

Appendix I: Correspondence from Applicant

LINOWES |
AND BLOCHER LLP
ATTORNEYS AT LAW

October 23, 2008

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By Hand Delivery

Mr. Robert Kronenberg
Development Review
Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

OCT 23 2008

Re: Clarksburg Town Center – Request for Parking Waiver

Dear Mr. Kronenberg:

On behalf of the Applicant, NNPII-Clarksburg, LLC, and pursuant to Section 59-E-4.5 of the Montgomery County Zoning Ordinance, the purpose of this letter is to request a waiver of parking requirements related to the Clarksburg Town Center development. In discussions with MNCPPC, staff has indicated it believes it is necessary for the Applicant to request such a waiver, and this letter serves that purpose. As discussed below, the waiver seeks a reduction in the number of parking spaces to be provided on the West Side of the development.

Pursuant to Section 59-E-4.5, the Planning Board may waive any requirement in Article 59-E (Off-Street Parking and Loading Requirements) that is not necessary to accomplish the parking facilities plan objectives in Section 59-E-4.2, and in conjunction with reductions may adopt reasonable requirements above the minimum standards. In this case, the requested waiver concerns only a reduction in the number of parking spaces required. The waiver does not implicate any parking facility design standards such as landscape screening, lighting, or other design requirement. We also note the Planning Board previously granted at the time of the original project plan approval a waiver to allow the use of on-street parking to meet off-street parking requirements, subject to site plan review.

In our letters to the Commission and Planning Board dated September 5, 2008 and October 13, 2008, respectively (each incorporated herein in full by reference), we described the proposed parking for the Town Center, how the parking related to the parking concept included in the Clarksburg Town Center Compliance Program, and how the proposed parking would implement the recommendations of the Clarksburg Master Plan. The discussion in our previous letters and the revised 10/21/08 parking plans and analysis (Attachment 1), demonstrate that providing 100% of the number of parking spaces required by Article 59-E is not necessary to accomplish

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Mr. Robert Kronenberg
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the parking facilities plan objectives in Section 59-E-4.2. These materials also demonstrate why providing an excess concentration of parking within the Town Center Core would run counter to the recommendations of the Master Plan for a pedestrian and transit-oriented community that discourages automobile use.

As shown on the parking plan and analysis in Attachment 1:

1. The development program has been slightly modified from the development program referenced in the Compliance Program.
2. A greater number of publicly accessible parking spaces is provided for the entirety of the West Side of the project (57 more spaces) *and* for the three block retail Core (11 more spaces) than would have been provided under the Compliance Program parking concept and development program.
3. A parking waiver for the West Side of the project and/or the retail Core would have been required under the Compliance Program.
4. An *excess* of 288 overall parking spaces are provided for the entire community.

The attached parking plan and analysis demonstrate ample convenient parking can be provided for both retail and residential uses in the Town Center Core while still adhering to the Master Plan Vision. The Applicant is amenable to designating one parking space per multifamily unit within the mixed-use Core. In this manner, the project will address the reasonable need for convenient residential parking until additional transit facilities become available in Clarksburg, but will at the same time also encourage pedestrian activity and less reliance on the automobile. Importantly, convenient, non-designated on-street parking would also be available for multifamily residents having more than one vehicle. In this regard, the on-street parking will encourage residents with more than one vehicle to limit vehicular use and/or to interact with the community more frequently through the increased pedestrian activity associated with walking to/from the second vehicle. Both results will further the Master Plan objectives and benefit the community.

We also note the first floor retail space in live/work units and flex units is parked at 5 parking spaces /1000 sq. ft. which the Applicant anticipates to be in excess of actual parking demand associated with this space. Moreover, based on discussions with prospective grocery tenants, the Applicant also believes the grocery will not need 5 parking spaces/1000 sq. ft., and that any authorized grocery mezzanine space is unlikely to be utilized.

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As shown on Attachment 1, if the Planning Board evaluates the parking requirements for the West Side standing alone, a 10% reduction in the required number of parking spaces is needed. We note, however, that up to 23 parking spaces shown on the revised parking plan (10/21/08) may be impacted as follows:

Transit Stops

2 spaces on Overlook Park Drive at the Private Street 'A' intersection
4 spaces for 2 unidentified transit stops

MCDOT Sight Distance

5 spaces along Block KK frontage on Overlook Park Drive between the parking lot drive and Private Street 'A'

Diagonal Parking

A net loss of 6 spaces to convert to parallel parking

Surface Parking

Additional spaces added to the Parking Exhibit that were not shown on the September 5, 2008 revised plans:

- 2 additional spaces are shown at the Block EE parking near the church property line
- 4 additional parking spaces are shown behind the Block GG live-work units

If the 23 potentially impacted parking spaces are deleted from the parking plan, the parking reduction (waiver) would increase to 12% for the West Side.

Lastly, if the Board chooses to evaluate parking based solely on the three block retail Core, a 28% reduction in the required number of parking spaces would be needed. This number would increase to 30% if the relevant potentially impacted spaces referred to above were deleted from the plan. However, we emphasize (i) the number of parking spaces required by the Zoning Ordinance are intended, at least in part, to assure a sufficient number of parking spaces are provided to avoid spillover parking impacts to adjacent communities; and (ii) the number of parking spaces required by the Zoning Ordinance does not take into account the recommendations of the Master Plan to utilize on-street parking. In this case, spillover parking on nearby streets is anticipated and consistent with the more urban nature of the project, and is in fact encouraged and recommended by the Master Plan. Therefore, we believe the appropriate

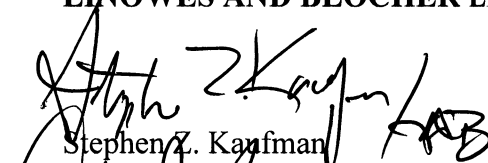

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analysis and waiver should be based on the entire West Side neighborhood of the project and not just the retail Core which is integrated into it.

In closing, as discussed in our previous letters and above, to the extent a parking waiver is needed, it is justified. Please consider this letter as a request for such waiver in the amount discussed in the preceding two paragraphs, as appropriate, if deemed necessary by the Board and depending on the analysis utilized. The waiver will further the Master Plan objectives for pedestrian and transit orientation and will not compromise the project's ability to meet the parking facilities plan objectives.

Sincerely,

LINOWES AND BLOCHER LLP


Stephen Z. Kaufman

Todd D. Brown

Attachments

cc: Mr. Douglas Delano
Mr. Robert Ditthardt
Ms. Rose Krasnow
David Lieb, Esq.
David Brown, Esq.

Attachment 1

Clarksburg Town Center
 Parking Analysis
 9/5/08 DRC Response

last revised: 10/21/08

Development Program

Community-wide comparison

Use	Compliance Program	9/5/08 Plans, revised	diff.
Single-family detached, du	241	219	(22)
Single-family attached (TH), du	661	656	(5)
Multi-family, du	266	287	21
Live-work - residential, du	50	51	1
Live-work - retail, Sq. Ft.	40,000	48,000	8,000
Retail, Sq. Ft.	128,000	139,000	11,000
Residential "Flex" - retail, Sq. Ft.	7,680	7,720	40

West-side comparison

Use	Compliance Program	9/5/08 Plans, revised	diff.
Single-family detached, du	19	19	0
Single-family attached (TH), du	276	255	(21)
Multi-family, du	84	110	26
Live-work - residential, du	50	51	1
Live-work - retail, Sq. Ft.	40,000	48,000	8,000
Retail, Sq. Ft.	128,000	139,000	11,000
Residential "Flex" - retail, Sq. Ft.	7,680	7,720	40

Retail core comparison

Use	Compliance Program	9/5/08 Plans, revised	diff.
Single-family detached, du	0	0	0
Single-family attached (TH), du	50	41	(9)
Multi-family, du	72	98	26
Live-work - residential, du	50	51	1
Live-work - retail, Sq. Ft.	40,000	48,000	8,000
Retail, Sq. Ft.	128,000	139,000	11,000
Residential "Flex" - retail, Sq. Ft.	7,680	7,720	40

Clarksburg Town Center
 Parking Analysis
 9/5/08 DRC Response

last revised: 10/21/08

Parking Requirements

Community-wide comparison

	Compliance Program	Parking Exhibit, revised 10/21/08
Parking Required	3,177	3,284
Parking Provided	3,667	3,572
Excess (Deficit)	490	288

West-side comparison

	Compliance Program	Parking Exhibit, revised 10/21/08
Parking Required	1,694	1,789
Parking Provided	1,615	1,605
Excess (Deficit)	(79) 5%	(184) 10%

Retail core comparison

	Compliance Program	10/21/08 Parking Exhibit
Parking Required	1,186	1,305
Parking Provided	974	942
Excess (Deficit)	(212) 18%	(363) 28%

Clarksburg Town Center
 Parking Analysis
 9/5/08 DRC Response

last revised: 10/21/08

Publicly-accessible parking provided

Community-wide comparison

Use	Compliance Program	Parking Exhibit, revised 10/21/08	diff.
On-street parking	942	927	(15)
Surface lot parking	271	524	253
Parking structures (excl. Library)	563	376	(187)
Totals	1,776	1,827	51

West-side comparison

Use	Compliance Program	Parking Exhibit, revised 10/21/08	diff.
On-street parking	382	372	(10)
Surface lot parking	125	381	256
Parking structures (excl. Library)	565	376	(189)
Totals	1,072	1,129	57

Retail core comparison

Use	Compliance Program	Parking Exhibit, revised 10/21/08	diff.
On-street parking	231	171	(60)
Surface lot parking	87	347	260
Parking structures (excl. Library)	565	376	(189)
Totals	883	894	11

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October 13, 2008

DEVELOPMENT REVIEW

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By Hand Delivery

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

Re: Clarksburg Town Center – Parking (Project Plan Amendment No. 92004004B;
Preliminary Plan Amendment No. 11995042A; Site Plan Review No. 820070020)

Dear Dr. Hanson and Members of the Planning Board:

On behalf of the Applicant, NNPII-Clarksburg, LLC, the purpose of this letter is to provide the Planning Board with additional information concerning parking within the Clarksburg Town Center. This letter supplements the information in our letter to Rose Krasnow dated September 5, 2008 (Attachment 1).

In our September 5, 2008 letter, we touched briefly on the Clarksburg Master Plan and its description of the Town Center as a transit and pedestrian oriented town surrounded by open space. This letter discusses the Master Plan recommendations in greater detail and explains why the Master Plan supports the conclusion that a second garage is not needed on the West Side of the project. This letter also discusses how the Master Plan recommendations in many ways lead to the conclusion that requiring a second garage in the retail core would be inconsistent with the Master Plan.

OVERVIEW

To begin, the Master Plan Overview states: “...*the most critical function of this [20-year] plan is to establish a strong public commitment to the vision of Clarksburg as a transit- and pedestrian- oriented community surrounded by open space.*” Master Plan at 1. Through this language the District Council and Planning Board recognized that achieving the Master Plan vision would not occur in the ordinary course, but would instead require a strong commitment over time from the public sector. This strong commitment requires the Planning Board and its staff to assess how each decision and recommendation made might advance or compromise the vision of a pedestrian- and transit- oriented town and to determine whether the necessary commitment to that vision is reflected in the action taken.

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In this case, the pending Town Center development plans utilize a combination of off-street and on-street parking to provide 276 excess parking spaces or about 8% more parking than required by the Zoning Ordinance for the entire development.^{1 2} However, under the Plan of Compliance, the parking surplus would grow to 490 excess parking spaces (or about 15%), with a second garage required in the mixed-use core. Therefore, a significant question posed by this case is whether the required public commitment to the Master Plan vision is strong enough to avoid creating a Town Center environment with an excess concentration of parking, rather than a dispersal of parking that will encourage walking, bicycling and transit use.

MASTER PLAN RECOMMENDATIONS

The project is subject to the recommendations of the Clarksburg Master Plan & Hyattstown Special Study Area (1994). A major emphasis of the Master Plan is to encourage and increase pedestrian, bicycle and transit use and to reduce automobile dependence. Another major Plan objective is to integrate the Town Center retail center within a planned community as opposed to locating the retail center in a more auto-oriented location. The clear goal of this integration was to create a mix of uses within walking distance of each other, to encourage walking through the design of pedestrian-friendly streets, and to reduce the reliance on and use of the automobile.

The Master Plan recommendations include:

1. Endorsing an extensive network of interconnected streets to provide local access within neighborhoods; streets are intended to increase mobility within each neighborhood by providing sidewalks on both sides, street trees, *and on-street parking*. Policy 5 at p. 24.
2. Clustering development into a series of transit- and pedestrian-oriented neighborhoods and establishing a mix of uses in each neighborhood to encourage pedestrian travel and reduce dependency on the automobile. Policy 7 at 28.

¹ This figure represents the anticipated scenario when several on-street parking spaces are removed to accommodate MCFRS requirements and MCDOT's desire for bus layover space.

² The Planning Board previously approved a waiver to utilize on-street parking to reduce the requirement for off-street parking, subject to site plan review. *See* Project Plan Opinion 9-94004 dated June 12, 1995 at 7

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3. Providing more direct access for pedestrians, bicyclists, and vehicles to all areas of the neighborhood, including transit stations, **retail stores**, civic space, and residences. Policy 7 at 28.
4. Providing sidewalks along both sides of the streets and encouraging **on-street parking**. Policy 7 at 28.
5. Providing a local system of interconnected streets which allow **on-street parking**. Master Plan at 52.
6. Improving pathway and sidewalk system connections between residential areas and employment centers and community facilities. Master Plan at 110.

Regarding the retail center and community facilities (e.g., a new Montgomery County library within Town Center), the Master Plan provides:

“One of the concerns about a retail center in the Town Center is how to integrate what has traditionally been an auto-oriented use in an area envisioned to be transit- and pedestrian-oriented. This Plan addressed that concern as follows:

“A retail center designation is proposed east of the historic district as part of a large-scale mixed-use neighborhood...By incorporating the retail center proposal into a larger planned development, there will be a greater opportunity to assure a strong integration of the retail center to adjoining residential and public uses and to assure a compatible relationship to the Clarksburg Historic District.

“The location, design, and size of community services and community facilities should reflect the more concentrated development pattern proposed for the Town Center. Facilities should be planned in this context and be land intensive and pedestrian-oriented; the same Plan principles which guide private development should also guide public uses.

“Clustering residential uses close to the transit stop will allow residents to walk to transit. A portion of the historic district as well as the mixed-use neighborhood proposed east of the district will also be within walking distance.”

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Master Plan at 46-51.

In addition and as noted above, a key Town Center District Land Use recommendation was “to encourage a proposed neighborhood shopping center be integrated with surrounding uses.” Master Plan at 104.

Regarding public facilities, the Master Plan added: “Public parks, schools, libraries, community centers, and other public facilities serve as “community magnets” to help provide a sense of community. This Plan recommends a full range of public facilities around which the community will be built. Such facilities should be linked to neighborhoods by pedestrian and bicycle paths and public transit.” Master Plan at 155.

Finally, regarding parking specifically, in addition to the multiple recommendations to include on-street parking as referenced above, the Master Plan provides the following specific guidance for regulatory review:

“Parallel, on-street parking will be encouraged along neighborhood streets to reduce the size of off-street parking facilities.” Master Plan at 209. (emphasis supplied)

COMMITMENT TO THE MASTER PLAN VISION

In this case, the primary issue concerning parking seems to be the proximity of parking to the proposed retail uses. Clearly, with 276 excess parking spaces, the project’s overall parking requirements are met. The relevant question therefore becomes how much and what kind of parking should be provided in proximity to the retail uses specifically.

In Town Center, the grocery store will be the largest traffic generator. The grocery store is also arguably the least pedestrian-friendly retail use due to the need to transport groceries. The Master Plan also recognizes that a “grocery store is particularly important since this type of use can serve as a magnet for other commercial operations.” Master Plan at 46. It is therefore critical to the success of the Town Center retail to provide enough parking to meet the grocery store’s parking needs.³

³ However, we also note the grocery and other retail uses will be located between residential uses in the project and the future Transit Center to be located on the West side of Rt. 355. The Master Plan specifically recognizes the mixed-use neighborhood on the East side of Rt. 355 (*i.e.*, the Town Center

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The pending development plans for Town Center meet the grocery store parking needs through a redesign of the parking structure serving the grocery. The redesigned parking structure includes approximately 200 parking spaces on the same level as the grocery entrance and does not, for safety reasons, utilize the ramp connecting the two levels of the parking garage. Newland has learned this amount of parking is critical for prospective grocery tenants. Importantly, once the grocery store parking need is met, greater emphasis should be placed on dispersing the remaining parking consistent with the Master Plan vision. By dispersing the off-street parking and maximizing on-street parking opportunities, the plan encourages walking between the mix of uses within Town Center.

Lastly, the Master Plan indicates 3,000-4,000 dwelling units are needed to support retail development that includes a grocery store. Master Plan at 190. As shown on the parking plan enclosed as Attachment 2, approximately 581 dwelling units are located within 0.25 miles of the retail core. This is a very comfortable walking distance. The 581 dwelling units represent 14.5 – 19.4% of the 3,000-4,000 units needed to support the grocery.

Based on the parking calculations for West Side the project, 89% of the parking required by the Zoning Ordinance is being provided. If the Planning Board or staff chooses to evaluate parking based not on the 276 excess parking spaces provided for the entire community, but instead on an East Side/West Side analysis, a waiver of 11% of the required number of parking spaces would be needed for the West Side. (Attachment 3) Considering 13-19% of the dwellings needed to support the retail are located within easy walking distance, an 11% reduction of the parking requirement is reasonable. Furthermore, considering the Master Plan's emphatic vision for a pedestrian-orientated community with on-street parking and reduced dependency on the automobile, an 11% reduction in the amount of required parking is not only consistent with the Master Plan, but is arguably needed to preserve the Master Plan vision. The fact that ample parking will be provided for the grocery in a structured parking facility designed to meet prospective grocer's needs assures the parking supply will be adequate and convenient to meet the greatest generator of parking demand.

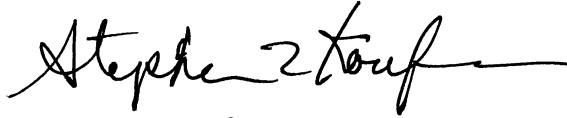
project) is within walking distance of the Transit Center. Master Plan at 51. In the future, transit riders living within the Town Center project will walk by the grocery and other retail uses on the way to and from the Transit Center. This relationship will encourage retail trips on foot—perhaps a substantial number of retail trips. Furthermore, residents living within comfortable walking distance of the grocery store may tend to increase the number of trips to the store and decrease the amount of groceries purchased during each trip. All of these trips will be convenient and can be made on foot. That is exactly what the Master Plan vision contemplates.

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and Members of the Montgomery County Planning Board
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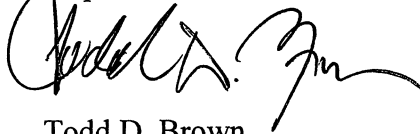
Thank you for your consideration.

Sincerely

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman



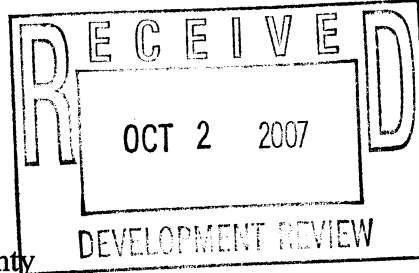
Todd D. Brown

cc: Ms. Rose Krasnow
Mr. Robert Kronenberg
Mr. Rollin Stanley
Mr. Douglas Delano
Mr. Robert Ditthardt
Adrian Gardner, Esq.
Debra Daniel, Esq.
David Brown, Esq.

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October 2, 2007

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By Hand Delivery

Mr. Jef Fuller, Chair
and Members of the Montgomery County
Historic Preservation Commission
1109 Spring Street, Suite 801
Silver Spring, Maryland 20910

Re: Clarksburg Town Center – Preliminary Consultation Concerning Extension of Redgrave Place/Clarksburg Square Road

Dear Mr. Fuller and Members of the Historic Preservation Commission:

This office represents Newland Communities, LLC and NNP II – Clarksburg, LLC (“Newland Communities”) in connection with the development of the Clarksburg Town Center project located near the southeast quadrant of the intersection of Clarksburg Road with Maryland Route 355, adjacent to the Clarksburg Historic District. This letter requests a preliminary consultation with the Historic Preservation Commission on the proposed extension and alignment of Clarksburg Square Road to Maryland Route 355 (“Rt. 355 Connection”). The road extension would traverse the Clarksburg Historic District through property improved with the Horace Willson House and Clarksburg Grocery.

Background

The Approved and Adopted Clarksburg Master Plan & Hyattstown Special Study Area (June 1994) recommends the extension of Redgrave Place from its current terminus at Rt. 355 east to provide a connection to the Town Center and stream valley park system (“Greenway”) and to provide Town Center residents with a connection to the future Clarksburg Transit Station. The Master Plan states:

“ This Plan recommends that Redgrave Place serve as a pedestrian and vehicular linkage between the eastern area of the Town Center and the Town Center transit station. To do so, an extension of Redgrave Place to the east is recommended. This recommendation would require the relocation of a structure within the historic district. Redgrave Place is intended to connect the Town Center transit station to the greenway.” Master Plan at 125.

Mr. Jef Fuller, Chair
and Members of the Montgomery County
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The Master Plan further provides:

“Redgrave Place will provide needed east-west movement through the historic district and help integrate the district into the larger Town Center. However, it is essential that the scale, character, and location of this connection is developed appropriately.

“The road should be a maximum of two lanes or 24 feet in width. It should have no parking lanes along the portions of the road which are in the historic district. The radius of the intersection corners should match the existing corners located on the west side of MD 355. Efforts should be made to design the road and the intersection as a low volume, local road which will not detract from the character of the historic district (see Figure 21, page 50).

“Redgrave Place will provide access from a proposed mixed-use neighborhood east of the historic district to a future transit stop. This Plan supports this connection but emphasizes that auto access to the stop should be secondary to the Plan objective that Redgrave Place be a low-volume, local road.” Master Plan at 52-52.

At a preliminary consultation in June 2005, the HPC considered a proposal by Newland Communities to extend Redgrave Place/Clarksburg Square Road along the alignment recommended by the Clarksburg Master Plan. The proposal would have required the relocation of the Horace Willson House from its current location fronting Route 355 to a location at the rear of the Clarksburg Grocery property. The relocated historic resource would then have fronted on the new road connection between the Town Center project and Route 355.

In a June 1, 2005 memorandum, HPC staff indicated it was not opposed to the potential relocation of the Horace Willson House or construction of the new road linking the Clarksburg Town Center development with Frederick Road. However staff felt the proposed new site for the Horace Willson House did not meet Master Plan guidance. Staff also pointed out in its report that the Master Plan indicated the relocation of historic structures was a “last resort” decision.

At its meeting on June 8, 2005, HPC members agreed with staff and did not support the proposal. Members cited the proposed relocation of the Horace Willson House as the primary objection, and the prevailing view was either to leave the house where it is currently located or, if

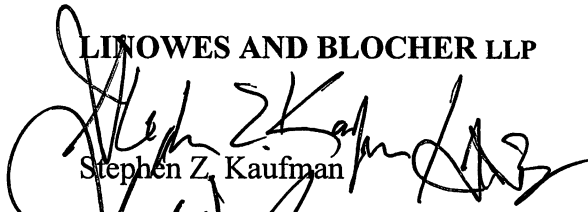
Mr. Jef Fuller, Chair
and Members of the Montgomery County
Historic Preservation Commission
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is seeking an affirmative statement by the HPC that construction of the new road along an alignment similar to that shown on the concept plan (allowing room for slight modification to accommodate any DPWT/MDSHA design requirements) that does not require the relocation or removal of the Horace Willson House is acceptable in concept, and removal of the non-historic structure located within the proposed right-of-way is also acceptable. Newland Communities understands the HPC will make a final decision on the matter subsequently in connection with a HAWP application. However, to facilitate the design and approval process for the remainder of the Town Center development, it is important to understand HPC's position on the proposed alignment and design at this time.

Thank you for your consideration of this important matter. We look forward to discussing the issue with you at the October 24, 2007 HPC meeting. In the interim, if additional information is needed, please contact us.

Very truly yours,

LINOWES AND BLOCHER LLP


Stephen Z. Kaufman


Todd D. Brown

Enclosures

cc: Mr. Robert Ditthardt
Mr. Douglas Delano
Ms. Gwen Wright
Mr. Robert Kronenberg
Ms. Rose Krasnow
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October 15, 2008

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By Hand Delivery

Mr. Michael S. Cassedy
Division of Capital Development
Department of Transportation
101 Monroe Street, 10th Floor
Rockville, Maryland 20850

Re: Abandonment of Portions of Overlook Park Drive, Clarksburg Square Road and
Clarksridge Road, Clarksburg Town Center

Dear Mr. Cassedy:

On behalf of Petitioner, NNP II-Clarksburg LLC, we hereby request the abandonment of limited segments of Overlook Park Drive, Clarksburg Square Road and Clarksridge Road in Clarksburg, Maryland, pursuant to Section 49-62, *et seq.*, of the Montgomery County Code 2004 (as amended). This request concerns the same road segments that were the subject of the road abandonment request initially filed with the County Executive on September 18, 2007. On March 27, 2008, the Department (with MNCPPC concurrence) directed the Applicant to refile the request for processing with MNCPPC under Section 49-68 of the Code. The Applicant refiled the request with MNCPPC on April 8, 2008, as directed. However, we are now advised by the Department (upon receiving advice from the County Attorney's Office) that the abandonment request must be processed as originally filed by the Applicant. An expedited hearing is requested.

The rights-of-way to be abandoned ("Abandonment Areas") are comprised of approximately 1.749 total acres and are shown in green on the Road Abandonment Exhibit attached hereto and made a part hereof as Exhibit "A". These road segments are more particularly described and shown by metes and bounds and sketches attached hereto and made a part hereof as Exhibit "B", Exhibit "C" and Exhibit "D". A Montgomery County Tax Map showing the general location of the Abandonment Areas is attached hereto and made a part hereof as Exhibit "E".

The Abandonment Areas are located within the Clarksburg Town Center development ("Town Center"). The portions of Overlook Park Drive, Clarksburg Square Road and Clarksridge Road

Mr. Michael S. Cassedy
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to be abandoned were dedicated to public use by Plat No. 22364. A copy of Plat No. 22364 is attached hereto and made a part hereof as Exhibit "F" ("Plat").

Subsequent to the approval and recordation of the Plat, questions were raised concerning the compliance status of the Town Center project approvals. These concerns were ultimately resolved in the form of a Plan of Compliance approved by the Montgomery County Planning Board in its Resolution dated August 17, 2006 ("Plan of Compliance"). The Plan of Compliance requires substantial revision to areas of the Town Center within which the referenced rights-of-way segments are located. Accordingly, to implement these revisions, the Plan of Compliance further requires submission of amendments to the existing Clarksburg Town Center project plan, preliminary plan and site plan approvals. The project plan (91994004B), preliminary plan (11995042B) and the site plan (820070220) applications reflecting a redesigned Town Center and realigned road network were filed with the Maryland-National Capital Park and Planning Commission in April 2007, have since been revised, and are now scheduled for action by the Planning Board on November 6, 2008.

To date, the Abandonment Areas have not been constructed as public roads and have not been accepted by Montgomery County for maintenance. However, infrastructure improvements within the Abandonment Areas have been installed, including water, sanitary sewer, storm sewer and various utilities. These existing infrastructure improvements will be either (i) relocated consistent with the revised Town Center design when the realigned roadways are constructed, or (ii) allowed to remain in place within new easements to be granted as necessary to applicable utility companies.

As noted, the Abandonment Areas have not been constructed and therefore do not provide vehicular or pedestrian access to any property. As a consequence, no property will be denied an adequate means of ingress or egress as a result of the requested road abandonment. Furthermore, as reflected on the revised Town Center design approved as a part of the Plan of Compliance and as further shown on the pending project plan, preliminary plan and site plan applications filed with the Planning Board, the existing rights-of-way will be realigned, replatted and constructed to provide adequate means of ingress and egress to all abutting properties. For similar reasons, the rights-of-way to be abandoned are not necessary for present public or anticipated public use in the foreseeable future.

Lastly, we have enclosed as Exhibit "G" a complete list of abutting property owners. Please be advised that the \$7,500.00 filing fee (representing a \$2,500 filing fee for each of the three roadway segments involved in this request) will be forwarded under separate cover within two weeks. The Applicant requests an expedited hearing on this matter.

Mr. Michael S. Cassedy
October 15, 2008
Page 3

If additional information is needed, please contact us.

Sincerely,

LINOWES AND BLOCHER LLP



Todd D. Brown

Attachments

cc: Mr. Robert Ditthardt
Mr. Douglas Delano
Ms. Diane Schwartz Jones
Mr. Edgar Gonzalez
Ms. Rose Krasnow
Ms. Catherine Conlon
Mr. Robert Kronenberg
Stephen Z. Kaufman, Esq.
David Brown, Esq.

GLWGUTSCHICK, LITTLE & WEBER, P.A.

CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS

August 13, 2007

Description of part of
Overlook Park Drive
"Clarksburg Town Center"
Plat No. 22364

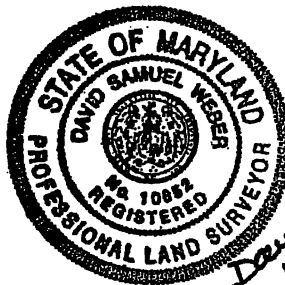
Clarksburg Election District No. 2
Montgomery County, Maryland

Being all that piece, parcel or tract of land, situate, lying and being in the Clarksburg Election District No. 2, Montgomery County, Maryland, being part of that area dedicated to public use for Overlook Park Drive (60' right-of-way), as delineated on a Plat of Subdivision entitled "Subdivision Record Plat, Parcel 'A', Block 'JJ', Clarksburg Town Center" and recorded among the Land Records of Montgomery County, Maryland as Plat No. 22364, and being more particularly described, in Plat Datum (Plat No. 22364), as follows:

Beginning for the same at a point on the northeasterly or South 45°48'26" East, 804.25 foot right-of-way line of said Overlook Park Drive, 363.71 feet from the northwesterly end thereof; thence running with part of said northeasterly right-of-way line of Overlook Park Drive

1. South 45°48'26" East, 275.19 feet to a point; thence leaving the aforesaid northeasterly right-of-way line and running in, through, over and across that area dedicated for the aforesaid Overlook Park Drive, as delineated on the aforesaid Plat 22364, the following two (2) courses and distances
2. 100.97 feet along the arc of a non-tangential curve, deflecting to the left, having a radius of 130.00 feet and a chord bearing and distance of North 68°03'26" West, 98.45 feet to a point of tangency; thence
3. South 89°41'34" West, 32.42 feet to a point on the southwesterly or North 45°48'26" West, 804.24 foot right-of-way line of said Overlook Park Drive, said point lying 279.59 feet from the southeasterly end thereof; thence running with part of said southwesterly right-of-way line
4. North 45°48'26" West, 47.47 feet to a point; thence leaving the aforesaid southwesterly right-of-way line and running in, through, over and across said area dedicated for Overlook Park Drive, the following two (2) courses and distances
5. North 00°18'26" West, 29.61 feet to a point of curvature; thence
6. 103.24 feet along the arc of a tangential curve, deflecting to the left, having a radius of 130.00 feet and a chord bearing and distance of North 23°03'26" West, 100.54 feet to the place of beginning, containing an area of 7,176 square feet or 0.1647 of an acre of land.

I hereby certify that I was in responsible charge over the preparation of this description and the surveying work reflected herein, all in compliance with COMAR Title 09, Subtitle 13, Chapter 06, Regulation.12.



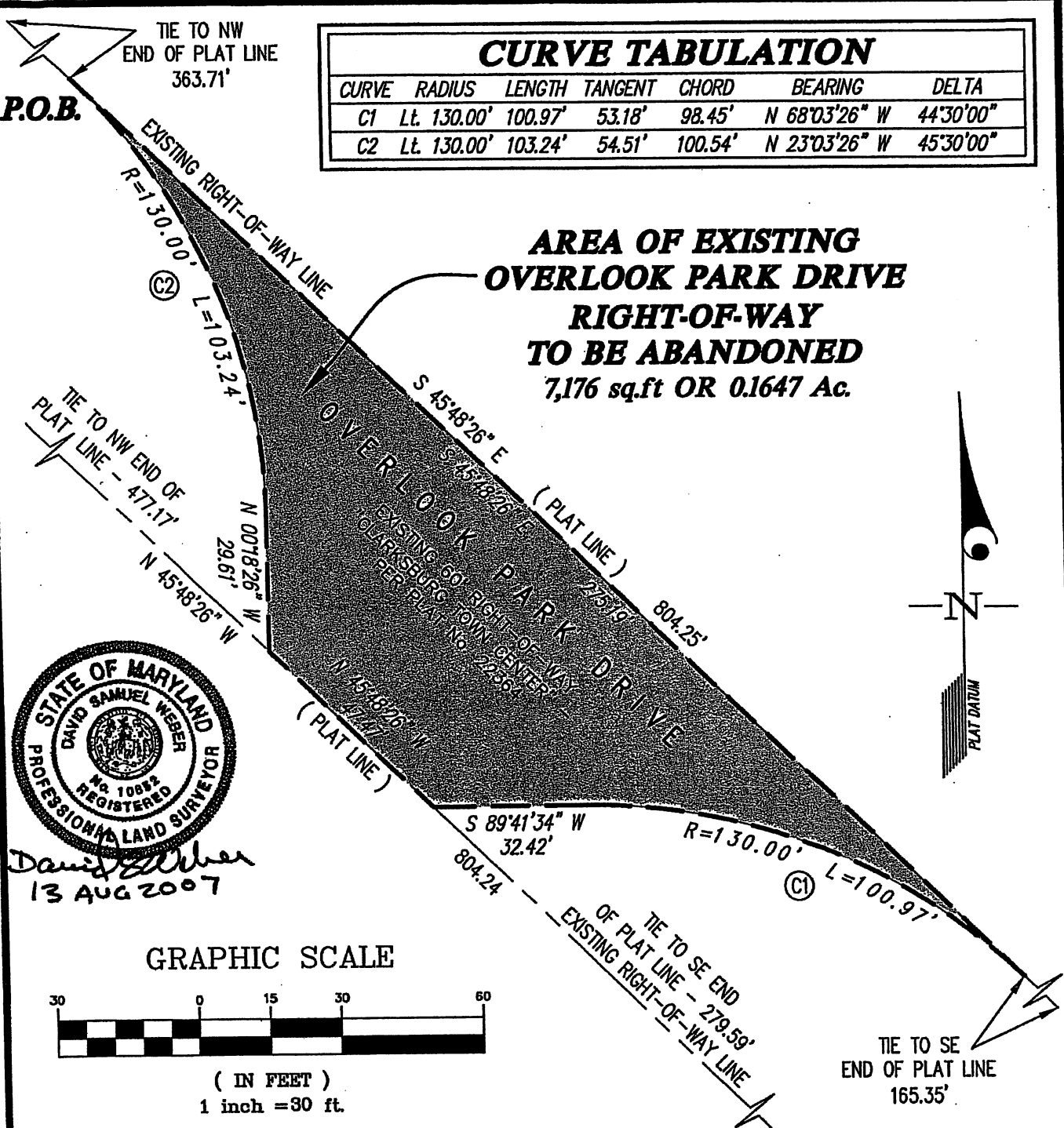
3909 National Drive, Suite 250 • Burtonsville Office Park • Burtonsville, MD 20866
Tel: 301-421-4024 • Balt: 410-880-1820 • DC/VA: 301-989-2524 • Fax: 301-421-4186 • www.glwpa.com

Exhibit "B"

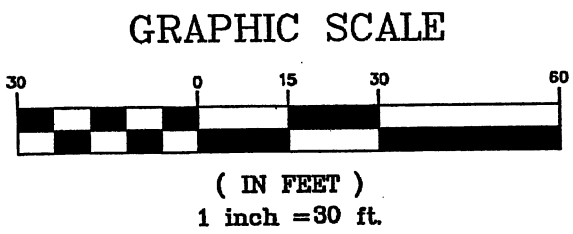
CURVE TABULATION

CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	Lt. 130.00'	100.97'	53.18'	98.45'	N 68°03'26" W	44°30'00"
C2	Lt. 130.00'	103.24'	54.51'	100.54'	N 23°03'26" W	45°30'00"

**AREA OF EXISTING
OVERLOOK PARK DRIVE
RIGHT-OF-WAY
TO BE ABANDONED**
7,176 sq.ft OR 0.1647 Ac.



David Weber
13 AUG 2007



**SKETCH OF
OVERLOOK PARK DRIVE
RIGHT-OF-WAY
TO BE ABANDONED**
"CLARKSBURG TOWN CENTER"
PLAT No. 22364

MONTGOMERY COUNTY, MARYLAND
CLARKSBURG (2nd) ELECTION DISTRICT

GLW GUTSCHICK LITTLE & WEBER, P.A.

CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS
3909 NATIONAL DRIVE - SUITE 250 - BURTONSVILLE OFFICE PARK
BURTONSVILLE, MARYLAND 20866
TEL: 301-421-4024 BAL: 410-880-1820 DC/VA: 301-989-2524 FAX: 301-421-4185

REFERENCE :		PLAT No. 22364
DRAWN BY :	WEG	DATE : AUG. 2007
CHECKED BY :	<i>parc</i>	SCALE : 1"=30'
		G.L.W. FILE No. 03-024

GLWGUTSCHICK, LITTLE & WEBER, P.A.

CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS

August 13, 2007

Description of part of
Clarksburg Square Road
"Clarksburg Town Center"
Plat No. 22364

Clarksburg Election District No. 2
Montgomery County, Maryland

Being all that piece, parcel or tract of land, situate, lying and being in the Clarksburg Election District No. 2, Montgomery County, Maryland, being part of that area dedicated to public use for **Clarksburg Square Road** (variable width right-of-way), as delineated on a Plat of Subdivision entitled "Subdivision Record Plat, Parcel 'A', Block 'JJ', **Clarksburg Town Center**" and recorded among the Land Records of Montgomery County, Maryland as Plat No. 22364, and being more particularly described, in Plat Datum (Plat No. 22364), as follows:

Beginning for the same at a point on the southeasterly or South 89°11'16" West, 35.36 foot right-of-way line of said Clarksburg Square Road; thence running with said southeasterly right-of-way line and with the southerly, westerly and northerly outline of Clarksburg Square Road, as delineated on said Plat No. 22364, the following seven (7) courses and distances

1. South 89°11'16" West, 35.36 feet to a point; thence
2. South 44°10'57" West, 255.02 feet to a point; thence
3. 129.18 feet along the arc of a non-tangential curve, deflecting to the right, having a radius of 105.00 feet and a chord bearing and distance of South 08°56'54" West, 121.18 feet to a point of tangency; thence
4. South 44°11'34" West, 289.67 feet to a point; thence
5. North 45°48'26" West, 60.00 feet to a point; thence
6. North 44°11'34" East, 289.67 feet to a point of curvature; thence
7. 110.66 feet along the arc of a tangential curve, deflecting to the left, having a radius of 45.00 feet and a chord bearing and distance of North 26°15'15" West, 84.81 feet to a point; thence leaving said northerly right-of-way line Outline and running in, through, over and across that area dedicated for the aforesaid Clarksburg Square Road, as delineated on the aforesaid Plat 22364

8. North $44^{\circ}10'57''$ East, 70.64 feet to a point on the northwesterly or North $44^{\circ}10'57''$ East, 254.98 foot line of Clarksburg Square Road; thence running with said northwesterly right-of-way line and continuing with the northwesterly outline of said Clarksburg Square Road, the following two (2) courses and distances
9. North $44^{\circ}10'57''$ East, 254.98 feet to a point; thence
10. North $00^{\circ}48'26''$ West, 35.36 feet to a point; thence leaving said northerly right-of-way Outline and running in, through, over and across that area dedicated for the aforesaid Clarksburg Square Road
11. South $45^{\circ}48'26''$ East, 120.00 feet to the place of beginning, containing an area of 46,595 square feet or 1.0697 acres of land.

I hereby certify that I was in responsible charge over the preparation of this description and the surveying work reflected herein, all in compliance with COMAR Title 09, Subtitle 13, Chapter 06, Regulation.12.

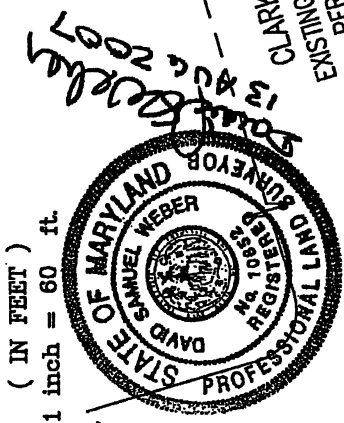
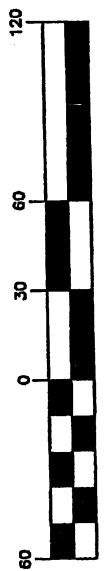


David Weiser
13 AUG 2007

CURVE TABULATION

CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	Rt. 105.00'	129.18'	74.19'	121.18'	S 08°36'54" W	70°29'21"
C2	Lt. 45.00'	110.66'	126.70'	84.81'	N 26°15'15" W	140°53'38"

GRAPHIC SCALE



OVERLOOK PARK DRIVE
EXISTING 60' RIGHT-OF-WAY
PER PLAT No. 22364

GENERAL STORE DRIVE
EXISTING 50' RIGHT-OF-WAY
PER PLAT No. 22364

CLARKSBURG SQUARE ROAD
EXISTING 60' RIGHT-OF-WAY
PER PLAT No. 22364

PUBLIC HOUSE ROAD
EXISTING 50' RIGHT-OF-WAY
PER PLAT No. 22369

CLARKSBURG SQUARE ROAD
EXISTING 60' RIGHT-OF-WAY
PER PLAT No. 22364 & 22367

PARCEL 'A'
CLARKSBURG TOWN CENTER
PLAT No. 22364

AREA OF EXISTING
CLARKSBURG SQUARE ROAD
RIGHT-OF-WAY
TO BE ABANDONED
46,595 sq.ft OR 1.0697 Ac.

SKETCH OF
CLARKSBURG SQUARE ROAD
RIGHT-OF-WAY
TO BE ABANDONED
"CLARKSBURG TOWN CENTER"
PLAT No. 22364

GLWGUTSCHICK LITTLE & WEBER, P.A.

CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS
3909 NATIONAL DRIVE - SUITE 250 - BURTONSVILLE OFFICE PARK
BURTONSVILLE, MARYLAND 20888

TEL: 301-421-4024 BALT: 410-880-1820 DC/VA: 301-888-2524 FAX: 301-421-4186

CADD TECH.: *pwl*
CHK.: *pwl*

GLWGUTSCHICK, LITTLE & WEBER, P.A.

CIVIL ENGINEERS, LAND SURVEYORS, LAND PLANNERS, LANDSCAPE ARCHITECTS

August 13, 2007

Description of part of
Clarksridge Road
"Clarksburg Town Center"
Plat No. 22364

Clarksburg Election District No. 2
Montgomery County, Maryland

Being all that piece, parcel or tract of land, situate, lying and being in the Clarksburg Election District No. 2, Montgomery County, Maryland, being all of that area dedicated to public use for Clarksridge Road (60' right-of-way), as delineated on a Plat of Subdivision entitled "Subdivision Record Plat, Parcel 'A', Block 'JJ', Clarksburg Town Center" and recorded among the Land Records of Montgomery County, Maryland as Plat No. 22364, and being more particularly described, in Plat Datum (Plat No. 22364), as follows:

Beginning for the same at a point on the southeasterly or 141.37 foot arc of said Clarksridge Road right-of-way, as delineated on said Plat No. 22364, 30.71 feet from the northwesterly end thereof, said point also lying on the northeasterly or 141.37 foot arc of Parcel 'A', Block "JJ", as delineated on said Plat No. 22364; thence running with said southeasterly right-of-way line and with the northerly outline of said Parcel 'A', Block "JJ", the following two (2) courses and distances

1. 30.71 feet along the arc of a non-tangential curve, deflecting to the left, having a radius of 45.00 feet and a chord bearing and distance of South 63°44'45" West, 30.12 feet to a point of tangency; thence
2. South 44°11'34" West, 289.67 feet to a point at the northwesterly corner of the aforesaid Parcel 'A', Block "JJ", said point also lying on the northeasterly right-of-way of Public House Road (50' right-of-way), as delineated on a Plat of Subdivision entitled "Subdivision Record Plat, Lots 1 through 31 and Parcels A & B, Block EE, Clarksburg Town Center" and recorded as Plat No. 22369; thence leaving the aforesaid Parcel 'A', Block "JJ" and running with part of said northeasterly right-of-way of Public House Road and continuing with the outline said area dedicated to public use for Clarksridge Road
3. North 45°48'26" West, 78.00 feet to a point; thence leaving said Public House Road right-of-way and continuing with the outline of said area dedicated to public use for Clarksridge Road, the following three (3) courses and distances

4. 28.27 feet along the arc of a non-tangential curve, deflecting to the left, having a radius of 18.00 feet and a chord bearing and distance of North 89°11'34" East, 25.46 feet to a point of tangency; thence
5. North 44°11'34" East, 228.67 feet to a point of curvature; thence
6. 28.27 feet along the arc of a tangential curve, deflecting to the left, having a radius of 18.00 feet and a chord bearing and distance of North 00°48'26" West, 25.46 feet to a point at the southeasterly end of the southwesterly or North 45°48'26" West, 415.64 foot line of General Store Drive (50' right-of-way), as delineated on said Plat No. 22364; thence leaving said right-of-way Outline for Clarksridge Road and running in, through, over and across that area dedicated for the aforesaid Clarksridge Road and General Store Drive, as delineated on the aforesaid Plat 22364, the following four (4) courses and distances
7. South 45°48'26" East, 18.00 feet to a point; thence
8. North 44°11'34" East, 25.00 feet to a point of curvature; thence
9. 25.24 feet along the arc of a tangential curve, deflecting to the right, having a radius of 105.00 feet and a chord bearing and distance of North 51°04'48" East, 25.18 feet to a point; thence
10. North 45°48'26" West, 13.26 feet to a point at the southeasterly end of the northeasterly or South 45°48'26" East, 423.41 foot line of General Store Drive; thence leaving said General Store Road right-of-way and continuing with the northerly outline of the area dedicated for the Clarksridge Road
11. 21.85 feet along the arc of a non-tangential curve, deflecting to the left, having a radius of 18.00 feet and a chord bearing and distance of South 80°34'33" East, 20.53 feet to a point of reverse curvature; thence
12. 91.82 feet along the arc of a tangential curve, deflecting to the right, having a radius of 105.00 feet and a chord bearing and distance of North 89°42'30" East, 88.93 feet to a point; thence running in, through, over and across that area dedicated for the aforesaid Clarksridge Road, as delineated on said Plat 22364
13. South 44°10'57" West, 70.64 feet to the place of beginning, containing an area of 22,416 square feet or 0.5146 of an acre of land.

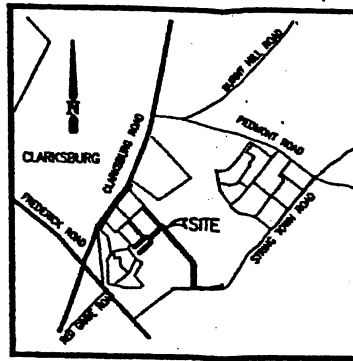
I hereby certify that I was in responsible charge over the preparation of this description and the surveying work reflected herein, all in compliance with COMAR Title 09, Subtitle 13, Chapter 06, Regulation.12.



David Samuel Weber
13 AUG 2007

NOTES:

- ALL TERMS, CONDITIONS, AGREEMENTS, LIMITATIONS, AND REQUIREMENTS ASSOCIATED WITH ANY PRELIMINARY PLAN, SITE PLAN, PROJECT PLAN, OR ANY OTHER PLAN, ALLOWING THE DEVELOPMENT OF THE PROPERTY, APPROVED BY THE MONTGOMERY COUNTY PLANNING BOARD, ARE INTENDED TO SURVIVE AND NOT BE EXTINGUISHED BY THE RECORDATION OF THIS PLAT, UNLESS EXPRESSLY CONTEMPLATED BY THE PLAN AS APPROVED. THE OFFICIAL FILES FOR ANY SUCH PLAN(S) ARE MAINTAINED BY THE PLANNING BOARD AND ARE AVAILABLE FOR REVIEW DURING NORMAL BUSINESS HOURS.
- THE PROPERTY SHOWN HEREON IS SUBJECT TO THE REQUIREMENTS OF THE MONTGOMERY COUNTY FOREST CONSERVATION LAW OF 1992, INCLUDING APPROVAL OF THE FINAL FOREST CONSERVATION PLAN AND APPROPRIATE AGREEMENTS PRIOR TO ISSUANCE OF A SEDIMENT CONTROL PERMIT. A COPY OF THE APPROVED PLAN MAY BE VIEWED AT 6787 GEORGIA AVENUE, SILVER SPRING, MARYLAND.
- THIS SUBDIVISION RECORD PLAT IS NOT INTENDED TO SHOW EVERY MATTER AFFECTING THE OWNERSHIP AND/OR USE, NOR EVERY MATTER RESTRICTING THE OWNERSHIP AND/OR USE OF THIS PROPERTY. THIS SUBDIVISION RECORD PLAT IS NOT INTENDED TO REPLACE AN EXAMINATION OF TITLE OR TO DEPICT OR NOTE ALL MATTERS AFFECTING TITLE.
- THIS DEVELOPMENT IS SERVED BY PUBLIC WATER AND SEWER SYSTEMS ONLY.
- THIS LAND IS ZONED "TRC" AND IS BEING DEVELOPED UNDER THE PROVISIONS OF DIVISION 58-C-10 OF THE MONTGOMERY COUNTY CODE.
- THIS SITE IS SUBJECT TO AN AGREEMENT WITH THE MONTGOMERY COUNTY PLANNING BOARD REGARDING ADEQUATE PUBLIC FACILITIES.
- THE DEVELOPMENT IS SUBJECT TO A SITE PLAN ENFORCEMENT AGREEMENT PURSUANT TO M-NCP&PC FILE NUMBER B-98001
- W.S.S.C. 200 SCALE REFERENCE: 223 NW 13
- PARCEL A, BLOCK JJ IS SUBJECT TO A DECLARATION OF COVENANTS FOR PRIVATE OPEN SPACE, RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND IN LIBER 19561 AT FOLD 342.



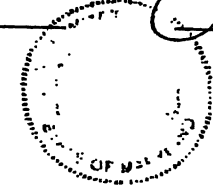
VICINITY MAP
NOT TO SCALE

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE INFORMATION SHOWN HEREON IS CORRECT, THAT IT IS A SUBDIVISION OF A PART OF THE PROPERTY ACQUIRED BY TERRABROOK CLARKSBURG, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY, FROM CLARKSBURG LAND ASSOCIATES, L.L.P., A MARYLAND LIMITED LIABILITY PARTNERSHIP AND PIEDMONT LAND ASSOCIATES, L.L.P., A MARYLAND LIMITED LIABILITY PARTNERSHIP, BY DEED DATED FEBRUARY 4, 2000 AND RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND IN LIBER 17865 AT FOLD 485.

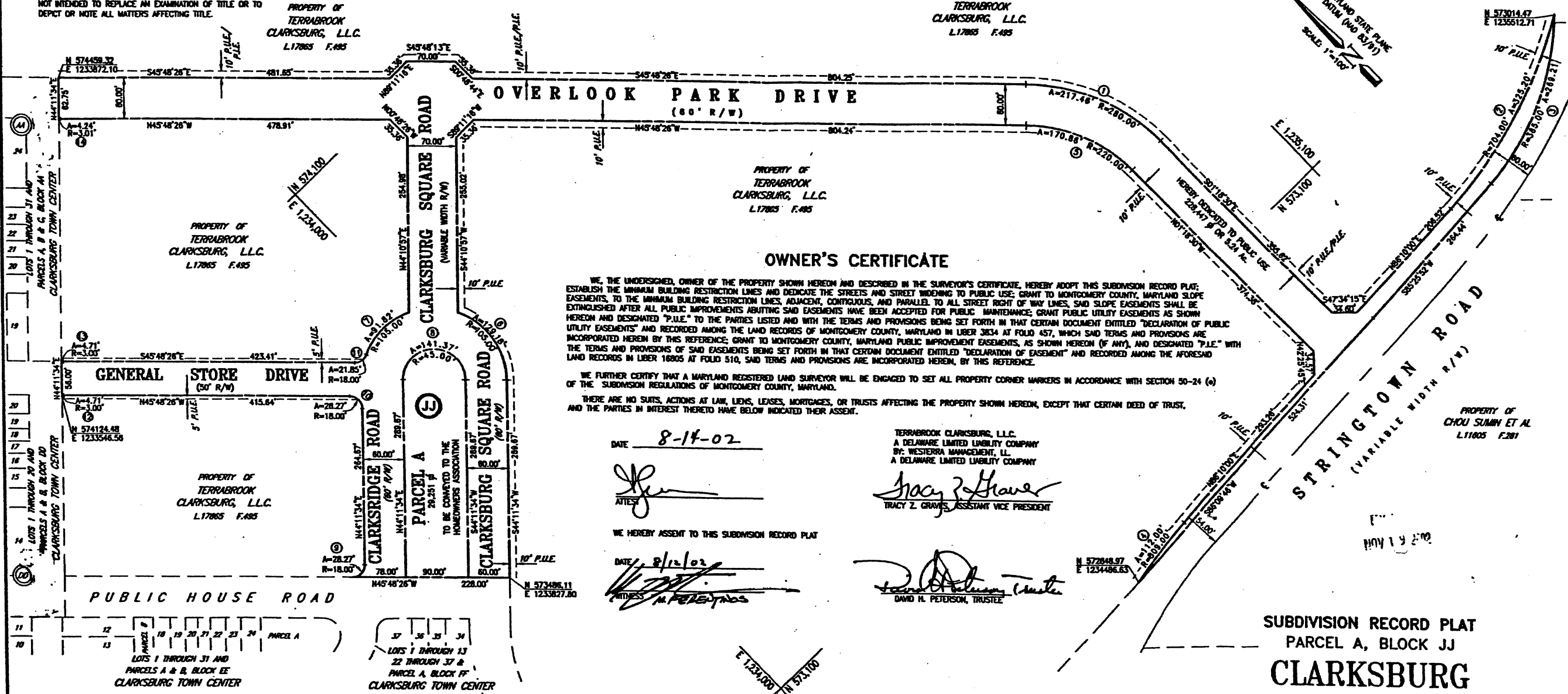
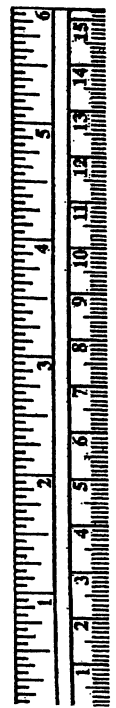
THE TOTAL AREA INCLUDED IN THIS SUBDIVISION RECORD PLAT IS 257,086 SQUARE FEET OR 5.91 ACRES OF LAND, OF WHICH 228,447 SQUARE FEET OR 5.24 ACRES OF LAND ARE DEDICATED TO PUBLIC USE.

DATE 8-5-2002



RONALD L. COLLIER
PROFESSIONAL LAND SURVEYOR
MARYLAND REG. NO. 20014

RECORDED:
PLAT NO.: **22004**



OWNER'S CERTIFICATE

WE, THE UNDERSIGNED, OWNER OF THE PROPERTY SHOWN HEREON AND DESCRIBED IN THE SURVEYOR'S CERTIFICATE, HEREBY ADOPT THIS SUBDIVISION RECORD PLAT; ESTABLISH THE MINIMUM BUILDING RESTRICTION LINES AND DEDICATE THE STREETS AND STREET WIDENING TO PUBLIC USE; GRANT TO MONTGOMERY COUNTY, MARYLAND SLOPE EASEMENTS, TO THE MINIMUM BUILDING RESTRICTION LINES, ADJACENT, CONTIGUOUS, AND PARALLEL TO ALL STREET RIGHT OF WAY LINES, SAID SLOPE EASEMENTS SHALL BE EXTINGUISHED AFTER ALL PUBLIC IMPROVEMENTS ADJUTING SAID EASEMENTS HAVE BEEN ACCEPTED FOR PUBLIC MAINTENANCE; GRANT PUBLIC UTILITY EASEMENTS AS SHOWN HEREON AND DESIGNATED "P.U.E." TO THE PARTIES LISTED AND WITH THE TERMS AND PROVISIONS BEING SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED "DECLARATION OF PUBLIC UTILITY EASEMENTS" AND RECORDED AMONG THE LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND IN LIBER 3834 AT FOLD 457, WHICH SAID TERMS AND PROVISIONS ARE INCORPORATED HEREIN BY THIS REFERENCE; GRANT TO MONTGOMERY COUNTY, MARYLAND PUBLIC IMPROVEMENT EASEMENTS, AS SHOWN HEREON (IF ANY), AND DESIGNATED "P.I.E." WITH THE TERMS AND PROVISIONS OF SAID EASEMENTS BEING SET FORTH IN THAT CERTAIN DOCUMENT ENTITLED "DECLARATION OF EASEMENT" AND RECORDED AMONG THE AFORESAID LAND RECORDS IN LIBER 16805 AT FOLD 510, SAID TERMS AND PROVISIONS ARE INCORPORATED HEREIN, BY THIS REFERENCE.

WE FURTHER CERTIFY THAT A MARYLAND REGISTERED LAND SURVEYOR WILL BE ENGAGED TO SET ALL PROPERTY CORNER MARKERS IN ACCORDANCE WITH SECTION 50-24 (a) OF THE SUBDIVISION REGULATIONS OF MONTGOMERY COUNTY, MARYLAND.

THERE ARE NO SUITS, ACTIONS AT LAW, LIENS, LEASES, MORTGAGES, OR TRUSTS AFFECTING THE PROPERTY SHOWN HEREON, EXCEPT THAT CERTAIN DEED OF TRUST, AND THE PARTIES IN INTEREST THERETO HAVE BELOW INDICATED THEIR ASSENT.

DATE 8-14-02

[Signature]
ATTEST

WE HEREBY ASSENT TO THIS SUBDIVISION RECORD PLAT

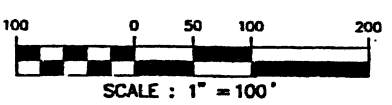
DATE 8/12/02

[Signature]
ATTEST

TERRABROOK CLARKSBURG, L.L.C.
A DELAWARE LIMITED LIABILITY COMPANY
BY: WESTERRA MANAGEMENT, LL
A DELAWARE LIMITED LIABILITY COMPANY

[Signature]
TRACY Z. GRAVES, ASSISTANT VICE PRESIDENT

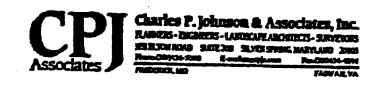
[Signature]
DAVID H. PETERSON, TRUSTEE



SCALE: 1" = 100'

CURVE	RADIUS	LENGTH	DELTA	TANGENT	BEARING	CHORD
1	280.00	217.48	44°29'56"	114.55	S23°33'28"E	212.04
2	704.00	329.20	26°28'01"	165.56	N72°58'00"E	322.32
3	385.00	289.21	40°03'50"	140.37	S87°23'57"W	283.78
4	809.00	112.00	7°35'57"	56.08	N82°12'02"E	111.91
5	220.00	170.86	44°29'56"	90.00	N23°33'28"E	168.80
6	105.00	129.18	70°28'21"	74.19	S08°56'54"W	121.18
7	105.00	91.82	50°08'21"	48.08	N89°42'30"E	88.93
8	45.00	141.37	180°00'00"	INFINITE	N43°48'26"W	90.00
9	18.00	28.27	90°00'00"	18.00	N89°11'34"E	25.48
10	18.00	28.27	90°00'00"	18.00	N07°48'26"W	25.48
11	18.00	21.85	89°32'15"	12.50	S89°34'33"E	20.53
12	3.00	4.71	90°00'00"	3.00	S89°11'35"W	4.24
13	3.00	4.71	90°00'00"	3.00	S00°48'26"E	4.24
14	3.01	4.24	89°38'24"	2.56	S89°11'34"W	3.90

SUBDIVISION RECORD PLAT
PARCEL A, BLOCK JJ
CLARKSBURG TOWN CENTER
CLARKSBURG (2ND) DISTRICT
MONTGOMERY COUNTY, MARYLAND
SCALE: 1"=100' AUGUST, 2002



702214 195042 Parcel 898001 8NYTDR

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION MONTGOMERY COUNTY PLANNING BOARD	DEPARTMENT OF PERMITTING SERVICES, MONTGOMERY COUNTY
APPROVED: <u>April 25, 2002</u> <i>[Signature]</i> CHAIRMAN	APPROVED: <u>NOVEMBER 9, 2002</u> <i>[Signature]</i> DIRECTOR
ASST. SECRETARY-TREASURER	

MNCP&PC Record File No. C19-21

1 PARCEL TAX MAP EW

Plotted: Aug. 5, 2002

Dwg: N:\29100\dwg\15-21 Xref:

LIST OF ADJOINING AND CONFRONTING PROPERTY OWNERS

(September 17, 2007)

Tax Account No.	Name	Address	Lot/Parcel	Block
02-03448167	Maryland Natl Cap Park & Pl Comm	8787 Georgia Ave Silver Spring, MD 20910	P735	
02-03282935	Terrabrook Clarksburg LLC	c/o Ballantyne 2/Ste 550 13777 Ballantyne Corporation Pl Charlotte, NC 28277-3417	P955	
02-03431737	Terrabrook Clarksburg LLC	c/o Lockbox 6 3030 LBJ Fwy Ste 150 Dallas, TX 75234-7022	PAR A	GG
02-03474873	Terrabrook Clarksburg LLC	c/o Newland Communities 13777 John J Delaney Dr #525 Charlotte, NC 28277	PAR E	EE
02-03390807	Yakov Shadyavichyus & Margarita Shadevich	23500 Public House Road Clarksburg, MD 20871-4338	34	FF
02-03390818	Isabel Dejuan-Jocher	23502 Public House Rd Clarksburg, MD 20871-4338	35	FF
02-03390820	Karen M & Thomas J Joseph	12800 Murphy Grove Ter Clarksburg, MD 20871-4318	36	FF
02-03390831	Kingsbridge LLC	8912 Burdette Rd Bethesda, MD 20817-2112	37	FF
02-03390580	Kevin R & Stephanie R Feig	23433 Clarksburg Rd Clarksburg, MD 20871	4	FF
02-03390578	Jerry & Catherine A Torres	23435 Clarksburg Rd Clarksburg, MD 20871-4340	3	FF
02-03390567	Vera MacAuley	23437 Clarksburg Rd Clarksburg, MD 20871-4340	2	FF
02-03390556	Charon E Flowers Maple	23439 Clarksburg Rd Clarksburg, MD 20871	1	FF
02-03390545	Terrabrook Clarksburg LLC	c/o Lockbox 6 3030 LBJ Fwy Ste 150 Dallas, TX 75234-7022	PAR A	FF
02-03469411	Terrabrook Clarksburg LLC	c/o Lockbox 6 3030 LBJ Fwy Ste 150 Dallas, TX 75234-7022	26	GG
02-03390795	Andreen A Brumbaugh	13101 Clarksburg Square Rd Clarksburg, MD 20871-4387	33	FF
02-03431772	Terrabrook Clarksburg LLC	c/o Lockbox 6 13777 Ballantyne 2/Ste 550 Charlotte, NC 28277-3417	2	GG
02-03390784	Joanna Fisher	13103 Clarksburg Square Rd Clarksburg, MD 20871-4387	32	FF
02-03431783	Terrabrook Clarksburg LLC	c/o Lockbox 6 13777 Ballantyne 2/Ste 550 Charlotte, NC 28277-3417	3	GG
02-03390773	Madiodio T Gaye & Maty T Mbaye	13105 Clarksburg Square Rd Clarksburg, MD 20871-4387	31	FF
02-03469422	Terrabrook Clarksburg LLC	c/o Lockbox 6 3030 LBJ Fwy Ste 150 Dallas, TX 75234-7022	27	GG

LIST OF ADJOINING AND CONFRONTING PROPERTY OWNERS
(September 17, 2007)

Tax Account No.	Name	Address	Lot/Parcel	Block
02-03390762	Gail Lantion	13107 Clarksburg Square Rd Clarksburg, MD 20871-4387	30	FF
02-03469433	Terrabrook Clarksburg LLC	c/o Lockbox 6 3030 LBJ Fwy Ste 150 Dallas, TX 75234-7022	28	GG
02-03390751	Jeffrey Brown	13109 Clarksburg Square Rd Clarksburg, MD 20871	29	FF
02-03469444	Terrabrook Clarksburg LLC	c/o Lockbox 6 3030 LBJ Fwy Ste 150 Dallas, TX 75234-7022	29	GG
02-03390740	023390751	13111 Clarksburg Square Rd Clarksburg, MD 20871	28	FF
02-03469455	Terrabrook Clarksburg LLC	c/o Lockbox 6 3030 LBJ Fwy Ste 150 Dallas, TX 75234-7022	30	GG
02-03390738	Marian Banfield	13113 Clarksburg Square Rd Clarksburg, MD 20871	27	FF
02-03469466	Terrabrook Clarksburg LLC	c/o Lockbox 6 3030 LBJ Fwy Ste 150 Dallas, TX 75234-7022	31	GG
02-03390727	John W Philbeck & Jennifer Todd	13115 Clarksburg Square Rd Clarksburg, MD 20871	26	FF
02-03469477	Terrabrook Clarksburg LLC	c/o Lockbox 6 3030 LBJ Fwy Ste 150 Dallas, TX 75234-7022	32	GG
02-03390716	Arvind V & Reeta A Vira	13117 Clarksburg Square Rd Clarksburg, MD 20871-4354	25	FF
02-03390705	Saeid Garmroudi & Masoumeh Mohammadi	13119 Clarksburg Square Rd Clarksburg, MD 20871-5126	24	FF
02-03390693	Bruce Francis Bell	13121 Clarksburg Square Rd Clarksburg, MD 20871	23	FF
02-03390682	Sandeep Rampuraa & Kalpana Goel	13123 Clarksburg Square Rd Clarksburg, MD 20871-4354	22	FF
02-03389898	Terrabrook Clarksburg LLC	c/o Lockbox 6 3030 LBJ Fwy Ste 150 Dallas, TX 75234-7022	PARCEL A	JJ
		Todd D. Brown, Esq. Linowes and Blocher LLP 7200 Wisconsin Avenue Suite 800 Bethesda, MD 20814	301-961- 5218	



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September 26, 2008

VIA OVERNIGHT MAIL

Debra Daniel, Esquire
Associate General Counsel
Maryland-National Capital Park and Planning Commission
6611 Kenilworth Avenue, Suite 403
Riverdale, Maryland 20737

Re: Extension of Project Plan Amendment No. 91994004B

Dear Ms. Daniel:

I represent NNP II – Clarksburg, LLC (“Newland”) and write in response to David Brown’s September 18, 2008 testimony on behalf of the Clarksburg Town Center Advisory Committee, Inc. (“CTCAC”).

I represented Newland in six contested arbitration proceedings with CTCAC before the Honorable Barbara K. Howe relating to the performance of the April 6, 2006 comprehensive Settlement Agreement (“Settlement Agreement”) between CTCAC, Newland and builders in the Clarksburg Town Center (“CTC”). Newland is being represented by Linowes and Blocher, LLP in current applications before the Board for the approval of a revised project plan and site plans for the CTC, but has asked me to submit this response because Mr. Brown’s testimony relates to the arbitration proceedings in which I represented Newland. I believe that Mr. Brown inaccurately described the proceedings and Judge Howe’s rulings and unfairly casts aspersion on Judge Howe, a distinguished Maryland Judge. In his July 25, 2008 letter responding to my request that Commissioner Amy Presley be recused from this matter, Adrian R. Gardner instructed me to send future correspondence in connection with this dispute to you. I respectfully request that you forward this letter to the Planning Board Commissioners so that Newland may be heard in response to the accusations made by Mr. Brown in his testimony. I have enclosed four extra copies of this letter for your convenience.

Rather than engage in an extended point-by-point refutation of Mr. Brown’s testimony, I will briefly describe Judge Howe’s rulings and attach copies of her relevant decisions, all of which are part of the public record in the Circuit Court for Baltimore County. In the Settlement Agreement, the parties agreed on the terms of a plan of compliance to be submitted by Newland to this Board for its consideration to address site plan violations and alleged violations in the CTC. The plan of compliance to which the parties agreed included a requirement that Newland spend \$1 million on enhanced landscaping for the community and provide numerous additional

amenities. The parties also agreed on a conceptual design for the retail area which depicted a walkable New Urbanist town center with parking located behind shops, restaurants, and other stores situated along a main street. The design was prepared by John Torti of Torti-Gallas and Partners and Michael Watkins of Duany Plater-Zyberk & Company, two nationally renowned architects and advocates of neo-traditional design. Under the terms of the Settlement Agreement, the design for the retail center was agreed upon as a "concept" only, but CTCAC was given the right to approve site plans to be submitted by Newland to the Board to implement the concept. CTCAC was not permitted, however, to unreasonably withhold its approval of such site plans.

This Board approved the plan of compliance as its Program of Compliance on August 3, 2006, and directed Newland to submit revised site plans to implement the program. Consistent with the Settlement Agreement, the Board ruled that the plan for the retail center in the Program of Compliance was conceptual in nature and would be fleshed out by the revised site plans. For example, with respect to the parking facilities, the Board's Program of Compliance provided that the parking facility in Block 5 of the retail center could be two or three levels and the facility in Block 3 could be one or two levels.

In an effort to move forward with the prompt development of the retail center concept to which the parties had agreed, Newland sent out a Request for Proposals ("RFP") to 30 potential developers of the center. In the RFP, Newland described the proposed retail center in virtually the precise formulation set forth in the concept plan contained in the Settlement Agreement and Program of Compliance. The response to the RFP, however, was troubling. No feasible offer was made to develop the entire retail center in this formulation, and most respondents indicated that substantial changes would have to be made for the center to be viable. Many of the objections related to the extensive structured parking in the remote, suburban location. As a result, Newland retained Robert Gibbs, a nationally recognized expert in establishing and revitalizing New Urbanist town centers, to review the concept plan and to recommend only those changes to the retail plan necessary to make it viable from a retail industry perspective.

Mr. Gibbs made a series of recommendations, the most significant of which was that the Block 5 parking be reduced from three levels to two levels so that 200 spaces can be provided on the same level as the entrance to the grocery store (with none of the spaces on a ramp) to meet industry requirements and that an entrance to the Block 3 parking facility be created from Main Street to allow easy access for convenience customers and that the Block 3 parking be reduced from two levels to one.

After CTCAC refused to accept the Gibbs recommendations, on April 21, 2008, an initial arbitration hearing was held before Judge Howe. The primary issue presented at this hearing was whether revised site plans could be filed with the Planning Board which contained the Gibbs recommendations for the retail center. At this hearing, Newland contended that (1) the Gibbs recommendations should be accepted by Judge Howe, and (2) CTCAC had unreasonably withheld its approval of the Gibbs recommendations by, among other things, failing to articulate any rational objections to the recommendations.

On April 29, 2008, Judge Howe issued an interlocutory decision in the arbitration, ruling that Newland was not entitled to substitute a Gibbs concept plan for the concept plan contained in the Settlement Agreement. A copy of the decision is attached as Exhibit 1. Judge Howe specifically found (at page 7) that the Gibbs recommendations were a "valiant" effort to address retail industry concerns and to establish a viable town center within the New Urbanist concept to which the parties had agreed in the Settlement Agreement. Judge Howe ruled, however that Newland and CTCAC had expressly agreed on the concept plan in the Settlement Agreement and thus a new concept plan could not be substituted without CTCAC's consent.

On May 6, 2008, Newland requested Judge Howe to reconsider her ruling, contending that the Gibbs recommendations were necessary to make the retail center viable and that CTCAC had unreasonably withheld its approval of the recommendations by failing, among other things, to articulate rational objections to them. On May 9, 2008, Judge Howe granted in part and denied in part Newland's request. (A copy of this decision is attached as Exhibit 2.) First, Judge Howe ruled that she would not change or reconsider her April 29, 2008 ruling. She reemphasized that the Gibbs plan could not be substituted for the Settlement Agreement plan. Judge Howe, however, agreed that in her first decision she had not addressed Newland's contention that CTCAC had unreasonably withheld its consent to the Gibbs recommendations. Judge Howe then addressed the issue and ruled that CTCAC had unreasonably withheld its approval by, among other things, failing to articulate any rational objections to the recommendations. Finally, Judge Howe clarified her April 21 decision by stating that the Program of Compliance provided that the garage in Block 5 could be either two or three levels, and that the garage in Block 3 could be one or two levels. Accordingly, Judge Howe ruled, it was conceivable that some of the Gibbs recommendations might be consistent with the Settlement Agreement and Program of Compliance concept plan. Judge Howe ruled that she would resolve which, if any, of the Gibbs recommendations were consistent with the Settlement Agreement concept plan at the arbitration scheduled for May 14, 2008.

On May 14-15, 2008, a final arbitration hearing was held. During the course of the hearing, Judge Howe approved the revised project plan and site plans that could be submitted to the Board. In approving these plans, Judge Howe approved some, but not all, of the Gibbs recommendations as being consistent with the concept plan in the Settlement Agreement and Program of Compliance. She did approve a parking facility in Block 5 with two levels and a parking facility in Block 3 with one level.

At the conclusion of the May 14-15 arbitration hearing, Judge Howe ordered the parties, as required by the Settlement Agreement, to support before the Planning Board the revised project plan and site plans as approved by her.

The revised site plans as approved by Judge Howe were filed with the Board on May 19, 2008.

Newland understands that this Board has complete authority to reject any portion of the revised site plans before the Board for its consideration. Mr. Brown, however, has incorrectly stated that Judge Howe did not rule that the revised plans were consistent with the Program of



Debra Daniel, Esquire
September 26, 2008
Page 4

Compliance. Judge Howe necessarily so ruled, and the plans would not be before the Board if this were not so. The Settlement Agreement and Program of Compliance contain the same conceptual plan for the development of the retail center and, in approving the retail center as shown in the plans which are now before the Board for its approval, Judge Howe specifically relied on the fact that the Program of Compliance stated that the parking facility in Block 5 would be two or three levels and that the facility in Block 3 would be one or two levels.

Finally, Mr. Brown's repeated suggestion that Judge Howe did not fairly conduct the proceedings is unconscionable and irresponsible. Judge Howe is a retired Circuit Court Judge who is well regarded throughout the State. She is a past Chair of the Maryland Judicial Disabilities Commission and the recipient of numerous professional awards. She is also a former zoning hearing examiner for Harford County and thus had specific expertise that was applicable to this case. Judge Howe was recommended for her position in connection with the Clarksburg Town Center dispute by high-level judicial and government officials and was approved by both Newland and CTCAC. Her rulings were thoughtful and based on settled law. That CTCAC should disagree with the rulings is not a license for Mr. Brown to make the pejorative suggestions that the Judge did not fairly and conscientiously conduct proceedings.

I would like to provide one example of Mr. Brown's extreme unfairness to Judge Howe. He makes much of the fact that Judge Howe conducted the proceeding until the early morning on May 15, 2008 and did not grant postponement to CTCAC. Mr. Brown omits the fact that the Planning Board staff had directed Newland to submit the revised site plans no later than May 19 and that some time after the May 14 hearing was needed to make the revisions ordered by Judge Howe. Further, Mr. Brown omits the fact that Judge Howe recognized that the hearings would be lengthy and sought to hold the hearings on two days, May 12 and 14. CTCAC initially agreed to start the hearings on May 12 and then claimed that all of its representatives were unavailable on May 12. Thus, CTCAC, not Judge Howe, imposed on everyone a hearing that extended until well past 1 AM. Judge Howe was only attempting to ensure that the Board's deadline was met.

Thank you for your consideration of these matters.

Very truly yours,

A handwritten signature in black ink that reads 'Kent J. Fitch'.

KJF/afp
Enclosures

cc: Robert Kronenberg
Rose Krasnow
David Brown, Esquire

IN THE MATTER OF NNPII-CLARKSBURG LLC
And CLARKSBURG TOWN CENTER ADVISORY
COMMITTEE, INC.

DECISION

On Monday April 21 2008 the above matter came on for an arbitration hearing before me. The session was held at the offices of DLAPiper. Kurt Fischer and Stephen Z. Kaufman were present as the attorneys for the Claimant, NNPII-Clarksburg LLC ("Newland"). Clarksburg Town Center Advisory Committee, Inc, the Respondent, ("CTCAC") was represented by David W. Brown. On April 14 2008 a formal notice of the time and place designated by me for the arbitration hearing was served on the Respondent.

Pursuant to paragraph 11 of the Business Terms of the Settlement Agreement of the parties, Newland asserted claims that were to be the subject of the hearing (See Attachment 1: letter dated April 14, 2008) At the hearing only claims 1, 2 and 3 were pursued and the others were reserved for future determination.

FINDINGS OF FACT

The Settlement Agreement dated April 6 2006 was accepted into evidence as Claimant's Exhibit 1. It includes the Business Points and the Development Terms and attached Exhibit A-P, as well as other documents not relevant to this arbitration hearing.

Claimant's Exhibit 2 was accepted into evidence and is the Resolution of the Montgomery County Planning Board which was mailed on August 17, 2006. The purpose of the Resolution was to memorialize the decision of the Planning Board that approved a Plan of Compliance that was intended to remediate and address some violations with respect to Clarksburg Town Center. The Compliance Program consisted of the Staff Recommendations, Board Modifications, Certain Deadlines, and Certain Waives as were described in the document with particularity. Of particular relevance to this arbitration hearing, is "Third Stage: Approval of a Revised Project Plan, preliminary Plan and Site Plans" contained on page Four. In Section 4 "Formal Disposition of the Violations and Related Findings", particularly relevant here is the last paragraph, which orders Newland to comply strictly each of the elements terms and conditions of the Compliance program and as was expressed otherwise in the Resolution. The Planning Board appropriately reserved to itself the authority going forward to approve all future submissions of amendments to the Project Plan, Preliminary Plan and Site Plans. It also recognized the Compliance Program to be "conceptual in nature and that additional review of more detailed plans may involve modifications". Attachment 5 is a June 15, 2006 Errata page. That page states that the Plan of Compliance includes the concepts presented in the written description along with the conceptual drawings, and the comments and modifications made by staff on Page 1 and 2 of the staff report. These comments were intended and did replace the entire Section "S Outcome of this Plan of Compliance". Exhibit R was also revised. There was a requirement that the revised plans that would reflect the elements of the Plan of Compliance were required to be submitted by October

26, 2006. That date was extended by the Planning Board several times and the new deadline is in September 2008.

Significant here is the document entitled "Development Terms" which is a part of Claimant's Exhibit 1. There are 8 pages which outline terms for future development of the Clarksburg Town Center. Pages A-P, the conceptual drawings are attached to it. Paragraph 1 of the Development Terms adopts the "Torti Plan" which is dated April 3rd 2006 as the design for the Retail Center. Exhibit A is attached to the development terms and is called the "Torti April 3, 2006 Mediation Plan". Importantly, in the agreed Business Points at paragraph 4 it is stated that the exhibits to the development terms for CTC provide a guide for purposes of determining the financial commitment of the Developer and the general, conceptual agreements regarding design". This paragraph was essential to all parties to the agreement because engineering plans had not been designed and all of the problems with topography and precise layout could not be defined with sufficient particularity. Some items however were clear and not subject to deletion but only to being drawn with precision: for example, in Block 3 and Block 5, there is a "parking structure" in each block. There was no discussion or notion at that time about the possible deletion of either garage. All that remained to be done with respect to each of them was that they needed to be designed with precision to fit the site and the manner of ingress and egress determined with relation to the slopes on the property itself.

Not to give proper relevance to the attachments to the Settlement Agreement would negate them and would destroy the entire purpose of the settlement which was mediated by and between all parties. Hour upon hour was spent on details so that

Newland, the builders who signed the agreement and CTCAC would have an agreement going forward that was specific enough to be enforceable.

There is no term in the any part of the Settlement Agreement which permits a change in the conceptual plans to remove or change any part of it dependent on “market changes”.

Newland sent out a Request for Proposal in the summer of 2007. (Claimant’s Exhibit 6). Claimant’s Exhibit 7 is a list of those to whom it was sent for response. The response was “poor” according to Douglas C. Delano, Vice President of Operations. Based on its perceptions of the responses received, Newland decided to retain a nationally known expert in neo-urban or TND design named Robert Gibbs. Mr. Gibbs was to determine based on market studies and other data what type of center should be built on this site. He performed an analysis of the amount and types of retailers that may be supportable in a commercial center on this site. Claimant’s Exhibit 23 contains his findings. Various charts are contained in Claimant’s Exhibit 24. Mr. Gibbs analysis resulted in a recommendation that a “super neighborhood center” be built at this location rather than a “lifestyle center” as designed by Mr. Torti. Mr. Gibbs had been instructed to make alterations to the Torti-April 3, 2006 Mediation Plan (Exhibit “A”) which is Claimant’s Exhibit 25 in as minimal a manner as could accomplish what he found to be supportable. The “Site Plan/Gibbs Concept” is Claimant’s Exhibit 25. It is a conceptual drawing, not an engineered design. Mr. Gibbs testified that he only dealt with the retail core portion and not the designs for any other part of Clarksburg Town Center. His design removes both garages, and instead draws a parking structure in Block 5 having two levels, and a surface parking lot in Block 3. He also designed a new parking plan

that added significant numbers of “nose-in” parking spaces and some additional parallel parking. Some street widths had to be modified to accommodate his parking plan. He did not especially deal with what would happen with the effect of all of these parking changes on the “bike trail” provided for in the Torti plan. Mr. Robert Ditthardt testified about Claimant’s Exhibit 28 and the resulting parking with the Gibbs changes in place. He testified that 61 additional spaces would be provided in the Gibbs Plan vs. the Torti Plan.

David S. Weber of Gutschick, Little & Weber, P.A (GSW). testified. His company prepared detailed engineered site plans after being furnished with an Auto-CAD prepared by Mr. Gibbs. Plans prepared by GSW dated April 11 2008 were introduced into evidence as Respondent’s Exhibit 14 and purport to represent the recommendations of Mr. Gibbs. Respondent’s Exhibit 15 is a set of plans dated April 2007 which were also prepared by GSW and submitted by Newland to Montgomery County without the approval of CTCAC as is required under the Settlement Agreement. Newland stated that these plans were “Place Holder” plans only and were never intended to be the final site plans for the project. Deficiencies on the April 11, 2008 plans were pointed out. For example, the symbol for “special paving” was left blank in the box on WS1. Mr. Gibbs said that the omission was inadvertent. Mr. Weber was asked about moving the bike path and he testified that the bike path had to move, in part, because of the addition of the diagonal parking spaces (T. 400-403).

Mr. Gibbs testified (T 361) that he “did not change the unit type” on the north side of Block 5. He only removed the name of the unit type and reserved the area for residential, and because he is not a residential architect, he did not specify the unit type.

However, on Respondent's Exhibit 14, the courtyard type homes have been replaced as liner town homes as though this was done based on the Gibbs recommendation.

Respondent's Exhibit 5 was admitted into evidence and is attached hereto. Ms. Kim Shiley testified about the differences between the Plan of Compliance and Respondent's Exhibit 14 in great detail.

Ms. Amy Presley also testified for Respondent. She testified that CTCAC has not given final approval plans to Newland because has never been presented with a full set of plans for the entire Clarksburg Town Center. Particularly with respect to the pool/recreation center, CTCAC has not been given a site plan to approve. Although there have been discussions held for a re-design of that area, a specific drawing has not been provided that has been agreed by the parties. Because their approval must be obtained on all site plans as a total plan, CTCAC has never been able to approve a set of site plans as a complete set has never been provided.

DECISION

The basic law of contracts as stated in Mr. Fischer's Pre-Hearing Memorandum as General Principles of Contract Construction (Pre-Hearing Memorandum at pages 16 and 17) is certainly the law that applies here. The law that Mr. Brown cites is also correct in that modification of a contract requires mutual assent of the parties, even if the party who wishes to modify the contract determines that for one reason or another, the deal made then is not the deal that would be made today because circumstances have changed. The Settlement Agreement and all of its inclusions was an agreement on development terms that were extremely specific that were intended to define the future construction of the major elements of the Town Center, and in particular, the build out of the retail core.

Newland negotiated with CTCAC and various builders to achieve what is a remarkable document given the personalities of all of the parties and the acrimony which existed before it was signed, and which continues today between CTCAC and Newland. The level of distrust of Newland exhibited by CTCAC is unmistakable. I make no finding on whose fault that may be. The language of the contract, however, is not ambiguous and under Maryland law it will be afforded the effect of its plain meaning in light of the context within which it is employed. "It is a fundamental rule of contract construction that the entire contract, and each and all of its parts and provisions must be given meaning, and force and effect, if that can consistently and reasonably be done. An interpretation which gives reasonable meaning to all its provisions will be preferred to one which leaves a portion of the writing useless or inexplicable". *Orkin v. Jacobson*, 274 Md. 124, 130 (1975) (quoting Am. Jur. 2d *Contracts* Section 259 (1964)). Newland wishes to add a new and different term to the Settlement Agreement. Instead of its plain language, Newland wishes to add a provision that would make the Torti-April 3 Plan viable when looking at market realities. While this language may attempt to add a common sense provision to the Agreement, it is not contained in the Agreement itself and cannot be implied into an unambiguous agreement. Newland says that it cannot build the Center nor find a builder who is interested in building it according to the Torti-April 3 Plan. If that is true, and it may subsequently be found so, then the Center will not be built. It is as simple as that. I agree with Newland that the Gibbs Plan is a valiant attempt to develop a plan that is comparable to the Torti-April 3 Plan. But it cannot be substituted because it removes features that were included after a lengthy negotiated settlement discussion held over many hours. It may be perceived by many to be a

superior plan, but it is not the plan that was bargained for and specifically agreed to between these parties.

The declaratory relief requested is, therefore, denied.

An alternative claim is requested by Newland. I have ruled that the revised plans are inconsistent with the Settlement Agreement. Newland requests a ruling that the Settlement Agreement is impossible of performance and must be rescinded because the precise form and configuration of the retail center in the Settlement Agreement cannot be developed or leased for the designated retail uses. This claim is also denied. Within the exhibits introduced into evidence is Exhibit 11. Under the portion labeled "Financial Requirements, Legal Document, & Deal Structure" is a statement concerning "Deal Structure". The statement on its face is a statement of interest in developing this Town Center under the Torti-April3 Plan either as a joint venture or as an outright purchase. Nothing in the testimony shows that there was any follow-up of this response to the RFP. I cannot find, therefore, as requested, that it is impossible to perform the Settlement Agreement.

An alternative claim is also requested that if I rule that the revised plans for the retail center are inconsistent with the Settlement Agreement, that the Settlement Agreement was the product of a mutual mistake of fact, and must, therefore, be rescinded, because the precise form and configuration of the retail center in the Settlement Agreement cannot be developed or leased for the designated retail uses. There cannot be a finding that there is a "mutual mistake" here because CTCAC has a belief, grounded in the response to the RFP cited above, that it can be developed as agreed. Mutual mistakes, in addition, must concern past or present facts, not unexpected

facts that occur later, and after a document is signed by the parties. 17A Am. Jur. 2d *Contracts* Section 202 at 210 (2004) (Footnotes omitted). The request for rescission on this basis is also denied.

A revised project plan and site plans are to be drawn that are consistent with the Torti-April 3 Plan concepts. CTCAC is to have an ability to review them and to have an ability to approve a full and complete set of plans for the entire Clarksburg Town Center, both the East and West sides and all that is in between. If the Site plans are accurate, CTCAC is required to approve them because their approval cannot be unreasonably withheld.

On May 2, 2008 an arbitration session will be held and at that time all of the landscape/hardscape features will be designated and will be included on the revised site plans.

Unless CTCAC has approved the revised project plan and site plans before May 14, 2008, then on May 14, 2008 the revised project plan and site plans will be reviewed in an arbitration session to be held at the offices of DLA Piper in Baltimore MD beginning at 9 a.m. and I will establish on that date the project plan and site plans which will be submitted to the Montgomery County Planning Board on May 19, 2008. As previously agreed by the parties, all parties will support the revised project plan and the site plans which I approve, in all other proceedings of whatever nature which are conducted in the future.

Barbara Kerr Howe

April 29 2008

IN THE MATTER OF NNPII-CLARKSBURG LLC
And CLARKSBURG TOWN CENTER ADVISORY
COMMITTEE, INC.

RULING

On May 2, 2008 NNPII-Clarksburg LLC (Newland) filed a Motion for Reconsideration of my decision dated April 29, 2008 to which Clarksburg Town Center Advisory Committee, Inc. (CTCAC) filed a response on May 2, 2008. A Reply to the Opposition was filed by Newland on May 6, 2008.

In the decision of April 29, 2008 the declaratory relief requested by Newland was denied. My decision directs Newland to prepare a revised project plan and site plans that are consistent with the Torti-April 3 Plan concepts. There has been an on-going debate between the parties about the final site plans. Of particular note is the dispute over the construction of garages in Blocks 3 and 5. I have read again the language in the Plan of Compliance which was approved by the Planning Board concerning the garage in Block 3 and it is ambiguous. At page 19 it states that "Block 3 will be built around one, 2 to 3 level parking structure depending on the topography" and on page 23, at B.4. it states that it will be "... constructed around a 1-2 parking structure". Both of those conflicting statements supposedly originate from the Torti-April 3 Plan concepts. How can Newland draw site plans consistent with the Torti-April 3 Plan concepts and at the same time be in compliance with what has been approved by the Planning Board? It is impossible to do so.

Under Section 4 of the Business Points of the Settlement Agreement Newland is required to prepare final site plans to implement the conceptual agreements of the parties and to obtain CTCAC's approval. The Torti Plan and its attachments are to be a "guide" going forward to reflect the "general conceptual agreements" of the parties. There was to be a cooperative effort between these parties each acting in good faith, as the final plans were drawn. Newland was charged with the responsibility to prepare site plans and CTCAC was to act in good faith to approve them. There is language in Section 4 referenced above that CTCAC will not unreasonably withhold their approval.

Site plans have been prepared several times. The Planning Board has plans which were filed in April 2007. The current dispute revolves around the April 2007 site plans and the site plans submitted to CTCAC for approval in April 2008. If the parties cannot agree on the final Site Plans, arbitration provisions of the Settlement Agreement control the process for approval of what is ultimately submitted to the Planning Board for approval.

Newland has requested the relief requested by them to use the "Gibbs Plan dated April 11, 2008" be granted on several grounds: (1) that it is consistent with the agreement of the parties and (2) that CTCAC has withheld its consent in a manner that is not reasonable and in good faith. They allege that it is unreasonable to refuse to grant consent solely to extract a monetary concession. There is testimony in the record that is contradictory. Mr. Douglas Delano testified that Mrs. Amy Presley told him when they had a meeting about the revisions to the Site Plans and Mr. Gibbs' proposals in February 2008 that she wanted Newland to pay monies directly CTCAC out of the landscape budget so that their principals could be paid back for all of the work they have done for

the community. Mrs. Presley testified that she was making a request at that time for money to go to the HOA so that it could use the monies in the community, and that any other discussion that ensued later about payments of money “migrated” after that conversation. It matters not under the law to whom the money was to be paid. If the monies were demanded and were to be in exchange for an approval of a Site Plan, it is an unlawful request. Also in this case is the fact that CTCAC did not articulate specific reasons why the Gibbs recommendations would have a detrimental impact on the community or the retail core. It is true that a list of deficiencies was provided and was in fact incorporated in my original decision but the list is without explanations of any detrimental effects. That exhibit however pointed out certain items that had been contained in earlier plans and which were no longer shown.

On May 14, 2008 when the arbitration session is conducted the following items are to be submitted for approval, change or substitution if agreed, or revision after my rulings:

The April 2007 plans that have been filed with the Planning Board;

The April 11, 2008 plans which must contain the following changes and additional items: (1) a data table and index Sheets and a legend for “special paving” (2) the 355 connection shown as an aligned intersection (3) the bike path exact location and in sufficient detail so that it can be determined if it is in the stream buffer (4) the Library without change from the April 2007 plans and a restoration of the 3 live/work units (5) precise measurements of the retail depths (6) a removal of the liner townhomes and in their place, the courtyard style homes indicated on the April 2007 plans in the area

behind the grocery store (7) a deletion of any changes not specifically required by the revisions of Mr. Gibbs.

I am making a determination here that CTCAC has withheld its approval of plans submitted to it in an unreasonable manner to the extent that it has refused to approve plans submitted to it for approval that did not have the entire Site Plan shown for all of CTC but Newland is not entitled to the declaratory relief requested to have the April 11 2008 site plans containing the Gibbs recommendations for revision of the Clarksburg Town Center.

The Motion for Reconsideration is granted in part and denied in part consistent with this Ruling. The question for the arbitration hearing on May 12, 2008 is whether or not Site Plans are consistent with the Settlement Agreement. If the parties cannot agree, I will make a determination of what Site Plan is to be submitted consistent with my role assigned under the Settlement Agreement.