

**MEMORANDUM**

September 27, 2006

TO: Montgomery County Planning Board

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

FROM: Catherine Conlon, Supervisor 301-495-4542  
Development Review Division *CC*

SUBJECT: Request for Further "Interim" Extension to the Validity Period – Preliminary Plan No. 119950420 (formerly 1-95042), Clarksburg Town Center and Extension of Third Stage Project, Preliminary and Site Plan Filing Date

---

**RECOMMENDATION:** Grant requested extensions to April 26, 2007.

**BACKGROUND**

The subject preliminary plan application was submitted on November 23, 1994 to create a mixed-use development on 267.5 acres of land in the RMX-2 zone located in the northeast quadrant of the intersection of Frederick Road (MD 355) and Stringtown Road in Clarksburg. The preliminary plan was brought before the Planning Board for a public hearing on September 28, 1995 and was approved for a maximum of 1300 dwelling units, 150,000 square feet of retail uses, and 100,000 square feet of commercial office uses. The approval was granted subject to conditions as set forth in the Opinion of the Board mailed on March 26, 1996 (Attachment "A"). Per Condition No. 17, the preliminary plan remained valid for 109-months from the date of the mailing, or March 26, 2005 unless, prior to that date, the applicant either (1) recorded all plats among the land records of Montgomery County or (2) submitted a request to extend the validity period.

On March 24, 2005, the Applicant requested an extension of the Preliminary Plan for a period of two years. The request was discussed by the Planning Board on July 28, 2005 and an interim extension of the plan was granted until October 26, 2005. At that time, it was decided that review and discussion of alleged violations and other significant issues related to the Clarksburg Town Center development needed to be completed prior to the Planning Board's full

consideration of the preliminary plan extension request. Two other extensions have been granted since that time to maintain the validity of the underlying preliminary plan while a compliance plan for the project, which will include filing of a preliminary plan amendment, was completed. The current preliminary plan validity period, established by Planning Board action on June 8, 2006, expires on October 26, 2006.

On August 3, 2006, the Planning Board adopted a Resolution approving a Compliance Program for Clarksburg Town Center (Attachment "B"). The Compliance Program established a three stage development program for completion of the project. The first stage involved Planning Board release of existing stop work orders on 78 specific units/lots to permit construction of those units. The second stage required Newland Communities to file certain interim site plan amendments, which were filed on September 18, 2006. The third stage requires that Newland Communities file amendments to the overall Project, Preliminary and Site Plans for the entire Town Center, including a new site plan for the mixed-use retail area.

By letter of September 20, 2006 (Attachment "C"), the Applicant has requested an additional six-month extension of the Preliminary Plan, and extension of the plan filing date for the Third Stage of the Compliance Program. The letter cites delays resulting from complications experienced by the applicant in identifying and retaining consulting firms to design the necessary plans. The letter also notes that coordination between the applicant, the Clarksburg Town Center Advisory Committee (CTCAC), and government agencies concerning the design has also taken a considerable amount of time.

The requested extensions should provide Newland Communities and its consultants with sufficient time to complete and submit the plans needed for the Compliance Program, including a preliminary plan amendment. The preliminary plan amendment will determine how much more of an extension to the plan validity period is necessary to complete of the new Town Center plans. In the meantime, staff recommends granting the currently requested six-month extension requests until April 26, 2007.

#### Attachments

- Attachment A – Planning Board Opinion dated 3/26/96
- Attachment B – Compliance Program Resolution (without Attachments)
- Attachment C – Applicant's Extension Request dated 9/20/06

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

6787 Georgia Avenue • Silver Spring, Maryland 20910-3760

Date of mailing: March 26, 1996

MONTGOMERY COUNTY PLANNING BOARD  
REVISED OPINION

Preliminary Plan No.: #1-95042  
Name of Plan: Clarksburg Town Center

Action: Approval, subject to conditions. (Motion by Commissioner Aron; seconded by Commissioner Holmes; with a vote of 5 to 0, Commissioners Aron, Holmes, Hussmann, Baptiste and Richardson voting in favor of the motion).

INTRODUCTION

On September 28, 1995, the Montgomery County Planning Board ("Board") held a public hearing to consider Preliminary Plan 1-95042, an application for subdivision approval in the RMX-2 zone. The proposed uses include residential, retail and commercial development. The Applicants, Piedmont & Clarksburg Associates, proposed to create 834 lots on 267.50 acres of land.

At the hearing, the Board heard testimony and received evidence submitted in the record on the application. Based upon the testimony and evidence presented, the Board finds Preliminary Plan 1-95042 to be in accordance with the purposes and requirements of the Subdivision Regulations (Chapter 50, Montgomery County Code, as amended) and approves Preliminary Plan 1-95042, subject to the conditions listed at the end of this opinion.

BACKGROUND

The property is located northeast of Maryland Route 355 between Clarksburg Road and Stringtown Road (A-260 on the Master Plan). Piedmont Road crosses through the northern portion of the property. The Applicant proposes construction of 1,300 dwelling units, including townhomes, multi-family and single-family residences. The proposal also includes 150,000 square feet of retail space and 100,000 square feet of office/development space.

The underlying development authority, Project Plan No. 9-94004, was approved by the Planning Board on May 11, 1995, after two prior Planning Board meetings (held on April 6 and 20, 1995). The record for Preliminary Plan 1-95042 specifically includes the records from those prior hearings.

## DISCUSSION AND FINDINGS

The Planning Department staff evaluated the transportation effects of the subject application as required by the Subdivision Regulations and as recommended in the Master Plan. First, the Board must determine that public facilities, including roads, will be adequate to support and service the area of the proposed subdivision. Staff evaluated the impact of the proposed development on nearby roads and intersections in accordance with the Local Area Transportation Review Guidelines. Necessary local area transportation review improvements for this project are identified in condition #2 for Project Plan No. 9-94004.

The second level of transportation review was based on the Master Plan recommendation that development districts, or alternative financing mechanisms, be implemented prior to new development, to ensure that road infrastructure be provided to support recommended Master Plan development. The Clarksburg Master Plan specifically addressed the County's fiscal concerns that the timing and sequence of development in the area should be responsive to the fact that capital improvements funding required to support new growth will have to come from a variety of sources, including government sources and private development. As part of the Project Plan discussion, the Board requested staff to conduct an analysis of the Master Plan road network, determine the amount of road infrastructure required, evaluate how the roads would be built, and recommend when they should be built.

The Master Plan anticipated a funding shortfall for the construction of schools, local roads and other community facilities recommended in the Master Plan to serve the expected new growth. In response to this, the Master Plan recommended that development in Clarksburg should occur in stages conditioned upon the ability of private developers to fund a significant portion of the infrastructure improvements or the availability of other new sources of revenues. The Planning Board expressed a desire to address the Master Plan's stated need to comprehensively allocate among developers a responsibility to construct portions of road infrastructure in a fair and equitable manner.

To ensure that the Applicant fund its share of road infrastructure, as best can be determined at this time, staff recommended that the Applicant improve Stringtown Road (A-260), to County standards as a two lane road within the Master Plan Alignment, No. 2, as of August 25, 1995. Staff's assessment was based on the 1993 Fiscal Impact Analysis prepared by the Montgomery County Office of Planning Implementation (OPI), as part of the Clarksburg Master Plan review. The OPI study projected a funding gap of approximately \$89 million for required infrastructure. The Study also projected approximately \$37 million in revenues to be generated by the Construction Excise Tax (CET). Since the CET has been repealed, this loss of

anticipated revenue must be added to the capital gap, with a total estimated funding gap of approximately \$126 million. Staff thus estimated the Applicant's share of this infrastructure to be approximately 10 percent, or \$12.5 million, with no County or State input. The Planning Board concluded that the Stringtown Road improvement, which will be the responsibility of the applicant, represents the current best estimate of the Town Center's share of the Master Plan road infrastructure (as more particularly identified in revised traffic staff memo of 09/26/95.)

Staff noted that if the Council adopts an impact tax or other alternative road infrastructure funding mechanism, then the Applicant's contribution (in the form of improvements to Stringtown Road) will be assessed and, if found lacking, will be augmented by additional tax requirements. The Board determined that the infrastructure schemes proposed by the Master Plan are legislative in nature, will be implemented by the Council, and may or may not grandfather development predating any such legislation. The Board concluded that to anticipate the Council's actions would be presumptive, and premature.

MCDOT has requested that the hiker/biker trail shown in the Clarksburg Master Plan along Stringtown Road (A-260) be constructed along P-5 from Frederick Road (MD 355) to Piedmont Road (A-305), in lieu of the Master Plan Alignment. The developer has agreed to construct the hiker/biker trail along P-5.

Applicant also will be required to dedicate approximately 8 acres of land for a future school site, to be used in the interim as public parkland. At the time the school is developed, if ever, the parkland adjoining the school site will be jointly used as school athletic facilities and public parkland under an easement agreement between The Maryland-National Capital Park and Planning Commission and Montgomery County Public Schools (MCPS). MCPS staff asked that the entire future school site (10-12 acres) be dedicated to MCPS at this time. Under normal circumstances this would be the usual procedure. In this instance, however, staff recommended and the Board agreed that within the Clarksburg Town Center, a planned park/school site provides a more efficient use of land than separate facilities. In addition, if the land ultimately is not needed as a school site, then the land should be retained as public parkland. The Board determined that this joint use, with the recreational facilities remaining under The Maryland-National Capital Park and Planning Commission ownership, would afford the most efficient public use of the land.

Therefore, with all of the evidence heard and all testimony taken, The Planning Board, approved the plan, including (1) waiver of the distance between intersections requirements as contained in Section 50-26 of the Subdivision Regulations and (2) approval of closed street sections subject to MCDOT approval. The approval is subject to the following conditions:

1. Agreement with Planning Board to limit development to a maximum of 1300 dwelling units, 150,000 square feet of retail uses and 100,000 square feet of commercial office uses, subject to the following requirements:
  - (a) Agreement with the Planning Board to provide the necessary roadway improvements as identified in the phasing section of the revised Transportation Planning Division Memorandum dated 03/26/95.
  - (b) The recordation of the subdivision plats for the Clarksburg Town Center project shall be phased over a nine year period. Plats may be recorded in three separate phases with each phase being completed within a thirty-six month period. Applicant to record plats for at least 200 residential units during Phase 1. Applicant must submit a plat recordation schedule for Phases 2 and 3 for Planning Board approval as part of the Phase 1 site plan review.
2. Compliance with Environmental Planning Division approval regarding the requirements of the forest conservation legislation. Applicant must meet all conditions prior to recording of plat or MCDEP issuance of sediment and erosion control permit, as appropriate.
3. The commercial area's stormwater management forebay, sand filter #6 and associated grading that cannot be forested must be located outside of the required stream buffer. The SWM facilities should be designed to promote aesthetics and effectiveness.
4. Agricultural areas within the environmental buffer will be taken out of production and stabilized with a suitable grass cover no later than Spring, 1996.
5. Dedication of the following roads as shown on plan must be provided as follows:
  - (a) Clarksburg Road (MD RT 171) for ultimate 80' right-of-way.
  - (b) Piedmont Road (Master Plan A-305) for ultimate 80' right-of-way.
  - (c) Stringtown Road (Master Plan A-260) for ultimate 120' right-of-way.
6. Dedication of the proposed park/school, as shown on the Applicant's revised preliminary plan drawing, is to be made to M-NCPPC. In order to facilitate the implementation of the combined park/school facilities, the following provisions apply:



- (a) M-NCPPC and the Applicant will enter into an agreement specifying that an exchange of land, identified as areas "B1" and "B2" on the park/school concept drawing set out on Circle Page 49 of the staff report, will occur prior to the execution of the Site Plan Enforcement Agreement.
- (b) Dedication of the approximately 8 acre area, identified as area "A" on the same park/school concept drawing identified above, will occur either at the time of recordation of the plats for the adjacent phase of the project or at such time as funds for construction of the future elementary school are added to the County CIP, whichever occurs first.
- (c) The Applicant will provide site grading, infield preparation and seeding of the replacement athletic fields on the approximately 8 acres of dedicated land at a time which insures that there will be no disruption in the continued use of the existing athletic fields prior to completion of the replacement athletic fields.
  - (i) In the event that dedication occurs when funds for the proposed school are shown in the CIP, Applicant will complete work on the replacement fields prior to the construction of the proposed school.
  - (ii) In the event that dedication occurs prior to funding for the school being shown in the CIP, then upon construction of Street "F", as shown on the revised preliminary plan, Applicant will commence work on replacement of the baseball field. In addition, if at site plan it is determined that there is sufficient earth material on site to construct both replacement fields, then Applicant will also rough grade and seed the replacement soccer field when construction of Street "F" begins. Area tabulations for the proposed park/school complexes to be submitted for technical staff review at site plan. Final grading plan for the park/school site to be submitted for technical staff approval as part of the site plan application.

- 7. In accordance with Condition #6 above, Applicant to enter into an agreement with the Planning Board to provide for site grading, infield preparation and seeding of the replacement athletic fields in accordance with Parks Department specifications, as shown on the preliminary plan drawing, and as specified in the Department of Parks' Memorandum dated September 22, 1995. The construction of

the replacement athletic fields must occur as specified in Condition #6.

8. Record plats to reflect delineation of conservation easements over the areas of the 100 year floodplain, stream valley buffer, wetland buffer and tree preservation and/or reforestation and greenway dedications.
9. No clearing, grading, or recording of plats prior to site plan approval.
10. Final number and location of units to be determined at site plan.
11. Access and improvements as required to be approved by MCDOT and MDSHA.
12. Conditions of MCDEP stormwater management approval dated 07/26/95.
13. Final number of MPDU's to be determined at site plan dependent on condition #10 above.
14. Preliminary Plan 1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan No. 9-94004. Each term, condition, and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are, therefore, not automatically severable. Should any term, condition, or requirement associated with the approved plans be invalidated, then the entirety of the approved plan must be remanded to the Planning Board for further consideration. At that time, the Board shall determine if all applicable requirements under State and County law will be met in the absence of such term, condition and requirement, and if some alternative, lawful conditions or plan revisions related to the severed term, condition, or requirement are then required.
15. Other necessary easements.
- (16) The following phasing requirements are conditioned upon issuance of building permits for the subject preliminary plan:
  - (a) The first 44 dwelling units without any off-site road improvements.
  - (b) After the 44th building permit, the developer must start reconstruction of the southbound right turn lane along MD 355 at MD 121 to provide a "free flowing" movement.



- (c) After the 400th building permit, the developer has two options:
- 1) Construction of A-260 from MD 355 to the southern access road of the commercial site (commercial access road between A-260 and P-5) and construction of P-5 across the stream valley into the residential area north of stream valley.
  - 2) Construction of A-260 from MD 355 to the northern access road of the residential development and construction of a northbound right-turn lane along MD 355 at A-260 should be included in this phase.
- (d) After the 800th building permit, the developer must start construction of remaining section of A-260 to A-305, and intersection improvements at MD 355 and MD 121 to construct eastbound & westbound left-turn lanes along MD 121.
- (e) Construction of A-305 from A-260 to MD 121 must begin when the developer starts building any of the residential units on blocks 11, 12, 13, and the northern half of block 10.

17. This preliminary plan will remain valid until March 26, 2005. (9 years and 1 month from the date of mailing which is February 26, 1996). The recordation of plats shall occur in accordance with the phasing identified in Condition 1(b) of this opinion, and as further stipulated in the Planning Board's approval of the phase 1 site plan review. Prior to the expiration of the validity period for each phase, a final record plat for all property delineated in a particular phase must be recorded or a request for an extension must be filed. The first phase of the preliminary plan must be recorded by March 26, 1999 or a request for an extension must be filed.

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-1760  
301-495-4500, [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

---

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

---

**§1. EFFECTIVE DATE**

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

---

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

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

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

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

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

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

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

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

---

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

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

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

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

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

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

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

2. **Phasing and Next Steps** – As a condition of the Compliance Program, the Board approved the following phasing of development:

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



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

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

---

#### **§4. FORMAL DISPOSITION OF THE VIOLATIONS AND RELATED FINDINGS**

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



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

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

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

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

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

---

## **§5. PLANNING BOARD AUTHORITY EXPRESSLY RESERVED**

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

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

## CONCLUSION


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

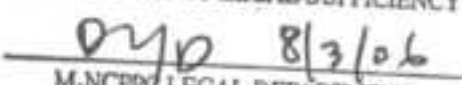
\* \* \* \* \*

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

Adopted by the Planning Board this 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  
  
M-NCPPO LEGAL DEPARTMENT

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

September 20, 2006

**Stephen Z. Kaufman**  
301.961.5156  
[skauffman@linowes-law.com](mailto:skauffman@linowes-law.com)  
**Todd D. Brown**  
301.961.5218  
[tbrown@linowes-law.com](mailto:tbrown@linowes-law.com)

Hon. Royce Hanson, Chair  
and Members of the Montgomery  
County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Clarksburg Town Center – Request for Extension of Preliminary Plan and Compliance Program Staging

Dear Mr. Hanson and Members of the Planning Board:

On behalf of Newland Communities LLC and NNPII -Clarksburg LLC (collectively, "Newland Communities"), this letter requests an interim 6-month extension of Preliminary Plan No. 119950420 (formerly 1-95042) ("Preliminary Plan") and a 6-month extension of time to file the Preliminary Plan, Project Plan and Site Plan applications required by the Third Stage of the Clarksburg Town Center Compliance Program ("Compliance Program"). This request would establish April 26, 2007 as the interim expiration date of the Preliminary Plan and the outside date for filing the Compliance Program applications.

Preliminary Plan Extension

At its meeting on June 8, 2006, the Planning Board approved an interim extension of the Preliminary Plan until October 26, 2006. The extension was the most recent in a series of Preliminary Plan extensions the Board had approved to maintain the *status quo* of the project while it addressed site plan issues concerning the Town Center. The Board granted the extension until October 26, 2006 to provide Newland Communities with sufficient time to seek approval of the Compliance Program and to submit project, preliminary and site plan amendments and a new site plan for the retail area within the Town Center. A further extension of the Preliminary Plan is needed to provide sufficient time for the Planning Board to consider the plan amendments, once filed, and for Newland Communities to record the remaining subdivision plats for the project. Accordingly, this letter requests a 6-month interim extension of the Preliminary Plan until April 26, 2007. This interim extension will continue to maintain the *status quo* until the Board considers the overall plan amendments to be submitted as a part of the Compliance Program.

Hon. Royce Hanson, Chair  
and Members of the Montgomery  
County Planning Board  
September 20, 2006  
Page 2

### Compliance Program

After many months of hearings and a mediated settlement among the private parties, on August 3, 2006, the Planning Board adopted a Resolution approving a Compliance Program for the Town Center. The Compliance Program establishes a three stage development program for completion of the Town Center. In the First Stage, effective immediately, the Planning Board dissolved its existing stop work orders for 78 units/lots and authorized construction of such units/lots to proceed. The Second Stage ("Second Stage") requires Newland Communities to file an interim site plan amendment for Sections 2D, GG and the Bozzuto Manor House buildings. The Third Stage ("Third Stage") requires Newland Communities to file amendments to the overall Project Plan, Preliminary Plan and Site Plans for the entire Town Center, including a new site plan for the mixed-use retail area.

### Efforts Moving Forward

Since adoption of the Compliance Program on August 3, 2006 (mailed on August 17, 2006), Newland Communities has worked diligently to identify and retained several consulting firms (including two civil engineering firms and two landscape architecture firms) to design the new mixed-use retail area and to prepare the Second and Third Stage applications required by the Compliance Program. Since August 3, 2006, Newland Communities has also worked with each of the builders within the Town Center and the Clarksburg Town Center Advisory Committee ("CTCAC") to finalize the site plan amendment applications for the Second Stage. Newland Communities filed the Second Stage applications with the Planning Board on September 18, 2006 (designated Site Plan Review Nos. 81998001 I and 82002014 D).

Since August 3, 2006, Newland Communities has also identified a new Town Architect consultant for the project. The Town Architect will work with the parties to prepare development design guidelines that will apply throughout the remaining portions of the Town Center. In addition, Newland Communities and CTCAC have consulted with one another on various design issues and have jointly met with MNCPPC Parks Department representatives concerning Piedmont Woods Park and with representatives of MNCPPC, the Montgomery County Department of Transportation and the Montgomery County Department of Permitting Services to discuss a number of issues concerning the project. All of this took considerable time.

Hon. Royce Hanson, Chair  
and Members of the Montgomery  
County Planning Board  
September 20, 2006  
Page 3

Extension Requests

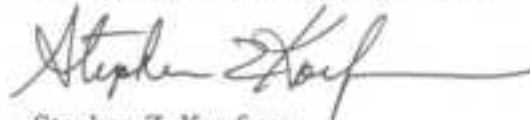
As a consequence of the above activity, it became apparent to Newland Communities, the builders and CTCAC that additional time would be needed to assemble and retain the necessary consultants and to design and prepare the submissions required for the Third Stage of the Compliance Program. Newland Communities has discussed this matter with CTCAC and believes the parties are in agreement that a 6-month extension of time is appropriate. The 6-month extension (until April 26, 2007) should be sufficient to allow the new areas of the Town Center to be thoughtfully designed and for the required amendments to the Project Plan, Preliminary Plan and Site Plans, along with a new site plan for the retail area, to be prepared and filed.

Accordingly, this letter requests an interim 6-month extension of the October 26, 2006 expiration of the Preliminary Plan and a 6-month extension of the October 26, 2006 deadline for filing the Third Stage Project Plan, Preliminary Plan and Site Plan applications. As noted above, we suggest that as a part of the anticipated Preliminary Plan amendment (to be filed as a part of the Third Stage), the Board should consider extending the Preliminary Plan validity period as necessary to provide sufficient time for Newland Communities to validate any approval granted by the Board through the recordation of subdivision plats for the remainder of the project.

Thank you for your consideration.

Sincerely,

**LINOWES AND BLOCHER LLP**



Stephen Z. Kaufman



Todd D. Brown

Hon. Royce Hanson, Chair  
and Members of the Montgomery  
County Planning Board  
September 20, 2006  
Page 4

cc: Mr. Robert Ditthardt  
Mr. Douglas Delano  
David Brown, Esq.  
Timothy Dugan, Esq.  
Charles Stuart, Esq.  
Scott Wallace, Esq.  
Barbara Sears, Esq.  
Ms. Nanci Porten  
Ms. Rose Krasnow  
Ms. Catherine Conlon