-526-7435

[www.TrustedEstatePartners.com](http://www.TrustedEstatePartners.com)

[Click to Download](#)

Testimony Before the Board-Amy Presley-2-25-2024.pdf

14.1 MB

Begin forwarded message:

**From:** Amy Presley <[Amy@trustedestatepartners.com](mailto:Amy@trustedestatepartners.com)>

**Subject:** Project Plan Amendment #91994004#, Preliminary Plan Amendment #11995042#, and Site Plan Amendment #820070221

**Date:** February 26, 2024 at 10:56:45 AM EST

**To:** MCP-Chair <[MCP-Chair@mncppc-mc.org](mailto:MCP-Chair@mncppc-mc.org)>

Honorable Chair,

Please find attached my testimony relative to the Plans coming before the Board for review on 2/29/2024.

I respectfully request that my testimony be included in the public testimony received.

Sincerely,  
Amy

Amy Presley, REALTOR®  
301-526-7435  
[www.TrustedEstatePartners.com](http://www.TrustedEstatePartners.com)

[Click to Download](#)

Testimony Before the Board-Amy Presley-2-25-2024.docx

8.3 MB



Amy Presley (Commissioner Emeritus, and Former CTCAC Co-Chair)  
23506 Sugar View Drive  
Clarksburg, MD 20871

February 25, 2024

The Honorable Artie Harris, Chairman  
Montgomery County Planning Board  
2425 Reddie Drive  
Wheaton, MD 20902

Re: Clarksburg Town Center (Project Plan Amendment #91994004#, Preliminary Plan Amendment #11995042#, and Site Plan Amendment #820070221)

Dear Chairman Harris, and Honorable Commissioners of the Board,

I am writing to you as a 22-year resident of the Clarksburg Town Center, a past Co-Chair of the Clarksburg Town Center Advisory Committee (CTCAC), and a Commissioner Emeritus (having served 8 consecutive years on the Planning Board and, most recently, as a temporary Commissioner filling in until the currently seated Board members could be officially appointed by the County Council). So, while I am not an attorney, I have a thorough and accurate understanding of the history and details of this case.

I bring extensive knowledge to the table regarding:

- the discovery and scope of the violations within the Town Center community;
- the initial violation hearings and proposed fines (in excess of \$2M even prior to completion of hearings);
- the Stop Work Order enacted by the County Council in response to the scope of violations uncovered and exposure of the failed oversight and enforcement by regulatory agencies;
- the reason that we (CTCAC) were urged by both the Planning Board and County Council at the time to enter into Mediation/Arbitration (a process which was structured by the Council and the Board because the County was not equipped to continue to deal publicly with the breadth of issues - i.e., no procedures in place to continue to conduct hearings on violations of the magnitude exposed);
- the Mediation/Arbitration proceedings and Settlement Agreement (which took the better of one year to Settle);
- the resultant Compliance Program as submitted to the Planning Board;
- the Planning Board's adoption of the Compliance Program and its import (legal sufficiency to remediate violations);
- the Planning Board's actions taken from 2005 to date;
- and the relevance of the past and present to your decision on the plans coming before you now.

Prior to presenting the main concerns that I hold relative to the proposed plan revisions, I must first refute the erroneous points made by Mr. Robert Harris, Counsel for the Applicant. Six minutes of oral presentation before the Board during live testimony will be insufficient to do so, and would take away from my presentation of community concerns and expectations. Therefore, I have embedded Mr. Harris' letter together with my counterpoints below:



7600 Wisconsin Avenue, Suite 700 • Bethesda, MD 20814 • [lerchearly.com](http://lerchearly.com)

Robert R. Harris  
Attorney  
301-841-3826  
[rrharris@lerchearly.com](mailto:rrharris@lerchearly.com)

February 22, 2024

The Honorable Artie Harris  
Chairman  
Montgomery County Planning Board  
2425 Reedie Drive  
Wheaton, MD 20902

Re: Clarksburg Town Center (Project Plan Amendment No. 91994004E, Preliminary Plan Amendment No. 11995042E, and Site Plan Amendment No. 820070221)

Dear Chairman Harris:

I am writing to you as counsel for the applicant in these proceedings, in response to information recently submitted for the record. More specifically, I want to comment on and support Staff's conclusions in their Staff Report (dated 2/16/24) with respect to approvability of these applications under an earlier approval regarding the subject property referred to as the "Plan of Compliance" or "Compliance Program". In short, for the reasons discussed below, I agree that the Plan of Compliance allows the Planning Board to approve these applications.

By way of background, back in 2006, after residents alleged violations of previously approved Clarksburg development, the earlier developers and the community entered a "Settlement Agreement" dated April 6, 2006 intended to address the alleged development violations. The Planning Board was not a party to the Agreement. Therefore, the parties to that Agreement sought Planning Board approval of a Plan of Compliance to guide future actions by the Board, and the parties signed a Release with respect to alleged violations. The terms and conditions of the resulting

It is technically true that the Planning Board was not a "Party" to the Settlement Agreement. Nevertheless, the reality is that the Planning Board, together with the County Council, directed CTCAC, the Developer, and Builders to enter into Mediation/Arbitration and to present the resultant Settlement to the Staff to be turned into a Compliance Program. The alternative, should an Agreement not be reached, was to continue to continue with violation hearings and imposed fines and penalties.

After nearly one year, the parties were able to enter into a Settlement Agreement that was submitted to the Staff, reviewed by the Staff and turned into the Compliance Program. The Compliance Program was presented to the Board and Approved on June 16, 2006.

Mr. Harris states:

construction of amenity features and other factors where the resulting development did not conform with the underlying approvals. By Resolution No. 06-20, dated August 17, 2006, the Montgomery County Planning Board approved the Plan of Compliance. In that Resolution, the Planning Board noted, however, that "the compliance program is conceptual in nature, and that additional review of more detailed plans may involve modifications." It further stated that "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." Subsequent to the Plan of



Unfortunately, much was omitted in Mr. Harris' recent letter relative to the "conceptual nature" of the Compliance Program and the Board's modification rights, but the details can be found in the actual Resolution No. 06-20. I was unable to locate the Resolution in the Planning Board's online records (which means that the general public does not have access either), but thankfully I had kept a copy of it in my CTCAC files. The complete copy of the Resolution is attached for this Board's review, but I will augment Mr. Harris' incomplete observations with the following excerpts below:

**§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 7-118(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.

**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.

The Board clearly found that that "subject to its completion according to its terms and conditions in accordance with this Resolution" the "Compliance Program constitutes a lawful and appropriate alternative to imposing fines or monetary penalties" and, further, that "implementation of the Compliance Program will remediate and resolve all Violations." In accordance with that Finding, the Board then "orders the Respondents to comply strictly with each of the elements, terms and conditions" of the Compliance Program.

As Mr. Harris states, the Plans for the Compliance Program were indeed "conceptual in nature." I am not in disagreement with this statement. However, the specific "elements" of the Compliance Program were not only **not conceptual**, but they were actually required by the Board as sufficient to remediate violations and penalties, as confirmed in the Resolution by way of the Board incorporating the Staff Report and Circle Pages 17-91 (which collectively itemize each of the proffered and accepted "elements" together with a financial analysis of items noted by the Staff and approved by the Board as sufficient to remedy violations).

**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 (blue-lined) ("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);

Prior to a more detailed examination of the specific items as approved by the Board, and the actions taken by the Board from that time through present, I will first complete my response to Mr. Harris' statements relative to his Client's responsibility - or rather lack thereof - to be held accountable to comply with the Plan of Compliance.

The applicant in this proceeding was not a party to either the Settlement Agreement or the Plan of Compliance, nor was the area of the Clarksburg Town Center development that is the subject of the currently pending applications, the subject of any alleged violations. In fact, there was no

development at all on this portion of the property at that time so there could not have been any violations.

As Mr. Harris is well aware, the Applicant is a "successor and assign" to the Project and is responsible for fulfilling the remaining requirements as would be any other successor to other approved Preliminary, Project, and/or Site Plans as is required by law. Indeed, the Applicant (Mr. Flanagan/at the time "Third Try LLC") publicly announced to the Clarksburg Town Center Community relative to his succession of Newland that he understood the difficult requirements that had been imposed on the project and still remained to be fulfilled, and that is why he "bought it for \$1.00." When Mr. Flanagan purchased the project, he had access to the Board's Resolution adopting the Compliance Program and also requiring future successors to comply:

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.



Mr. Harris states that “there was no development at all on this portion of the property at that time, so there could not have been any violations”. . . That statement is nonsensical. The very “portion” he refers to is “Stage III” of the Compliance Program. Stage III items proffered by the Applicant at the time, detailed and cost-itemized in the Staff Report and further supported by Circle Page 17, approved by the Board with specific items noted as Required Elements (Per the Board’s Resolution), represent **the most critical portion** of the Compliance Program. In fact, the Retail Core of the Town Center is the very issue that sent residents down the path of “violation” hunting back in 2005, when Newland had presented a “strip-mall” type of plan they intended to build rather than the promised Town Center Retail (which I and many other residents were promised when we moved into the development in 2002 - 22 years ago).

The Clarksburg Town Center retail area and design was the crux of the Community’s issues then and remains so today -- after many failed promises and a failure by Staff (post 2008) and successive Board members to enforce what was won and owed to the Community through the Settlement Agreement underlying the Compliance Program. But, prior to outlining all that the Community has lost from 2008 to the present, I must first address Mr. Harris’ claim regarding the Board’s right to review and modify or approve plan submissions post-approval of the Compliance Program.

I do not dispute, especially having served as a Commissioner, the Board’s legal right relative to review and approval of plans in general, nor do I dispute that right specific to the Compliance Program. But, most critically, the Staff at the time of the submission of the Compliance Program was informed as to the CTCAC’s and the Community’s concern that over time the Compliance Program could be eroded if the Staff did not include specific language requiring the proffered elements accepted by the Board to actually be provided. It was understood at the time that this language should not limit minor revisions and plan alterations, but would secure the specific elements as approved. In response, the Staff did include protective language and the Board also included protective language limiting itself to the scope of potential future reviews and any modifications to the Compliance Program.

#### **§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.

What was “expressly provided in this Resolution” was that the Elements as outlined in the Staff Report and Circle Page 17 were indeed **requirements**. They had nothing to do with “conceptual plans” which were to be later detailed, they were the specific proffered elements to be included in those future plans. The Staff intentionally outlined not only the specific elements, but also the associated project costs/monetary benefit to the Community, which was their rationale for accounting them as sufficient to remedy violations found to date and otherwise scheduled for future hearing and imposition of additional fines and penalties.

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.

It is critical to note the Board intended “to require only such modifications that are reasonably consistent with the Compliance Program.” Their approval of the Compliance Program, as stated in the Resolution, was “according to the elements, terms, and conditions stated above.” In short, the design of plans could change, the Planning Board could make modifications “consistent with the Compliance Program,” but nowhere was there any indication that major modifications could be made that would reduce or remove the physical elements that were required to be provided. Nowhere was there any leeway provided to arbitrarily and capriciously reduce the proffered and accepted “elements,” or to grossly discount the monetary value of the underlying Settlement award to the Community as reinforced by the adopted Compliance Plan.

Before summarizing what I request of the Board (and my understanding from multiple discussion with members of the Community expressing that they desire, but don’t have sufficient supporting information or historical data to request), it is critical to provide an accounting of the Settlement benefits/Compliance Program requirements of which the Community has been deprived to date.

Following is the Staff calculation of the cost/financial benefit to the Community of specific elements as contained within the Board approved Compliance Program, and adopted as required Elements (Page 14 of the Staff Report to the Board):

• Additional landscaping	\$1,000,000
• Improvements to Rodgrave 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	\$2,200,000
<b>Total</b>	<b>\$14,690,000</b>



Of the preceding calculated benefits, to date the Planning Board has removed in excess of \$12 Million Dollars of these “required” elements. Removals have included the Parking Garages, Indoor Lap Pool, and Market Building or Civic Plaza. These removals do not take into account the additional revised plans of the past and currently proposed, or the revised locations of other elements/amenities that were to be provided. At this point, I am only addressing the monetary value of elements eliminated from those **required** under the Compliance Program. And, please remember, these elements constituted appropriate remediation for all violations and eliminated further hearings and proposed fines.

While one could argue that the Planning Board was within its legal right to amend the plans, even to remove the requirement for parking structures due to an evaluation that they are not practical in today’s market, there is no support for eliminating the equivalent monetary compensation that was due to the Community per the Settlement Agreement and resultant Compliance Program. In fact, the Staff and Board were required in accordance with the Compliance Plan and as outlined within the Resolution to ensure that all required elements were provided. I posit that if the Planning Board had reallocated even the financial equivalent of the parking garages (\$8.4M) to another purpose - such as requiring the Applicant to offer that amount over some period of time for free or reduced rent to a potential grocer - the Community would not still be waiting for a grocery store . . . or be held hostage to accept whatever plan revisions the Applicant presents in the hope of getting completed some or any development in the still vacant Town Center Retail Core.

As to the specifics of the Retail Core, the overall square footage of commercial and retail space has been arbitrarily reduced by almost half of what was initially proffered and incorporated into the Compliance Program. At the same time, apartment buildings with some heights of 70’ (exceeding heights as approved in the Compliance Program) are now being proposed - and supported by Staff, even though Staff were instructed in the Compliance Program to “undertake all reasonable measures to detect and report to the Board the Respondents’ compliance and non-compliance as the applicable case may be.”

**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.**

Why then is there no comparison in the current Staff Report showing an accurate table of elements and standards of the Compliance Program as compared to the Plan revisions now submitted to the Planning Board? Minimally, it would highlight the actual square footage reduction in proposed retail/commercial square footage versus what was approved in the Compliance Program. Instead, what the Board has before it is a regurgitation of prior approvals as if they are no longer pertinent to what is being presented by the current Applicant.

It is fair to say that the Staff and Planning Board have helped to ensure fulfillment of many of the Compliance Program elements to date. The current Developer, regardless of its name, as led by Mr. Flanagan, has completed in a respectable way the required elements of Stage I and II of the Compliance Program. The Community is grateful for those elements that have come to fruition - including the Dog Park, renovated Pool area, and many more aesthetic features.

Unfortunately, the Staff and Planning Board have failed their responsibility to enforce the required elements of Stage III of the Compliance Program - arguably the most critical implementation of the Program as "fulfillment" and "remediation" of violations and penalties that would otherwise have been imposed. As a direct result, the Community has been defrauded of the specific elements (most desired and long awaited) and associated monetary benefit that were due to them in this most critical Stage of the Compliance Program - The Clarksburg Town Center Retail Core.

The good news is that it is still not too late to act in the Community's true best interest to ensure that the final Stage of the Compliance Program is fulfilled in accordance with all of the "required elements" of the Program for that Stage. This would include reinstating the full retail/commercial square footage as "required" by the approved Compliance Program. This would ensure that the retail/commercial space would support now and long-term a true Town Center rather than a strip-center retail capacity.

Acting in the Community's true best interest would also include revisiting the currently proposed Apartment Buildings (one of which exceeds the existing height limitation, but both of which take up space that was otherwise dedicated to retail/commercial use and/or parking surface). As pertains to the Apartment Buildings, the current Plan submission includes a pool dedicated solely to the apartments. This pool takes up space that would otherwise be dedicated to Community use, such as additional retail/commercial use and/or parking for the retail/commercial use. Also, the splash pool (a feature of the Compliance Program approved to be within the Town Center Retail Core) is shown as relocated from the Town Center Retail Core to an area abutting one of the apartment buildings. This splash pool was a key element of the approved Compliance Program, initially designated to be in front of the Library, and was meant to be a focal point within the Retail Core to activate the retail area.

The Applicant could argue that many of the elements I mentioned above have been eliminated or repositioned through past Site Plan revisions and approvals. This is not truly the case. The Applicant is submitting a request for amendment to prior Plan approvals, and thereby subjects itself to the Planning Board's current review. And, as Mr. Harris mentions in his letter to the Board, the Planning Board has a legal right to make modifications as it sees fit. In this case, the Planning Board has the legal right to review the Plan in its entirety and require whatever alterations it deems necessary - including changes to revert to originally required retail square footage and the other revisions as suggested above.

Also, this is **The Last Chance** the Community has (precluding submission by me/CTCAC of the Settlement Agreement to the Circuit Court for Motion to Enforce) for Stage III of the Compliance Program to be implemented as approved and required.



Please consider these requests soberly before arriving at your decision to approve or disapprove, with recommendations for revisions, the Plan coming before you.

In conclusion, I will also advise that the former counsel to CTCAC (Dave Brown of Knopf and Brown) has reviewed my letter in detail and agreed with my foregoing statements and their legal accuracy.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Presley", written in dark ink.

Amy Presley  
Former CTCAC Co-Chair

cc: The Honorable Mitra Pedoeem, The Honorable James Hedrick, The Honorable Shawn Bartley, The Honorable Josh Linden, Mr. Phillip Estes, Ms. Sandra Pereira, Mr. Patrick Butler, Mr. Robert Kronenberg, Ms. Emily Vaias

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  
301-493-4500, [www.mncppc.org](http://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

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**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.

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**§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.



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## **§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.

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### **§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.

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#### **§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.

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#### **§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.

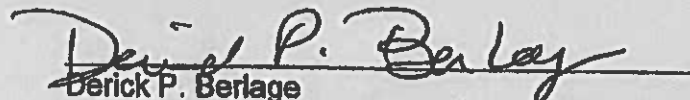
### CONCLUSION

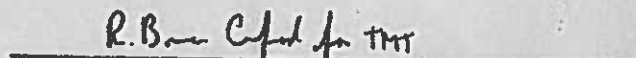
The Planning Board accordingly approves this Resolution according to elements, terms, and conditions stated above.

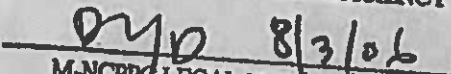
\* \* \* \* \*

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 3<sup>rd</sup> day of August 2006.

  
Derrick P. Berlage  
Chair, Montgomery County Planning Board

  
Trudye M. Johnson, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY  
 8/3/06  
M-NCPPC LEGAL DEPARTMENT



**From:** [Amy Presley](#)  
**To:** [MCP-Chair](#)  
**Subject:** RE: Project Plan Amendment #91994004#, Preliminary Plan Amendment #11995042#, and Site Plan Amendment #820070221  
**Date:** Tuesday, February 27, 2024 7:22:33 PM  
**Attachments:** [Supplemental Testimony to the Board-Amy Presley-2-27-2024.docx](#)

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**[EXTERNAL EMAIL]** Exercise caution when opening attachments, clicking links, or responding.

Honorable Chair,

Please accept this Supplemental Testimony and ensure that it is distributed appropriately.

Sincerely,  
Amy Presley

Amy Presley, REALTOR®  
301-526-7435  
[www.TrustedEstatePartners.com](http://www.TrustedEstatePartners.com)

Amy Presley (Commissioner Emeritus, and Former CTCAC Co-Chair)  
23506 Sugar View Drive  
Clarksburg, MD 20871

February 27, 2024

The Honorable Artie Harris, Chairman  
Montgomery County Planning Board  
2425 Reddie Drive  
Wheaton, MD 20902

Re: Clarksburg Town Center (Project Plan Amendment #91994004#, Preliminary Plan Amendment #11995042#, and Site Plan Amendment #820070221)

Dear Chairman Harris, and Honorable Commissioners of the Board,

I am writing to you today to supplement the testimony, dated 2/25/2024, previously submitted by me to the Board. With this letter, I would like to call attention to the departure by Staff over time from ensuring strict compliance with the Compliance Program (as initially directed by the Board at the time of approval of the Compliance Program). As the Board stated back then, and instructed the Staff, the elements and conditions of the Compliance Program were to be strictly enforced, as these elements constituted sufficient legal remedy to the violations heard and otherwise to have been heard in the alternative of a program of compliance. One of the key Findings of the Board at the time confirmed exactly that:

**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.

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.

Based on the above, if the Board approves the modifications to the Stage III of the Compliance Program (the Retail Core) as now presented by the Applicant (specifically in view of the reduction of retail square footage, elimination of significant elements, and addition of other non-Compliance Program elements), the Project itself would no longer be in "compliance" with the approved Program and would therefore be in a state of violation. I can confidently assert this because only "implementation of the Compliance Program" with "each of the elements..." constituted 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."



I am not suggesting at this point that the Board reach back to other erroneously approved Plans that were not technically in compliance with the Compliance Program and attempt to bring them into Compliance. Those plans have been reviewed, approved, and implemented and the elements lost could not easily be recaptured. At the time many of these other plans were submitted and approved, I was a Commissioner on the Board (June 2008-July 2016) as was strictly prohibited from participating in any of the hearings, commenting on any of the plans, or speaking with Staff or Board members about the plans. I honored that commitment to my position, recusing myself from all Clarksburg Town Center hearings. Instead, I had to sit in painful silence as I watched hard-won benefits for the Community cast aside without any reallocation of the monetary value associated with items that were eliminated from the Compliance Program.

This process of erosion of the elements of the Compliance Program happened without Board members being advised by the Staff - or reminded by Staff at the time - of what changes were actually allowed. However, under the leadership of Rose Krasnow (and with the participation of Robert Kronenberg), there once was a clear understanding by Staff and also presented to the Board. As was made plain in the Executive Summary on Page 2 of the October 22, 2008 Staff Report:

*"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."*

Also, within the same Staff Report at Page 2, the scope of what was allowable relative to changes:

*"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".*

Further, on the same Staff Report at Page 2, the Staff confirmed their known responsibility as to evaluation of the plans being submitted for compliance with the Compliance Program:

*"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."*

I question the Board as to how it can depart from requiring the specific elements that serve as legal sufficiency to remediate violations. This is most critical to weigh carefully for Stage III - the Town Center Retail Core - as it represents the heart of the Community, what they were promised as satisfaction of violations, and what they have long awaited.

Please consider the legal underpinning of the Compliance Program as you review the latest submission. Do not allow further erosion of elements long-promised to the Community and critical the success of the Clarksburg Town Center.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Presley".

Amy Presley  
Former CTCAC Co-Chair

cc: The Honorable Mitra Pedoeem, The Honorable James Hedrick, The Honorable Shawn Bartley, The Honorable Josh Linden, Mr. Phillip Estes, Ms. Sandra Pereira, Mr. Patrick Butler, Mr. Robert Kronenberg, Ms. Emily Vaia

**From:** [Amy Presley](#)  
**To:** [MCP-Chair](#)  
**Subject:** Project Plan Amendment #91994004#, Preliminary Plan Amendment #11995042#, and Site Plan Amendment #820070221  
**Date:** Wednesday, February 28, 2024 12:59:41 PM  
**Attachments:** [Amy Presley-Supplement 2 to Testimony-2-28-2024.pdf](#)

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**[EXTERNAL EMAIL]** Exercise caution when opening attachments, clicking links, or responding.

Honorable Chair,

Please see attached addition to my prior submissions for testimony to the Board. I apologize for the late submission, but this information was just discovered by me and it is pertinent to this case.

Kind regards,  
Amy

Amy Presley, REALTOR®  
301-526-7435  
[www.TrustedEstatePartners.com](http://www.TrustedEstatePartners.com)



Amy Presley (Commissioner Emeritus, and Former CTCAC Co-Chair)  
23506 Sugar View Drive  
Clarksburg, MD 20871

February 28, 2024

The Honorable Artie Harris, Chairman  
Montgomery County Planning Board  
2425 Reddie Drive  
Wheaton, MD 20902

Re: Clarksburg Town Center (Project Plan Amendment #91994004#, Preliminary Plan Amendment #11995042#, and Site Plan Amendment #820070221)

Dear Chairman Harris, and Honorable Commissioners of the Board,

I am writing once more to further supplement my existing testimony to you. With this letter, I submit for your review the attachment - a Press Release from the Planning Board in 2009.

Thank you in advance for taking the time to read it, as it corroborates my prior testimony and makes plain the position that the Staff and the Board held with respect to changes to the Compliance Program. Of specific note and most pertinent to the plans as currently submitted by the Applicant:

*"According to planners reviewing the certified site plan submission, among its many problems was that it did not include or account for the correct amount of retail square footage, changed paving materials along the length of the main road, altered site details and specified that Montgomery County, rather than Newland, construct an up to 45-space library parking lot."*

Staff at the time of that critical review understood, as should Staff today, that a departure from the "correct amount" of retail square footage was not acceptable and must be denied. The same holds true today. The proposed reduction of retail square footage should not be approved. In fact, the Board should enforce the Compliance Program requirements for the full amount of Retail Square Footage as required.

Sincerely,

Amy Presley  
Former CTCAC Co-Chair

cc: The Honorable Mitra Pedoeem, The Honorable James Hedrick, The Honorable Shawn Bartley, The Honorable Josh Linden, Mr. Phillip Estes, Ms. Sandra Pereira, Mr. Patrick Butler, Mr. Robert Kronenberg, Ms. Emily Vaia



Montgomery County, MD

**Montgomery Planning**

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# **Montgomery County Planners Reviewing Clarksburg Town Center Document Identify Deviations from Planning Board Approval**

December 10, 2009

## **Planning**

**SILVER SPRING** – After reviewing a 220-plus page certified site plan and project plan submitted by Newland Communities, the developer of the Clarksburg Town Center, planners have found numerous inconsistencies with the plans approved by the Planning Board.

The discrepancies were detailed in a lengthy letter from staff. In an unusual move, Planning Director Rollin Stanley also sent a letter expressing dismay over the submittal and reminding the developer that the Planning Board could assess a \$500-a-day fine if it finds Newland to be out of compliance with the site plan. The planners sent their responses to Newland yesterday.

Newland is scheduled to appear before the Planning Board on January 14 as part of a regular series of updates on the Clarksburg Town Center project. Planners asked Newland in their December 8 correspondence to submit corrected plans in early January in preparation for the January 14 meeting.

The Town Center project has been delayed for years to reconcile building violations and allow for mediation between

the developer and Clarksburg residents. The Town Center plans were approved for close to 200,000 square feet of retail and 1,213 homes on 270 acres at Clarksburg Road and Snowden Farm Parkway. Although the first plan approvals go back as far as 1995, the project was virtually halted when residents uncovered numerous discrepancies between the approved plans and what had been constructed.

Newland submitted a certified site plan on October 12 to reflect the Board's site plan approval last fall. Typically, Board approvals include conditions that must be shown in a certified site plan. After certified site plan approval, developers can request building permits and begin construction.

According to planners reviewing the certified site plan submission, among its many problems was that it did not include or account for the correct amount of retail square footage, changed paving materials along the length of the main road, altered site details and specified that Montgomery County, rather than Newland, construct an up to 45-space library parking lot.

Planners in Development Review, Environmental Planning, the Department of Parks and the County Department of Permitting Services contributed to the 32-page December 8 response.

# # #



# **EXHIBIT E**

0454

Montgomery Planning

## CLARKSBURG TOWN CENTER

**PROJECT PLAN AMENDMENT NO. 91994004E, PRELIMINARY PLAN  
AMENDMENT NO. 11995042E, SITE PLAN AMENDMENT NO. 82007022I,  
FOREST CONSERVATION PLAN AMENDMENT NO. F20230380**



Amendments to reduce the approved commercial density from 206,185 SF to 106,920 SF, replace the approved office buildings with 189 multi-family housing units (including 12.5% MPDUs), reconfigure retail buildings and parking areas, update amenities, and to make parcel revisions.

Nos. 91994004E,  
119995042E, 82007022I,  
F20230380

Completed: 02-16-2024

MCPB  
02-29-2024

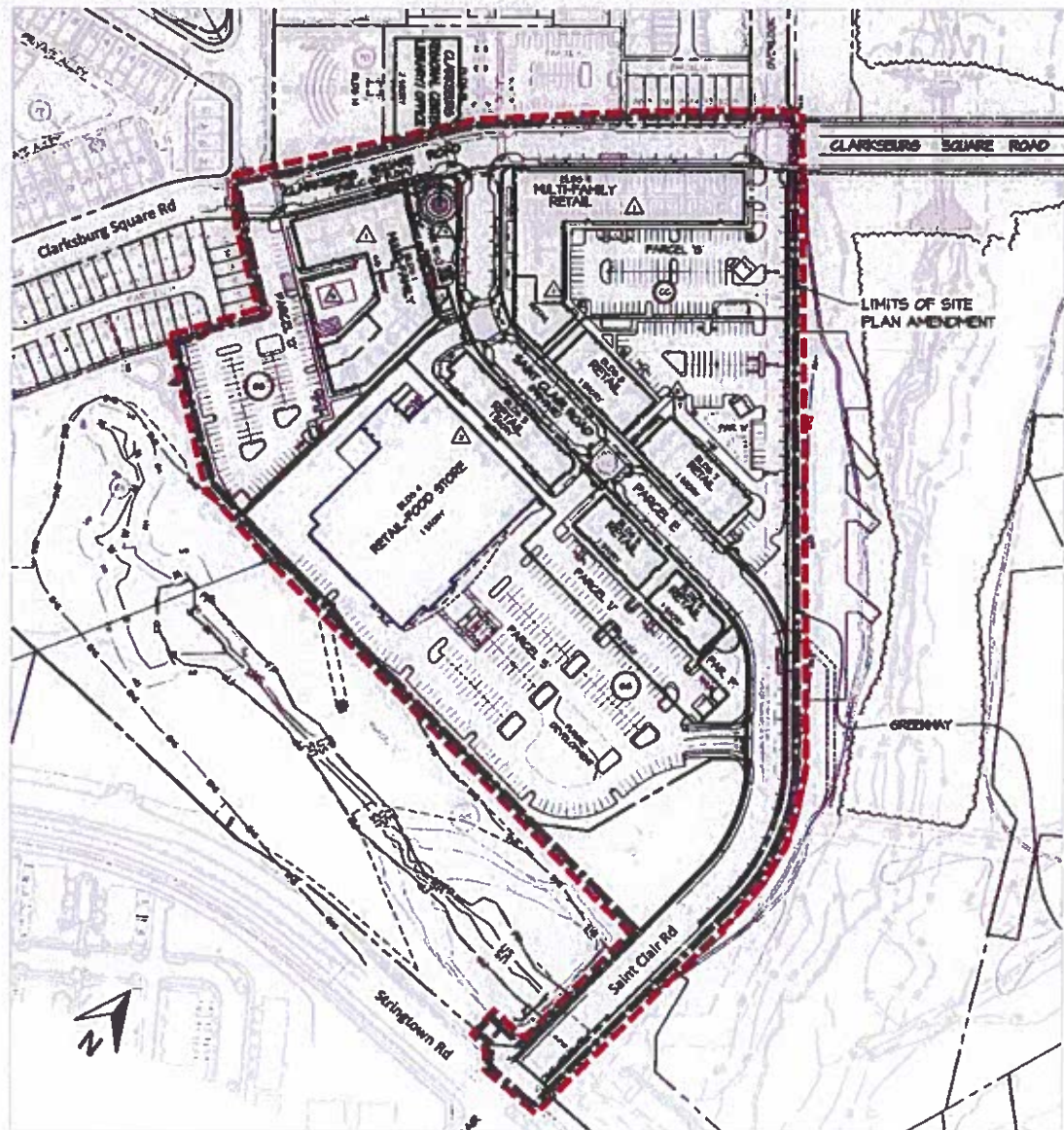
Montgomery County  
Planning Board  
2425 Reedie Drive, Floor 14  
Wheaton, MD 20902





Figure 4 - Rendering of proposed Site Plan Amendment.





**Figure 5 - Proposed Site Plan Amendment.**

Comment	Staff Response
	in the center reduces vehicular trips and encourages walking and bicycling to the proposed grocery store and other uses.
The proposed amendments are not in conformance with the Compliance Program	The key elements have been completed including roads, land for the library, amphitheater, two local parks, connection to the church, landscaping, sidewalks, and resident club/community building. Staff believes the proposed amendments continue to serve the public interest because they are in substantial conformance with the Compliance Program, as amended by subsequent plan amendments. The proposed Applications will complete the unbuilt commercial core, bring much-needed retail and services to the community, provide a plaza and splash fountain, all while responding to a notably changed retail sector and post-pandemic office market.
The Compliance Program cannot be modified without changes to the underlying settlement agreement	By resolution dated August 17, 2006 (MCPB No. 06-20), the Planning Board approved the Compliance Program subject to further detailed review and a new site plan approval. Provided in the Compliance Program resolution, the Planning Board authority was expressly reserved to consider, approve, approve subject to conditions or disapprove any future application based upon the law and merits presented at the time. As such, in approving Site Plan applications and subsequent amendments, the Planning Board has resolved that such amendments are in substantial conformance with the Compliance Program.

# **EXHIBIT F**



52 53

# **Montgomery County Planning Board**

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Date Mailed:

March 25, 2024

MCPB No. 24-027  
Site Plan Amendment No. 82007022I  
**Clarksburg Town Center**  
Date of Hearing: February 29, 2024

## **RESOLUTION**

WHEREAS, under Section 59-7.1.2 of the Montgomery County Zoning Ordinance, the Montgomery County Planning Board is authorized to review site plan applications; and

WHEREAS, under Section 59-7.7.1.B.3, the Planning Board reviewed this site plan under the procedures and standards of the Zoning Ordinance in effect on October 29, 2014, including the zoning then in effect; and

WHEREAS, on July 16, 2009, the Planning Board, by Resolution MCPB No. 09- 15, approved Site Plan No. 820070220, for 194,720 square feet of commercial uses, which includes up to 69,720 square feet of specialty retail, 1,213 residential dwelling units including 152 moderately priced dwelling units ("MPDUs"); on approximately 270 acres in the RMX-2 and RDT zones; located at the northeast quadrant of Stringtown Rd and Frederick Rd (MD 355) ("Overall Property"); in the Clarksburg Policy Area, and 1994 Clarksburg Master Plan and Hyattstown Special Study Area, as amended in 2011 ("Master Plan") area; and

WHEREAS, on June 15, 2010, the Planning Board approved an amendment , designated as Site Plan Amendment No. 82007022A (MCPB No. 10-59) to correct the unit count from 1,213 to 1,206 residential dwelling units including 151 MPDUs on the Overall Property; and

WHEREAS, on July 11, 2013, the Planning Board approved an amendment , designated as Site Plan Amendment No. 82007022B (MCPB No. 13-125) to reinstate accessory structure setbacks on certain lots, and confirm that based on the existing approved lot standards, either single-family detached houses with garages or the previously shown "Courtyard" houses could be built on certain lots on the Overall Property; and

WHEREAS, on July 23, 2015, the Planning Board approved an amendment , designated as Site Plan Amendment No. 82007022C (MCPB No. 15-81) for construction of a driveway approach onto Clarksridge Road, revised parking spaces, landscaping, lighting, and stormwater

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2425 Reddie Drive, Floor 14, Wheaton, MD 20902 | Phone: 301-495-4605  
[www.montgomeryplanningboard.org](http://www.montgomeryplanningboard.org) | [mcp-chair@mncppc.org](mailto:mcp-chair@mncppc.org)

Approved as to  
Legal Sufficiency: /s/ Emily Vaias  
M-NCPPC Legal Department

Unless specifically set forth herein, this Amendment does not alter the intent, objectives, or requirements in the originally approved site plan, as revised by previous amendments, and all findings not specifically addressed remain in effect.

- 1. The site plan conforms to all non-illustrative elements of a development plan or diagrammatic plan, and all binding elements of a schematic development plan, certified by the Hearing Examiner under Section 59-D-1.64, or is consistent with an approved project plan for the optional method of development, if required, unless the Planning Board expressly modifies any element of the project plan.*

No development plan, diagrammatic plan, or schematic development plan are required for the site. The Application is consistent with Project Plan Amendment No. 91994004E for the Clarksburg Town Center, including land uses and maximum densities, design layout, development standards, and conditions of approval.

The Site Plan Amendment substantially conforms to the requirements of the Compliance Program, as modified by the Planning Board. The following elements of the Compliance Program have been completed: roads and sidewalks, land dedication for the library building, library parking lot, amphitheater, Harness Point tot lot, Sinequa Square, Clark Family Memorial, Kings Pond Local Park, Piedmont Woods Local Park, Greenway, residential mews, stairway connection to the Methodist Church, Resident's Club building and parking, as well as other elements. The Application serves the public interest because it completes the unbuilt portions of the Clarksburg Town Center core, including a long-anticipated grocery store, commercial spaces for shops, restaurants, services, and additional residential density to support the commercial core.

- 2. The site plan meets all of the requirements of the zone in which it is located, and where applicable conforms to an urban renewal plan approved under Chapter 56.*

The Subject Property includes approximately 26.3 acres zoned CRT-0.75, C-0.25, R-0.5, H-65T. However, pursuant to Sec. 59.7.7.1.B.3 (Exemptions), the Applicant elected to amend the Site Plan using the RMX-2 development standards, which were effective on October 29, 2014. The proposed development satisfies all applicable development standards for the RMX-2 zone. A summary of this review is included in the Data Table below.

The Application includes retail and service establishment uses, with two drive-thru facilities (previously approved), in addition to a new multi-family apartment building and a new mixed-use residential/commercial building. Multi-family residential, mixed-use residential/commercial, and retail/service establishment uses were permitted in the RMX-2 zone and are also permitted in the current CRT zone, and drive-thru facilities are permitted as a limited use in the CRT zone. The previously approved parking requirements are amended in a manner that satisfies Sec. 59-6.2.3 and Sec. 59-6.2.4 of the current Zoning Code. The Application has been reviewed by other applicable county and state agencies, all of whom have recommended approval.

# EXHIBIT G



## **WEIS FILLING STATION CONDITIONAL USE NO. CU202502**

### **Description**

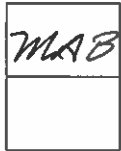
The Applicant is proposing a Conditional Use for a Filling Station use per Section 59.3.5.13.C to be located in the parking lot of a Weis grocery store that has been approved but not yet constructed.

COMPLETED: 12/9/2024

PLANNING BOARD HEARING DATE: 12/19/2024

MCPB ITEM NO. 9

## Planning Staff



Mark Beall, Zoning Planner IV, [mark.beall@montgomeryplanning.org](mailto:mark.beall@montgomeryplanning.org), (301)495-1330

Patrick Butler, Chief, [Patrick.Butler@montgomeryplanning.org](mailto:Patrick.Butler@montgomeryplanning.org), (301)495-4561

### LOCATION/ADDRESS

Parcel K on Plat 25584, Clarksburg 20871

### MASTER PLAN

1994 Clarksburg Master Plan

### ZONE

CRT-0.75, C-0.25, R-0.5, H-65T

### PROPERTY SIZE

12,000 Square Feet

### APPLICANT

CYC Retail, LC c/o Elm Street Development & Weis Markets, Inc.

### ACCEPTANCE DATE

September 9, 2024

### REVIEW BASIS

Chapter 59

### HEARING EXAMINER PUBLIC HEARING

January 23, 2025

## Summary:

- Staff recommends approval of the Conditional Use with conditions and transmittal of comments to the Hearing Examiner for a hearing scheduled for January 23, 2025.
- The Subject Site is an existing undeveloped portion of Clarksburg Town Center. The Proposal would allow a Filling Station with up to three (3) pumps.
- The Property has a recently approved Preliminary Plan Amendment, Site Plan Amendment, and Forest Conservation Plan Amendment, which will be amended at a later date.
- Staff has not received any public correspondence as of the date of this Staff Report.

## TABLE OF CONTENTS

SECTION 1: RECOMMENDATIONS AND CONDITIONS .....	3
CONDITIONAL USE No. CU202502 .....	3
SECTION 2: NEIGHBORHOOD & SITE DESCRIPTION .....	4
VICINITY/NEIGHBORHOOD .....	4
PROPERTY DESCRIPTION.....	5
SECTION 3: PROJECT DESCRIPTION.....	5
PREVIOUS APPROVALS .....	5
PROPOSAL .....	6
SECTION 4: COMMUNITY CORRESPONDENCE .....	9
SECTION 5: FINDINGS.....	9
CONDITIONAL USE No. CU202502 .....	9
SECTION 6: CONCLUSION .....	20
ATTACHMENTS .....	21



## SECTION 1: RECOMMENDATIONS AND CONDITIONS

### CONDITIONAL USE NO. CU202502

Staff recommends approval of Weis Filling Station, Conditional Use No. CU202502, for a Filling Station, subject to the following conditions:

1. The use is limited to an Automobile Filling Station and must meet all requirements of Section 59.3.5.13.C.
2. The Conditional Use will be limited to three fuel pumps (six positions).
3. Applicant must amend the Preliminary Plan, the Site Plan, and the Forest Conservation Plan to reflect the Conditional Use approval.
4. Hours of operation shall be limited to 6 a.m. through 12 a.m.
5. The Filling Station must dispense less than 3.6 million gallons of gas and fuel per year.

## SECTION 2: NEIGHBORHOOD & SITE DESCRIPTION

### VICINITY/NEIGHBORHOOD

The Subject Property is outlined with the red dashed line in Figure 1 below and is located at Parcel K on Plat 25584 in Clarksburg Town Center, Clarksburg, Maryland. The Property is subject to the 1994 *Clarksburg Master Plan*.

To determine the compatibility of the proposed use with the surrounding area, it is necessary to delineate the “surrounding neighborhood,” which is the area that will be most directly impacted by the proposed use. Once delineated, Staff must assess the character of the neighborhood and determine whether the impacts of the proposed conditional use will adversely affect that character.

Staff defines the surrounding neighborhood as outlined in the bold yellow line in Figure 1. The surrounding neighborhood is zoned CRT-0.75, C-0.25, R-0.5, H-65T and consists of existing and planned mixed-use development including single-family detached, townhouses, multi-family, and commercial uses such as retail and restaurant uses. Staff did not locate any Special Exceptions or Conditional Uses in the neighborhood.



Figure 1: Vicinity Map with Staff-defined neighborhood

## PROPERTY DESCRIPTION

The Subject Property (outlined in red dashed line in Figure 2) consists of six acres known as Parcel K on recorded Plat No. 25584 (future Parcel G, Block GG and 4.5 acres). The Property is located on St. Clair Road, approximately 270 feet north of Stringtown Road in Clarksburg. The Property is an unimproved, rough graded parcel with no buildings or environmental features. The Property is part of the 14.5-acre retail and mixed-use core for the Clarksburg Town Center. The Property slopes gradually from west to east. The Property will be accessed from St. Clair Road north of the Stringtown Road intersection.



Figure 2 – Subject Property

## SECTION 3: PROJECT DESCRIPTION

### PREVIOUS APPROVALS

In 1994, the County Council approved the 1994 *Clarksburg Master Plan and Hyatt Special Study Area* ("Master Plan"). The Master Plan called for the creation of a town center alongside the Clarksburg Historic District, surrounded by residential, office, and retail uses. The plan envisioned up to 2,600 residences and 300,000 sq. ft. of commercial space.



In 1995, the Planning Board approved Project Plan No. 919940040 and Preliminary Plan No. 119950420. The approvals envisioned a neo-traditional community with 1,300 residences, 100,000 square feet of office, and 150,000 square feet of retail.

In 2005, a group of residents known as the Clarksburg Town Center Advisory Committee (CTCAC) alleged numerous violations associated with the as-built conditions, against the previous developer, NNPII Clarksburg, LLC (Newlands). To resolve the dispute, CTCAC and Newlands agreed to mediation. The mediation resulted in a Compliance Program which was approved by Planning Board resolution in June 2006.

The Compliance Program consisted of three stages. Stage I permitted the developer to proceed with the construction of certain residential units without further review by the Planning Board. Stage II required an interim review of certain residential units before construction. Stages I and II are completed.

To satisfy the requirements for Stage III, in 2008 the Planning Board approved Project and Preliminary Plan amendments along with new Site Plan No. 820070220. These approvals incorporated the necessary infrastructure and significant amenity improvements set forth in the Compliance Program.

In July 2013, the Planning Board approved Site Plan Amendment No. 82007022D to reduce residential units, increase commercial space, revise the commercial, along with park and amenity revisions. Although most Compliance Program elements were incorporated, the Board did not require all prior elements, such as parking structures in the retail core. The Board found that the amendment served the public interest by "providing significant community amenities and facilities that are comparable to the previously approved plans while responding to the aspirations and needs of today's community." Subsequently over the following years, the Applicant complied with the amendments and Compliance Program by substantially completing the required infrastructure and amenities.

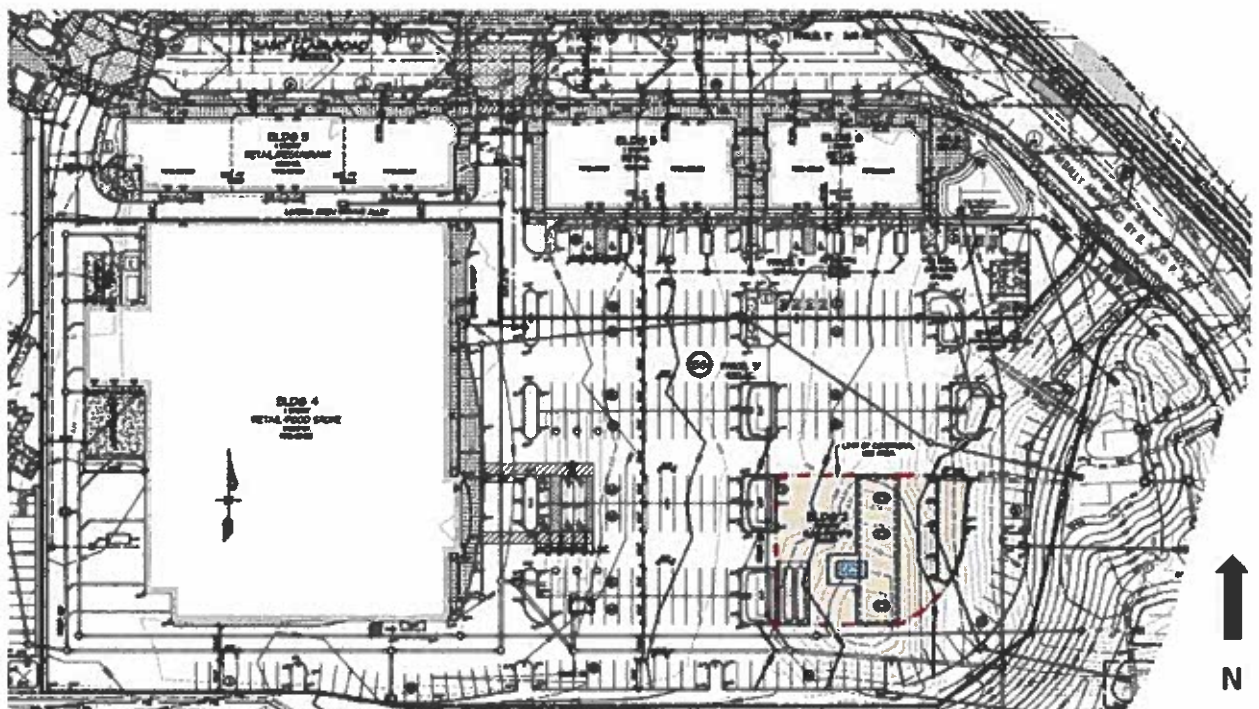
In June 2023, the Applicant filed the subject Applications to complete the commercial core. After more than a decade, the Applicant has secured a major grocery store anchor. With this anchor's commitment, the Applicant is in a position to attract additional commercial tenants and new residents to complete the final phase of the Clarksburg Town Center.

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## PROPOSAL

The Applicant proposes a Filling Station in the proposed parking lot of the future Weis grocery store. The Filling Station will be accessed from the shared driveway for the Weis grocery store from St. Clair

Road. The Applicant is proposing 3 gas pumps (6 fueling positions), a 500-square-foot kiosk, and a canopy with this Application. The pumps will operate from 7 a.m. to 11 p.m. seven days a week and will be monitored by one employee in the kiosk. Typical retail sales from the kiosk include motor oil, transmission fluid, and similar automotive products, soft drinks, cigarettes, lottery tickets, snack items, etc.



*Figure 3 – Proposed Filling Station, Subject Application shown in red dashed line.*





## SECTION 4: COMMUNITY CORRESPONDENCE

As of the date of this Staff Report, Staff has not received any letters of correspondence from the community.

## SECTION 5: FINDINGS

### CONDITIONAL USE NO. CU202502

- 1. Per Section 59.3.5.13.C.2, where a Filling Station is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:**

- a. Access to the site from a street with a residential classification is prohibited if:**

- i. it is the only access to the Filling Station, or**

- ii. it is the primary entrance to a Filling Station with more than 1 entrance.**

**The Hearing Examiner may allow a Filling Station with access on a residential street as a secondary entrance if it finds that the access will not have an adverse impact on neighboring residential houses.**

The Filling Station is accessed from the private road St. Clair Road which does not have a residential classification. The private road connects to Stringtown Road which is a Town Center Boulevard and Clarksburg Square Road which is a Town Center Street. This Section does not apply because these roads do not have a residential classification.

- b. Site lighting is a maximum of 0.1 footcandles at the lot line when the subject lot abuts a Residential zone. Site lighting is a maximum of 0.5 footcandles at the lot line when the subject lot abuts all other zones.**

The Applicant submitted a lighting plan with this Application. The photometric plan shows the lighting reduced to 0.0 footcandles ten feet before reaching the property line. The surrounding properties are all zoned CRT.

- c. Any Filling Station facility designed to dispense a minimum of 3.6 million gallons per year must be located at least 500 feet from the lot line of any land with a dwelling unit; public or private school; park; playground; day care center; any outdoor use categorized as a Civic and Institutional use or a Recreation and Entertainment use; or any wetland, stream, river, flood plain, or environmentally sensitive area.**

The proposed Filling Station will dispense less than 3.6 million gallons of gas or fuel per year, as conditioned, and therefore this section does not apply.

- d. Product displays, parked vehicles, and other obstructions that adversely affect visibility at intersections or to station driveways are prohibited.**

The Filling Station is located within a grocery store parking lot and therefore will not have any adverse effects on the intersection or driveway. The Filling Station and kiosk are 300 feet away from the driveway entrance to the parking lot. The Applicant is not proposing outdoor displays with this application.

- e. When such use occupies a corner lot, the driveways must be located a minimum of 20 feet from the intersection of the rights-of-way and must not exceed 30 feet in width.**

The proposed Filling Station is not located on a corner lot and therefore this Section does not apply to this Application.

- f. Each gasoline pump or other service appliance must be located on the lot a minimum of 10 feet behind the setback line; and all service, storage, or similar activities in connection with the use must be conducted entirely within the building, except for car-share space.**

The minimum side and rear setbacks for the CRT zone are 0 feet. The pumps and kiosk are proposed at 65.4 feet from the east property line and 98.7 feet from the rear lot line. These are more than 10 feet behind the setback lines for the side and rear.

- g. There must be a minimum of 20 feet between driveways on each street, and each driveway must be perpendicular to the curb or street line. The Hearing Examiner may waive the perpendicular driveway requirement if the Department of Transportation deems the alternative safe.**

As established by Preliminary Plan 11995042E and Site Plan 82007022I, the two driveways for ingress/egress to the parking lot where the gas pumps are located, are

over 400 feet apart from each other and both driveways are perpendicular to the curb and street line.

***h. Vehicle parking that overhangs the public right-of-way is prohibited.***

The vehicle parking and gas pump canopy does not overhang the public right-of-way. The canopy is over 250 feet away from the public right-of-way and parking is 200 feet away.

***i. If the Filling Station facility includes a car wash, it must:***

***i. provide vehicle stacking space equivalent to 5 times the vehicle capacity of the automatic car wash and 3 times the vehicle capacity of the manual car wash bays; and***

***ii. demonstrate that the vehicles using the car wash will not queue off-site.***

The Applicant is not proposing a car wash with this Application. If the Applicant ever decides to add a car wash, the Applicant will need to amend the Conditional Use application at that time.

***j. The Hearing Examiner must find there is adequate parking for all accessory uses.***

The Applicant is not proposing any accessory uses with this application therefore this Section does not apply. The Filling Station is a proposed accessory use to the grocery store onsite and provides 558 parking spaces which includes the two parking spaces for the Filling Station. The parking for the grocery store has been approved by the Planning Board as part of Preliminary Plan No. 11995042E and Site Plan No. 82007022I.

***2. Per Section 59.7.3.1.E., to approve a conditional use application, the Hearing Examiner must find that the proposed development:***

***a) satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended.***

The Site has a recently approved Preliminary Plan 11995042E, Site Plan 82007022I, and Forest Conservation Plan No. 91994994E. The previously approved plans show a potential future Filling Station at this proposed location. The Applicant will need to amend Preliminary Plan No. 11995042E, Site Plan No. 82007022I, and Forest Conservation Plan No. 91994004E if the Hearing Examiner approves this Conditional Use application.

***b) satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable***



**general requirements under Article 59-6;**

i. **Use Standards for Filling Station- Section 59.3.5.13.C**

As detailed above, the proposed Filling Station satisfies the requirements and use standards in Section 59.3.5.13.C

ii. **Development Standards**

The Subject Property is in the CRT-0.75, C-0.25, R-0.5, H-65T zone, which allows a Filling Station Use. The Project complies with all development standards of the CRT zone, as shown on the Development Standards Table below.

*Table 1: Development and Parking Standards CRT-0.75, C-0.25, R-0.5, H-65T*

<b>Development Standard Section 59.4.5.3.C</b>	<b>Permitted/ Required</b>	<b>Proposed</b>
Minimum Lot Area	N/A	N/A
Minimum Lot Width at Front Building Line	N/A	N/A
Minimum Lot Width at Front Lot Line	N/A	N/A
Maximum Density	0.75 FAR, C-0.25, R-0.5	0.05 FAR
Minimum Front Setback	0 feet	300 feet
Minimum Side Setback	0 feet	65.4 feet (east)
Minimum Sum of Side Setbacks	N/A	N/A
Minimum Rear Setback	0 feet	98.7 feet
Maximum Height	35 feet*	35 feet
<b>Vehicle Parking Requirement (Section 59.6.2.4.B)</b>	3.5 spaces/1000 sq. ft.= 2 space	3.5 spaces/.500= 2 space

\*Maximum height per approved Site Plan 82007022I

iii. **General Requirements of 59-6 -**

**(1) Access- 59-6.1**

Access to the overall Site is unchanged from approved Preliminary Plan No. 11995042E. The proposed fueling station shares all access points with the grocery store site. The design of the drive aisles are compliant with Section 59-6.2.5.G. The proposed use will be in compliance with the recently approved Site Plan No. 2007022I.

**(2) Parking, Queuing and Loading-59-6.2**

The fueling station use requires one parking space per 1,000 square feet of gross floor area (GFA) pursuant to Section 59.6.2.4.B. The Project proposes 500

square feet of GFA which requires two additional parking space. The grocery store site proposes 558 parking spaces, to be shared by the retail uses. As approved with Site Plan No. 82007022E, 558 parking spaces exceeds the minimum number of spaces required for the proposed uses. The Filling Station parking spaces were included in the parking calculations on Site Plan No. 82007022E. It is important to note that although the Filling Station fuel pumps are located within the proposed parking lot, this space was reserved and intended for a filling station use, as shown in the Preliminary Plan and Site Plan. Approval of the filling station will not reduce the previous approved number or layout of parking spaces on the Site.

**(3) Landscaping and Outdoor Lighting- 59-6.4**

The Conditional Use area is restricted to the gas pump canopy area only. The areas around the Conditional Use contain proposed landscaping per Section 6.4. under the previously approved Site Plan 82007022I. All previously approved landscaping will not be affected by this application.

As required by Section 59-6.4.4.D, the photometric plans indicate that illumination at the lot line will not exceed 0.5 footcandles, excluding street lights within the right-of-way. The photometric plan indicates 0.0 footcandles at the property lines closest to the Filling Station.

**(4) Screening-59-6.5**

Screening is not required for this application per the Applicability Section 59.6.5.2.C. The Applicant has a landscape plan (Attachment C) for the Clarksburg Town Center Site Plan which will provide screening along with existing onsite Forest Conservation Easements.

**(5) Outdoor Display and Storage- 59.6.6**

*The Applicant is not proposing any outdoor displays or storage with this application.*

**(6) Signage-59-6.7**

The Applicant is not proposing any signage with this application. The signage will be included with the Weis Grocery Store as part of Site Plan No. 82007022I; however, if the Applicant proposes signage in the future, the Applicant will need to obtain a sign permit per Section 59.7.4.3.

**c) *substantially conforms with the recommendations of the applicable master plan;***

The Site is located within the Town Center District of the 1994 *Clarksburg Master Plan* (Master Plan). The Town Center District is planned as a central focus for the larger plan area and Clarksburg community, with a mix of residential, retail, and office uses to support an active and accessible Town Center. The gas station associated with the approved associated grocery store and adjacent retail shopping center is one element of this Town Center vision.

**d) *is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;***

The location of the proposed pumps, the topography of the site and landscaping previously approved on Site Plan No. 20070221 the proposed three pumps will be unobtrusive to the rest of the retail area. The gas pumps will be limited to a very small portion of the overall retail area (approximately 12,000square feet of a fourteen-acre retail core) and will be located in the parking lot, away from any residential uses and the street-oriented retail along Clarksburg Square Road and St. Clair Road.

**e) *will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;***

The contained nature of these gas pumps, as part of a much larger retail/mixed-use core area, and the fact there are no conditional uses/special exception in the neighborhood, the approval of this will not affect the area adversely. There is no abutting or confronting residential detached houses with this application. Since there are no other Conditional Uses/Special Exceptions in the neighborhood, there are will not be any adverse impacts on the Master Plan.

**f) *will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:***

- i. *if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police***



***and fire protection, water, sanitary sewer, public roads, and storm drainage, or***

- ii. ***if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, and***

A retail center up to 150,000 square feet of retail uses already has been approved under the referenced Project Plan, Preliminary Plan and Site Plan which collectively reviewed the adequacy of public facilities. The APF was reviewed at the time of the Preliminary Plan which included the future Filling Station use and no further review is required.

(1) Public safety (Police and fire protection): The entire Clarksburg Town Center area has excellent police and fire protection, and a new fire house was just opened very nearby. The addition of these gas pumps to the much larger retail center will not create any additional demand.

(2) Public Roads: The site is served by public roads, including Stringtown Road and Clarksburg Square Road, and the pumps themselves will be located on private property while the entire access and circulation system has been approved under the Preliminary Plan and Site Plan and will be reviewed again in the Preliminary Plan and Site Plan Amendment.

(3) Electrical Infrastructure: The area is currently served by extensive electric infrastructure and this retail core has been planned for a long time. Current design confirms that electric services can be provided to the gas pumps.

(4) Water and Sanitary Sewer: Once again, the site is served by public water and sewer and the construction of retail has long been planned, mains installed, and planned to serve the gas pumps in this area.

### ***Transportation***

#### ***Master-Planned Roadways and Bikeway***

The Subject Property is located along Clarksburg Square Road and St. Clair Road. Clarksburg Square Road functions as a Town Center Street with a minimum right-of-way of 70 feet by the 2024 *Master Plan of Highways and Transitways Technical Update*. There are no master planned bike facilities along Clarksburg Square Road.

St. Clair Road is a private road built to the Town Center Street public standard. St. Clair Road has a constructed master planned bicycle sidepath along the west side.

There are no other planned bike facilities along the project frontage and no additional dedication is required.

#### ***Pedestrian Facilities***

The existing pedestrian facilities along Clarksburg Road are adequate. Sidewalk and frontage zone vary in width but there is a 10-foot minimum width and a 5-foot buffer.

The sidewalk facilities along St. Clair Road exceed the eight-foot standard for width and include several connections to the existing sidepath.

Pedestrian circulation around the Site will be minimal and few pedestrian conflicts are anticipated. The gas pumps are located in the far corner of the development, away from major pedestrian and bicycle access points.

#### ***Transit Service***

Bus service, RideOn Route 75, is provided along Stringtown Road which intersects with St. Clair Road south of the project area.

#### ***Parking***

***Per Section 59-6.2.4.B., a 500-square-foot filling station requires one additional parking space, which can be accommodated with the existing surface parking lot.***

#### ***Local Area Transportation Review***

The 2020-2024 *Growth and Infrastructure Policy* requires mode-specific adequacy tests for any project estimated to generate 50 or more net new peak hour person trips. This proposed development has been found to produce fewer than 50 new peak hour trips and is exempt from a full transportation impact study.

The addition of the three fuel pumps (six positions) to Preliminary Plan No. 11995042E , the subject of this analysis, still results in an overall net reduction in trips generated when comparing the 2023 Preliminary Plan No. 11995042E to Preliminary Plan No. 11995042A trip generation estimates.

***Table No. 1: Program Comparison of Subject Proposal to Previously approved Preliminary Plans 11995042A & 11995042E***

Land Use	Approved 2008 Preliminary Plan Amendment 11995042A	Approved 2023 Preliminary Plan Amendment 11995042E	Proposed Conditional Use 25-02
Condominiums	287 DU	201 DU	201 DU
Townhomes	700 DU	686 DU	686 DU
Single Family Detached	219 DU	219 DU	219 DU

Multifamily (Garden Style)	-	189 DU	189 DU
Total Residential	1,206 DU	1,295 DU	1,295 DU
Retail	194,720 SF	106,920 SF	106,920 SF
Gasoline Pumps	-	-	6 fueling positions

It is acceptable, in this case, to consider the addition of the fueling stations as an adjustment to Amendment E because the estimated overall impact is still a reduction in trips generated compared to the adequate public facilities analysis conducted as part of Plan Amendment 11995042A. It is important to note that any development within the vicinity of the Site would have been predicated on the APF analysis conducted for Plan Amendment 11995042A, which is still valid. Furthermore, the number of trips estimated generated by the addition of the pumps is likely conservative. Many of the trips to a gas pump co-located with the grocery store are likely captured trips, internal to the Site, that would further reduce the number of new peak trips generated.

Land Use	Quantity	Vehicle Trip Adjustment Factor	AM Peak Hour Vehicle Trip Total	AM Peak Hour Person Trip Total	PM Peak Hour Vehicle Trip Total	PM Peak Hour Person Trip Total
<b>Original Approval (Preliminary Plan 11995042A, 2008)</b>						
Single Family Detached	219 DU	100%	161	249.6	201	311.6
Multifamily Housing Low Rise	987 DU	100%	484	750.4	507	786
Retail	194,720 sq ft	100%	424	586.4	1694	2343
<b>Previously Approved Total</b>			<b>1,069</b>	<b>1,586</b>	<b>2,402</b>	<b>3,441</b>
<b>Approved (Preliminary Plan Amendment 11995042E, 2023 and Subject Application)</b>						
Single Family Detached	219 DU	100%	152	236	208	323
Multifamily Housing Low Rise	887 DU	100%	355	550	452	701
Multifamily Housing Mid Rise	189 DU	100%	70	109	74	115
Retail	106,920 sqft	100%	377	521	965	1335
Gasoline/Service Station*	6 Fueling Positions	100%	62	81	83	109
<b>Proposed Total</b>			<b>1,016</b>	<b>1,497</b>	<b>1782</b>	<b>2,582</b>



<b>Net New Person Trips (Proposed minus 2008 Approved)</b>	<b>-53</b>	<b>-89</b>	<b>-620</b>	<b>-859</b>
*New land use, subject of this Conditional Use.				

Source: Transportation Exemption Statement by Kimley Horn, dated July 5, 2024, as modified by staff

### **(7) Schools**

The Subject Application does not propose a residential use and therefore does not have any impacts on public schools.

**g) will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:**

- i. **the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;**
- ii. **traffic, noise, odors, dust, illumination, or a lack of parking; or**
- iii. **the health, safety, or welfare of neighboring residents, residents, visitors, or employees.**

This finding requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Section 1.4.2 of the Zoning Ordinance defines inherent adverse effects as “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

Non-inherent adverse effects are defined as “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood. When analyzing whether impacts are inherent or non-inherent, the size, scale, scope, light, noise, traffic, and environmental effects of the proposed use must be analyzed.

The following physical and operational characteristics are necessarily associated with (i.e., inherent to) a Filling Station:

- **Customer trips:** Typically trips for the Filling Station will be in conjunction with the grocery store. In other words, the gas station is not generating many new trips on its own. Instead, people patronizing the adjacent retail and grocery store are likely adding on trips to the gas station as a matter of convenience. The Filling Station is located in the parking lot so the use will not have any affects on the surrounding neighborhood.
- **Canopy lighting:** The photometric plan submitted with the application shows 0.0 footcandles at the property lines.
- **Fuel truck deliveries:** Fuel delivery trucks are likely the delivery trucks for the grocery store. Typically, the fuel delivery trucks will make deliveries during normal daylight hours, and outside of peak travel times.
- **Fuel odors and fumes:** The pumps will be located several hundred feet away from houses and other commercial uses. The vapor recovery systems on today's modern pumps help to minimize odors and fumes.

Staff did not identify any non-inherent characteristics of the proposed use.

The proposed use will not cause undue harm to the neighborhood as a result of non-inherent adverse effects alone or the combination of inherent and non-inherent adverse effects.

**3. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.**

The proposed Conditional Use is not located in a Residential Detached zone; therefore, this Section does not apply.

**4. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and is not sufficient to require conditional use approval.**

The Applicant understands even though this Application meets all the requirements for a Filling Station Conditional Use for the specific use, it does not constitute an approval.

**5. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.**

The proposed Filling Station is not an agricultural conditional use. Thus, this Section does not apply.

6. ***The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:***

- a) ***Filling Station;***
- b) ***Light Vehicle Sales and Rental (Outdoor);***
- c) ***Swimming Pool (Community); and***
- d) ***the following Recreation and Entertainment Facility use: swimming pool, commercial.***

The Applicant has provided a needs analysis with this application (Attachment B). The study shows the Filling Station use is needed for the Clarksburg Town Center area. The needs analysis indicates there is a demand of 13.2 million gallons of gasoline in the Clarksburg Weis Market area and shows there is unmet demand of approximately of seven million gallons of gas for this area.

7. ***The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:***

- a) ***Funeral Home; Undertaker;***
- b) ***Hotel, Motel;***
- c) ***Shooting Range (Outdoor);***
- d) ***Drive-Thru***
- e) ***Landfill, Incinerator, or Transfer Station; and***
- f) ***a Public Use Helipad, Heliport or a Public Use Helistop.***

This Application is for a Filling Station. Thus, this Section does not apply.

## SECTION 6: CONCLUSION

The proposed Conditional Use complies with the findings require for approval of a Filling Station, subject to the recommended conditions of approval. The proposed use substantially conforms to the 1994 *Clarksburg Master Plan*, will not alter the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends



approval of the Conditional Use with conditions and transmittal of comments to the Hearing Examiner.

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## **ATTACHMENTS**

Attachment A: Conditional Use Plan

Attachment B: Needs Analysis/Study

Attachment C: Planning Board Resolutions

# EXHIBIT H

APPROVED AND ADOPTED

# Clarksburg Master Plan & Hyattstown Special Study Area

June 1994

An Amendment to *Clarksburg and Vicinity Master Plan*, 1968, as amended; a portion of the *Master Plan for Historic Preservation*, 1979, as amended; a portion of the *Functional Master Plan for Preservation of Agriculture and Rural Open Space*, 1980; a portion of the *Boyd's Master Plan*, 1985; a portion of the *Germantown Master Plan*, 1989; the *Master Plan of Bikeways*, 1978, as amended; being also an amendment to *The General Plan (On Wedges and Corridors) for the Physical Development of the Maryland-Washington Regional District in Montgomery and Prince George's Counties*, as amended; and the *Master Plan of Highways in Montgomery County*, as amended.

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Montgomery County Department of Park and Planning  
8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760



## *Notice to Readers*

An area master plan, after approval by the County Council and adoption by The Maryland-National Capital Park and Planning Commission, constitutes an amendment to The General Plan for Montgomery County. As such, it provides a set of comprehensive recommendations and guidelines for the use of publicly and privately owned land within its planning area. Each area master plan reflects a vision of future development that responds to the unique character of the local community within the context of a County-wide perspective.

Area master plans are intended to provide a point of reference with regard to public policy. Together with relevant County-wide functional master plans, they should be referred to by public officials and private individuals when decisions are made that affect the use of land within the plan boundaries.

Master plans generally look ahead about 20 years from the date of adoption, although they are intended to be updated and revised about every 10 years. It is recognized that circumstances will change following adoption of a plan and that the specifics of a master plan may become less relevant over time. Any sketches or drawings in an adopted master plan are for illustrative purposes only and are intended to convey a general sense of desirable future character rather than a specific commitment to a particular detailed design.