



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

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

**ITEM #:** 5

**MCPB HEARING**

**DATE:** November 6, 2008

**REPORT DATE:** October 22, 2008

**TO:** Montgomery County Planning Board

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

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

Catherine Conlon, Supervisor *CC*  
 Development Review Division



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

**APPLICANT:** NNPII Clarksburg, LLC

**RECOMMENDATION:** Approval with conditions

## EXECUTIVE SUMMARY

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

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

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



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

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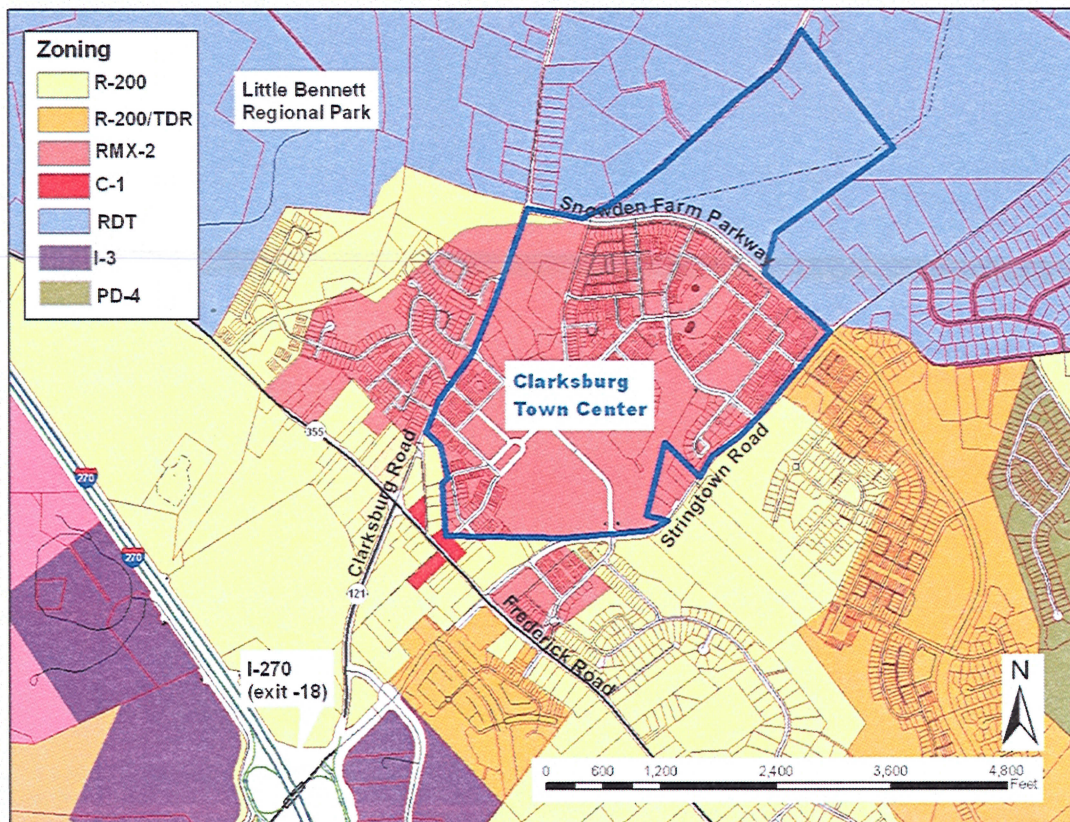
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## SITE DESCRIPTION

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

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

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

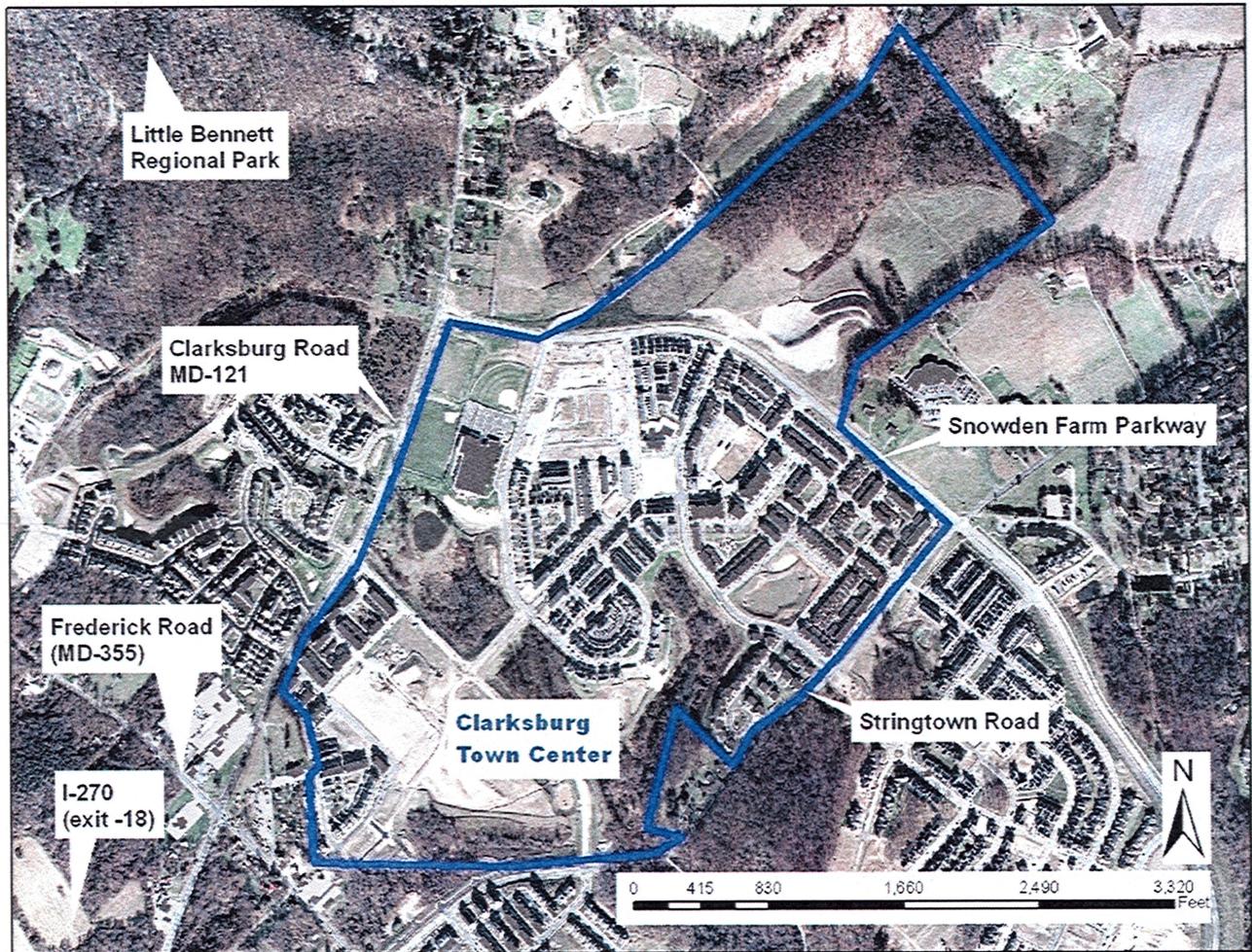




**Site Analysis**

The Town Center is an approximate 270-acre development split by a stream valley buffer now called the “Greenway.” The East Side of the Greenway is comprised of rolling topography from Snowden Farm Parkway to the greenway and Stringtown Road. This portion of the site consists primarily of residential uses; however, the elementary school is located in the northwest quadrant at the intersection of Snowden Farm Parkway and Clarksburg Road. The West Side has a more gradual slope from Clarksburg Road toward Stringtown Road. The West Side contains a number of one-family detached and attached units and is proposed to house the retail center, civic building and additional housing. The Town Center is zoned RMX-2 and Piedmont Woods Park on the opposite side of Snowden Farm Parkway is zoned RDT.

The majority of the infrastructure within the eastern portion of the 270-acre site is nearly complete, with the exception of the area crossing the Greenway to the West Side.





## **PROJECT DESCRIPTION**

### **Background and Previous Approvals**

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

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

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

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

CTCAC continued to allege additional violations as listed below:

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

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

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

### **Plan of Compliance**

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

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

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

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

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

## **FORMAL DISPOSITION OF VIOLATIONS AND RELATED FINDINGS IN THE PLAN**

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

### **FINDING 4.1**

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

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

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

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

#### **FINDING 4.2**

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

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

#### **FINDING 4.3**

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

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

#### **FINDING 4.4**

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

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



## **Status of the Town Center**

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

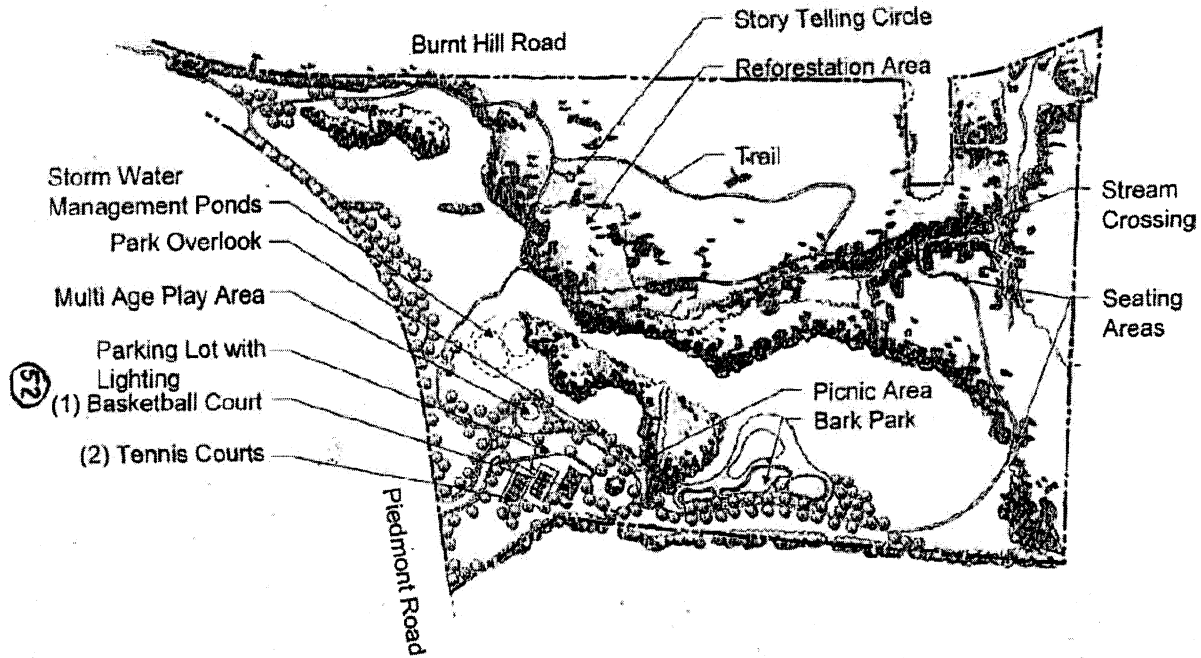
Currently, three vehicular access points (Public House Road, General Store Drive and Overlook Park Drive) exist from Clarksburg Road to the “West Side” of the Town Center and align with the developments on the west side of Clarksburg Road. No additional access is proposed to Clarksburg Road; however,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

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

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

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

# CLARKSBURG



## Concept for Piedmont Woods

TORTI GALLAS AND PARTNERS • DUANY PLATER-ZYBERK & COMPANY • Michael Vergeson Landscape Architects

The majority of the common areas and amenities on the East Side are complete, with the exception of Sinequa Square Park. However, some of the community-wide facilities, such as Murphy's Grove Pond and the Residents Club/Community Center are being retrofitted to conform to the Plan of Compliance. Additional conditions are being placed on the Applicant to augment common areas with more landscaping and pavement upgrades that were not built as required by the original plan approvals.

### History of the Current Project, Preliminary and Site Plan Applications

After the Plan of Compliance was approved by the Board on June 15, 2006, the Applicant was able to proceed with the construction of certain residential units in Section 2D and in parts of Section GG as allowed in Stage I of that Plan. Stage II of the Compliance Plan, which was approved by the Board on December 13, 2007, permitted construction to move forward on an additional 118 units, including 48 MPDUs. To satisfy the requirements for Stage III of the Plan of Compliance, the Applicant submitted amended Project and Preliminary Plans and a new site plan covering the entire town center development on April 24, 2007. The applications were reviewed by all agencies at a DRC (Development Review Committee) meeting on July 3, 2007. Staff and other County agencies provided the Applicant numerous comments that needed to be addressed. The plans were resubmitted on May 19, 2008 as a result of numerous extensions granted by the Planning Board. These new plans reflected significant revisions, but these were not in response to the DRC comments received the prior year. Rather, deliberations had been on-going between the two parties (CTCAC and Newlands) regarding disagreements over elements

of the plans in the Plan of Compliance. The new plans Staff received in May reflected significant changes to the retail center, parking, building height and landscaping, creating new issues and concerns for all of the reviewing agencies.

The May 19, 2008 plans were reviewed by all agencies and a new DRC meeting was held on June 23, 2008. This was not viewed as a typical resubmittal because of the extensive plan changes. The County agencies (DPS, DOT, MC Libraries, Fire/Rescue) provided consolidated comments on July 31, 2006, and M-NCPPC followed with comments on August 6, 2008. Binders were provided by the Applicant on September 5, 2008 in response to the DRC comments. Revised plans followed over a week later on September 15, 2008, and were distributed to the departments for their review and comment.

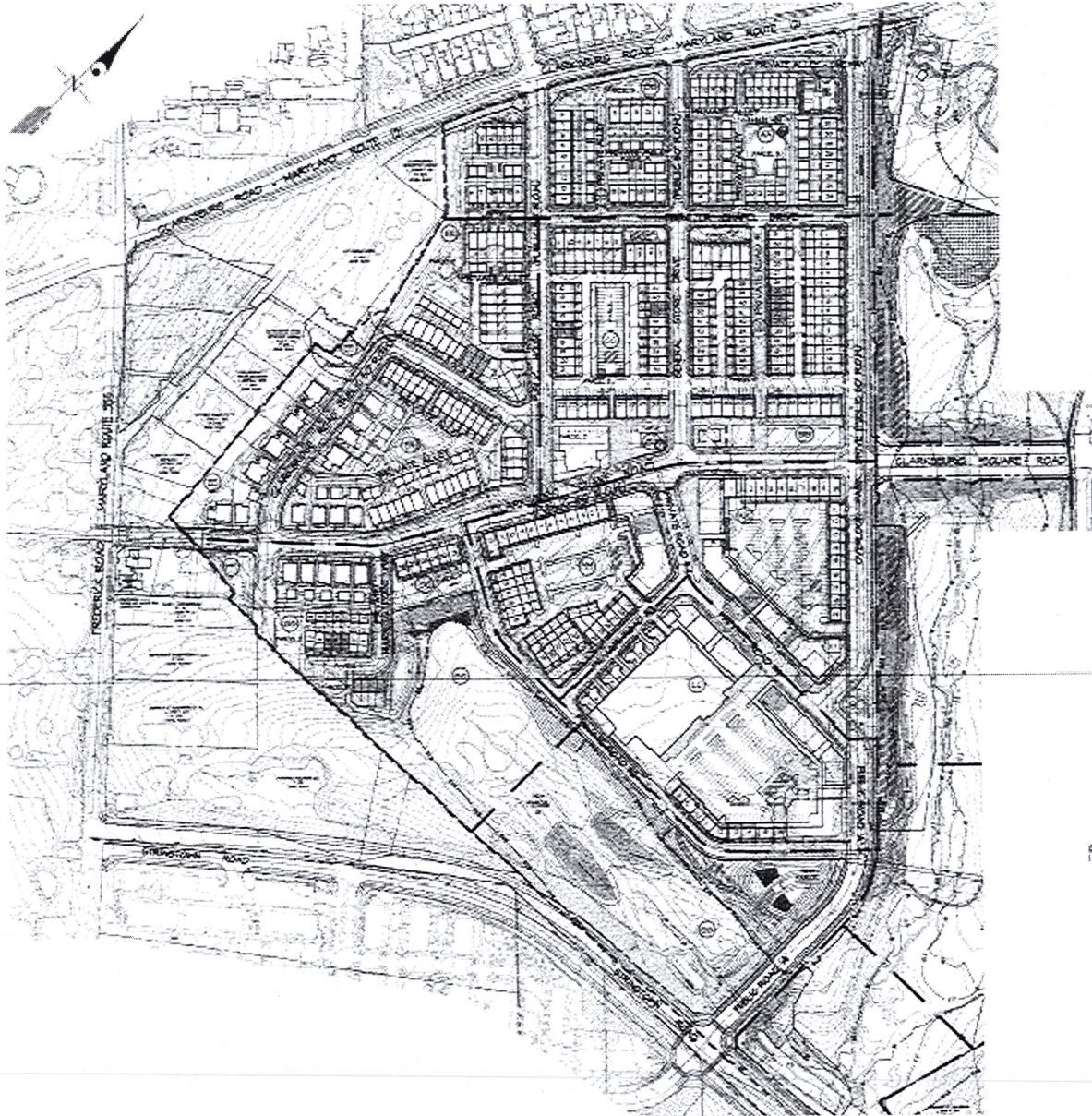
Due to the extensive plan changes and subsequent resubmittal by the Applicant in mid-September, Staff supported the Applicant's request for a 90 day extension to the Project Plan from September 18 to December 17. The Planning Board voted to extend the hearing date with a clear direction to place the item on the Board agenda for a full hearing on November 6, 2008.

## **Proposal**

The current applications for Project Plan Amendment, Preliminary Plan Amendment and Site Plan propose 194,720 gross square feet of commercial development, including 69,720 sf of specialty retail (51 live/work units at 48,000 sf; 7,720 sf of flex space, 14,000 sf. of mezzanine space above the grocery); and 1,213 residential dwelling units, consisting of 219 one-family detached units, 656 one-family attached units (includes live/work units) and 338 multi-family units, including 152 MPDUs, on approximately 270 acres.

As an overview, the application eliminated the office component, increased the retail square footage, and decreased the number of dwelling units, which led to a reduction of 3 MPDU's. The majority of the development is concentrated on the East and West sides (submitted as the "East Side" and "West Side") of the Greenway, with the retail component situated on the West Side. The Greenway and Piedmont Woods Park are major environmental and recreational amenities attributed to the development.

The Applicant states that the May 2008 plan applications conform to the approved Plan of Compliance.



Applicant's image of the West Side development



## **DISCUSSION OF ISSUES**

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

### **I. Parking**

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

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

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

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

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

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

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

### Community's Concerns

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

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

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

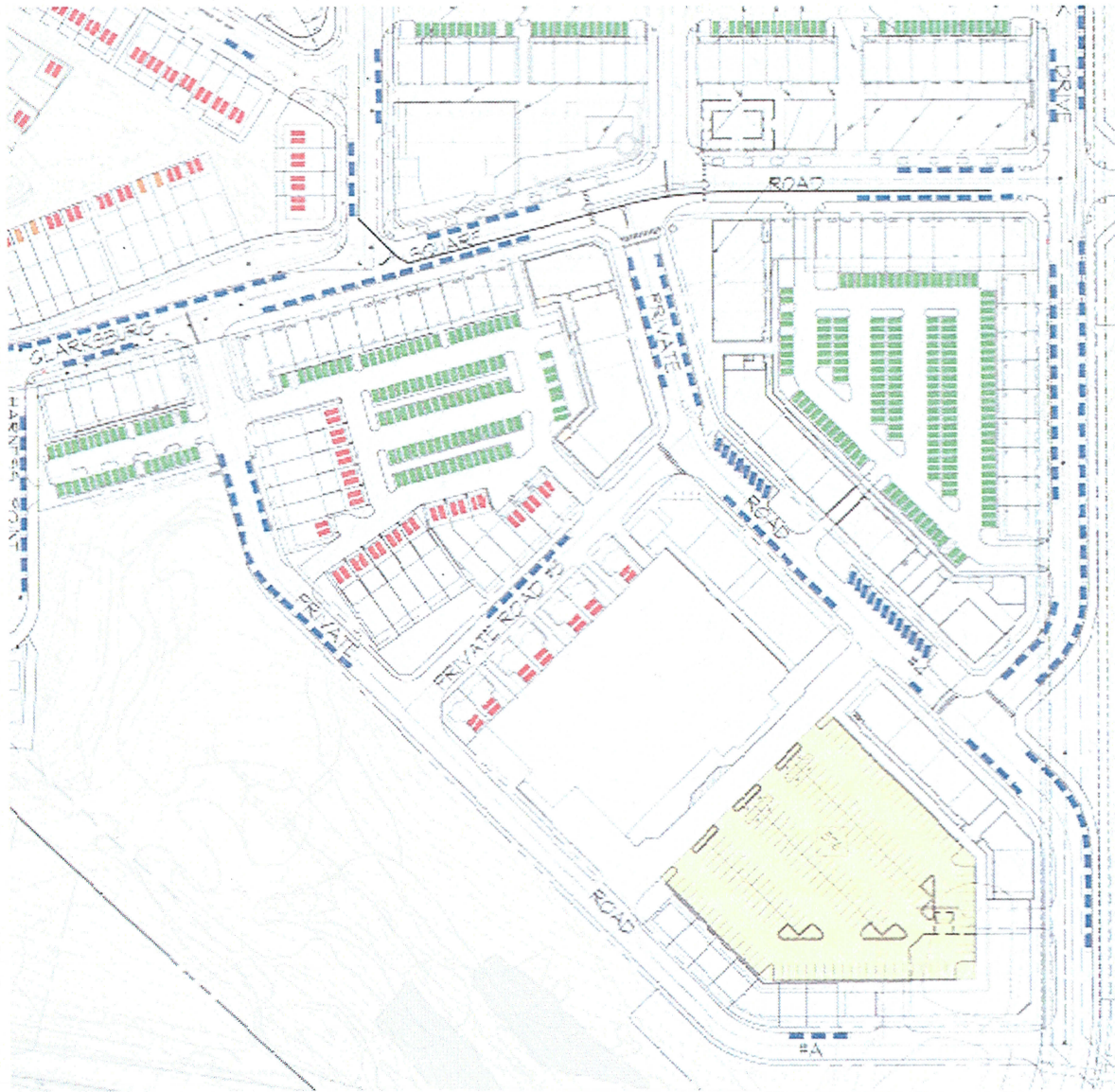
### Applicant’s Position

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

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

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

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



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

#### Staff Position

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



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

Two Parking Garages in the Retail Core	\$8,400,000
(840 spaces x \$10,000 additional cost per space)	

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

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

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

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

## **II. Retail Center**

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

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

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

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

### Community's Concerns

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

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

### Applicant's Position

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

## Staff Position

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

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

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

## **Landscaping (Grandfather provisions)**

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

## Community’s Concerns

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





Image of a private alley on the West Side that is devoid of both the trees and the stamped asphalt originally approved on the side of the alley.



Image of a private alley on the East Side in the Snow Hill Section that is void of trees





Image of a private alley on the West Side under common ownership that was approved for stamped asphalt and trees. The stamped asphalt could still be installed without intruding on private property.

#### Applicant's Position

The Applicant believes that all elements, including landscaping, lighting, recreation and other amenities that are associated with the areas that were subject to the earlier violation hearings are “grandfathered” and not subject to review under the current applications.

#### Staff Position

The Plan of Compliance is specific with respect to “grandfathering.” Finding 4.1 Section 4 Formal Disposition to the Violations and Related Finding of the Plan of Compliance states that those units already built or under contract should be allowed to proceed, and that any remaining issues with respect to items that had been the subject of alleged violation would be grandfathered. This provision, however, clearly applied only to privately owned lots and did not “grandfather” HOA common areas or amenities.

**Staff recommends that additional planting and special paving (stamped asphalt and brick) be installed in specific areas within the community that are under common ownership, respecting the property boundaries of the residents that currently live in the existing structures. This is to make up for clear deficiencies with respect to the previously approved plans and should not count as part of the \$1 million that was designated in the compliance plan for additional landscaping to enhance the overall community.**





Image of alley treatment on the East Side in the Benton Hill section that includes Crepe Myrtles, shrubs and groundcover



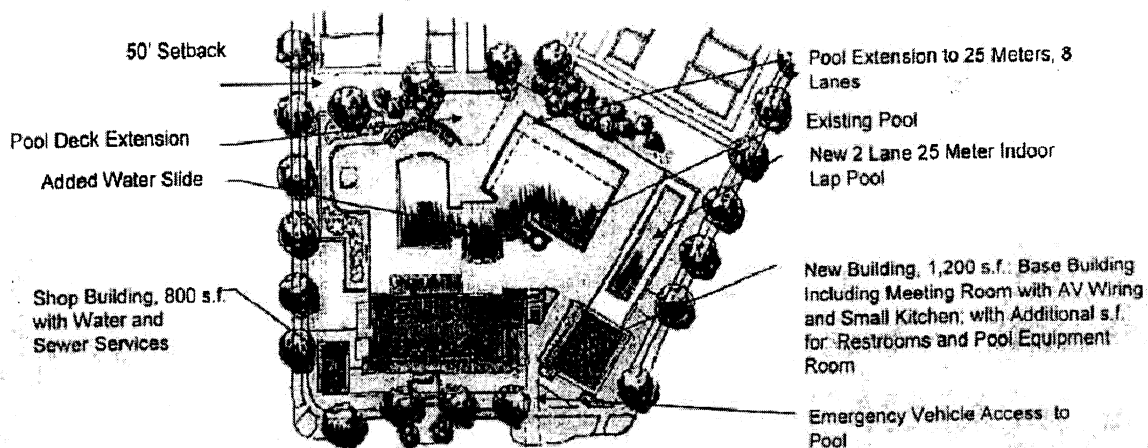
Image of alley treatment on the West Side in the Hidden Meadows section that includes shade trees, shrubs and grass.

### III. Residents Club (Community Center)

The Recreation Center/Pool Complex along with Sinequa Square was evaluated during mediation that lead to the Plan of Compliance and it was determined that certain elements of the pool and pool facility should be expanded as part of the new submittal. Specifically, the Plan of Compliance called for the following:

- 1) Extension of the outdoor pool to 25- meter length and add additional width to accommodate (7) eight foot wide lanes, one with a slide, and (6) lanes for regulation MCSL meets
- 2) Addition of an 800 square foot building to house a snack bar,
- 3) Addition of a 1,200 square foot building to be used for movies and other community functions,
- 4) Addition of a building to house a year-round, two-lane lap pool,
- 5) Additional parking to serve the facility.

The expansion was desirable, in part, because the pool originally envisioned for the west side was being eliminated as part of the Compliance Plan. The larger pool would serve to draw the two sides of the community together, and children would have the opportunity to participate in the county swim league.





### Community's Concerns

After the Plan of Compliance was approved, members of the community voiced concerns over the operational requirements and maintenance issues associated with a lap pool. Particular concerns included the need to provide costly lifeguards year round and the worry that such an enclosed, heated facility might have problems with mold. Newlands presented an alternative concept on 1/15/08 that proposed to eliminate the lap pool in favor of an all-sports court that would have the advantage of meeting the recreational needs of teenage residents. Several other modifications, such as removing the 800 square foot building altogether and relocating the square footage to one of the other buildings, were also considered. However, the community could not get a commitment from the Applicant as to just what they would provide in terms of fit-out for these new buildings, so the resident group opted to move forward with the facilities as submitted in the Plan of Compliance.

### Applicant's Position

The Applicant is willing to provide the lap pool and the other buildings as set forth in the Plan of Compliance but is also amenable to the revised configuration. The Applicant will finish the interiors of the buildings, including wiring for A/V, but has not committed to providing all of the interior improvements in terms of furnishings and equipment desired by the community.

### Staff Position

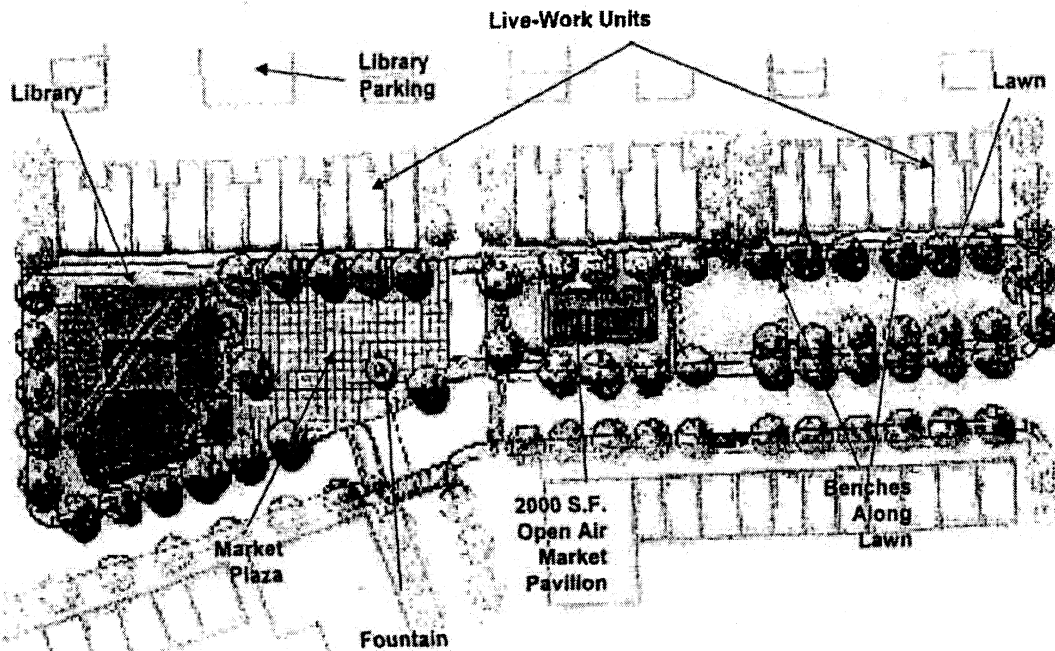
Staff agrees that the lap pool could pose a health issue and become a heavy burden financially for the HOA to carry. The sports court also seems desirable in terms of providing activities for a variety of ages, particularly teens. Moreover, the 800 foot building would clutter an already tight site.

**Staff recommendation: Staff recommends deleting the lap pool in favor of the all-sport court and eliminating the small building. The Applicant should be responsible for fitting out the sport-court and the community building (furniture, av system) with the specifics regarding what the applicant must provide with respect to fit-out being determined by certified site plan. All other improvements to the pool and wading pool should move forward as anticipated in the Plan of Compliance.**

### **Library Site**

The project plan (919940040) required the applicant to dedicate 10,000 square feet of land for a civic building. Although not specified at that time, the community always envisioned that the civic building would be a county library that could serve as the focal point of the Town Center, drawing people from throughout Clarksburg.. During development of the Plan of Compliance, Montgomery County Public Libraries (MCPL) did not voice objections to the concept of a two-story library on the dedicated land.. MCPL did have concerns about the expectation that the county would build a two story structured garage to serve the library.

The image below is an image taken from the Plan of Compliance (pg. 71) indicating the location of the proposed library on axis with the Town Green and pavilion and flanked by the proposed live/work units.



### County's Position

After reviewing the April, 2007 plans originally submitted for Stage III, MCPL voiced concerns regarding the limited size of the site, parking and access, and operational needs associated with the facility. MCPL also notes that funding for a proposed library is not in the County work program and that the construction timelines outlined by the Applicant are not feasible. Parking continues to be a major concern with respect to location and access and costs associated with a structured garage, located adjacent to the library.

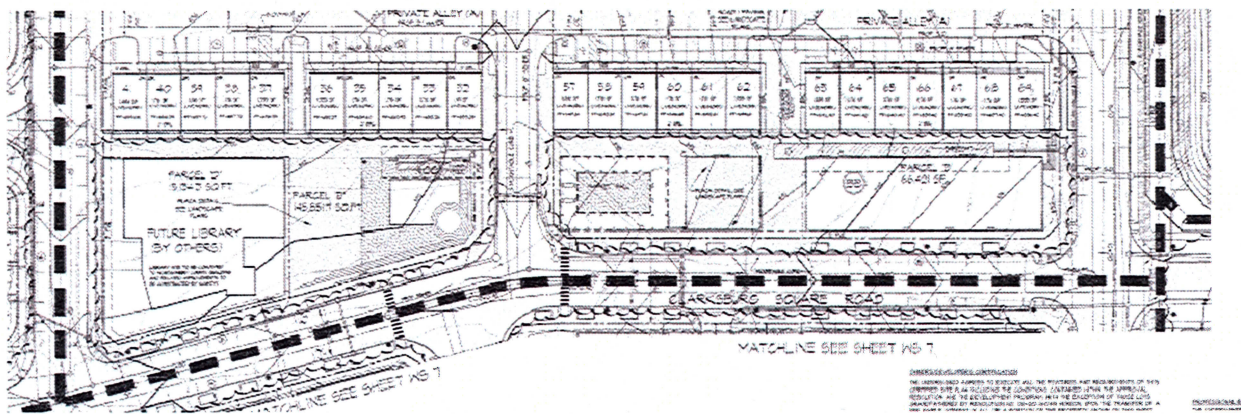
MCPL suggested that more land was necessary to build an appropriately sized, two-story structure. They also made clear that they needed a different configuration, a book drop off, and ADA accessibility.

MCPL prefers an expansion of the surface parking directly north of the future library site, eliminating the larger structured parking, which creates safety and accessibility issues for library patrons. To accommodate the overall parking needs of the library, (100 – 125 spaces are desirable) the MCPL recommends that an adequate amount of surface parking spaces be located directly adjacent to the building and the remainder of the spaces be dedicated and located nearby.

## Applicant's Position

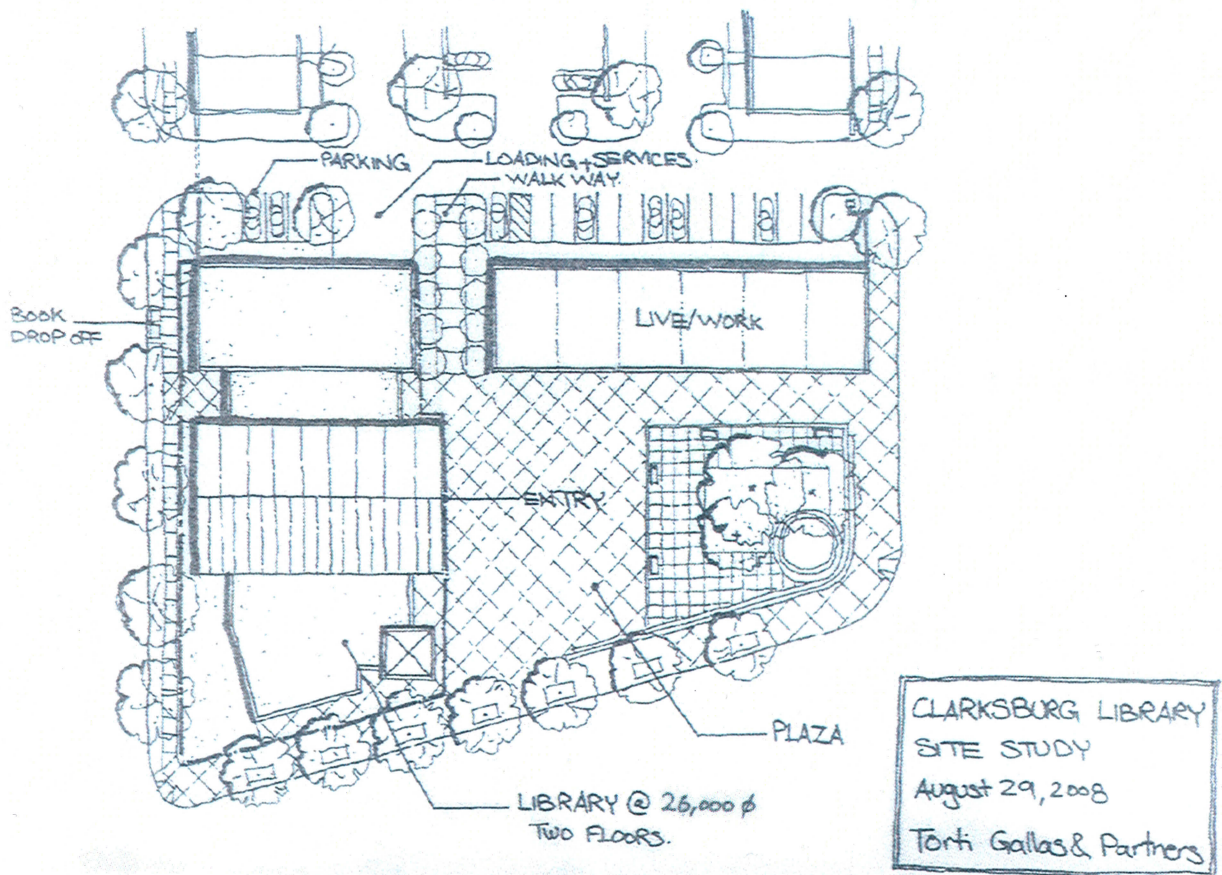
The first image (below) depicts the future library site and building originally submitted by the Applicant, which is very similar to the Plan of Compliance. The second image was presented by the Applicant as part of its resubmission on September 5, 2008 in response to the DRC comments. It indicates a larger footprint that would necessitate the removal of five live/work units (one of which would simply be relocated southward for a net loss of four) and provides a book drop-off on the public road with loading and three parking spaces (including handicapped).

The Applicant supports the plan as filed and believes the site and elements associated with the civic space are in conformance with the Plan of Compliance as approved. However, as indicated by their latest submission, they recognize that a larger dedication of approximately 40,000 square feet for a library and parking may be necessary to accommodate the facility envisioned by the Department of Libraries.



Current location of future library site as of May, 2008





Location as submitted in September, 2008

### Community's Concerns

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

### Staff Position

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

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

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

#### **IV. Clarksburg Square Road Connection**

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

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

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

#### Community’s Concerns

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

#### Applicant’s Position

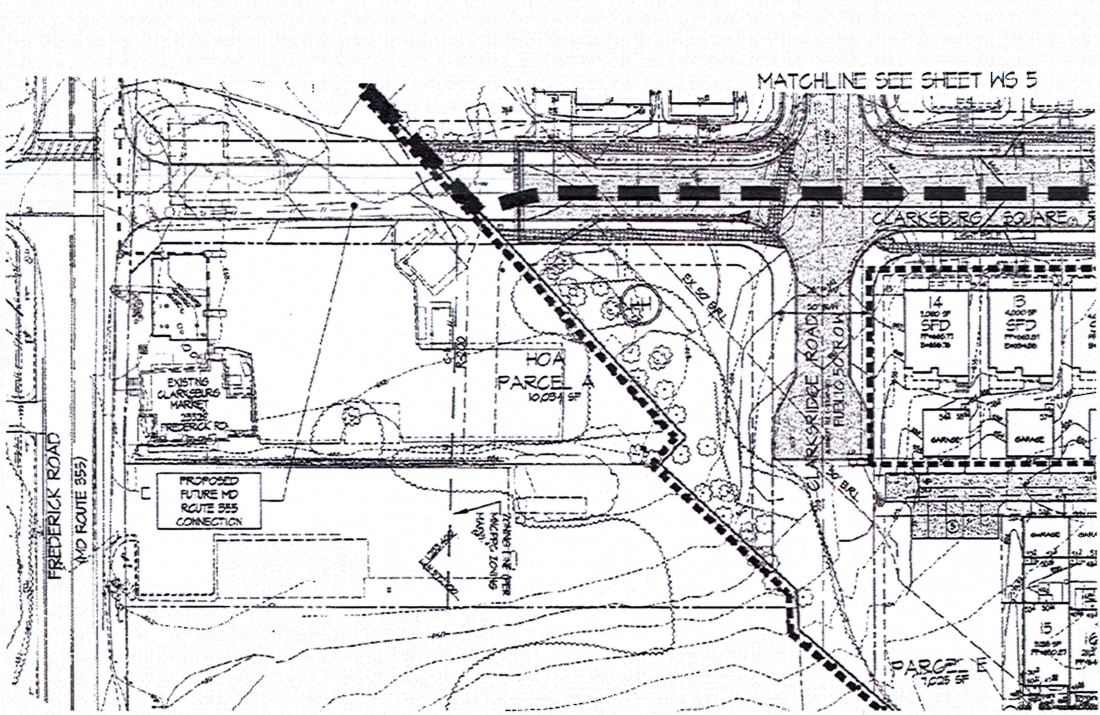
The Applicant is coordinating with the adjacent property owner of the Clarksburg Store/Grill because relocating the Horace Willson House so that the straight road alignment can be made does impact the store’s gas pumps, parking and possible access associated with the store. The



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



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



### Position of Historic Preservation Commission

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

### Staff Position

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

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

### **V. Location of Bike Path**

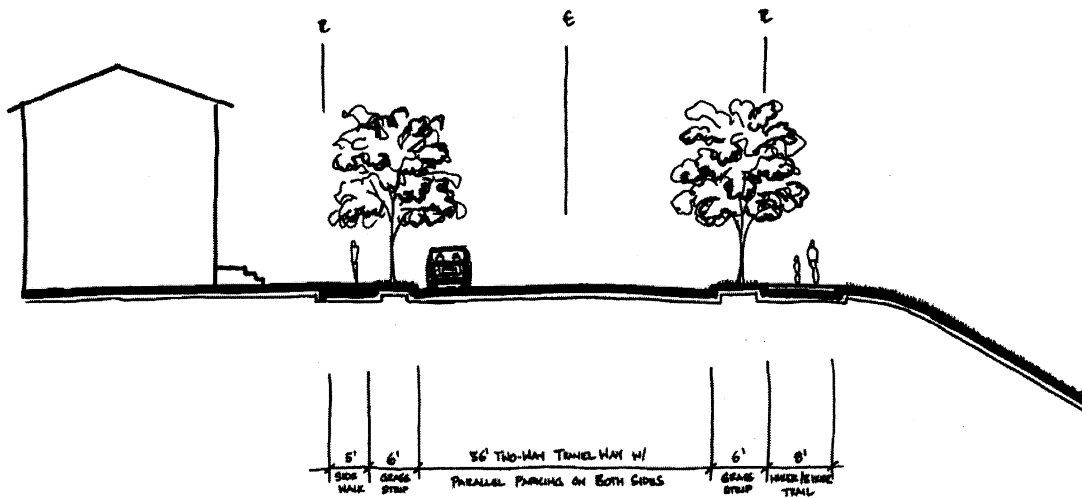
The location of the 8-foot-wide hard surface bike path was submitted and approved on the east side of Overlook Park Drive and adjacent to the Greenway during the site plan review for Phase I (819980010). The trail is intended to provide an important bicycle and pedestrian link through along the north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

Community's Concerns

The community has not expressed a position on the location of the path.

Applicant's Position

The Applicant has submitted plans that provide the bike path outside of the right-of-way.



*54' Overlook Park Drive Right of Way Section  
at Lot 15; Block "KK"*

Applicant's cross section which reflects a 54 foot-wide right-of-way. DOT is recommending a 53 foot right-of-way excluding the bike path.

Staff Position

The location of the bike path presents a number of issues that are a result of the shift in the road toward the stream buffer and the additional grading that occurred in order to accommodate the infrastructure and stormwater management facilities. The bike path is an important community-wide feature that must follow the alignment of Overlook Park Drive, connecting Clarksburg Road to Stringtown Road, and ultimately the larger Greenway.

Although Parks Staff has raised concerns about being responsible for maintenance of the path, particularly since it is separated from part of the Greenway by some of the stormwater management facilities that are under HOA control, planning staff feels that Parks should maintain the portion of the trail since it will be maintaining it as it passes through other communities in Clarksburg.



Staff Recommendation: Staff supports the MCDOT-approved 53-foot right-of-way for Overlook Park Drive. This section will consist of a 5' planting strip, 36' of pavement, 6' planting strip, 5' sidewalk, and 1' offset. The 8-foot greenway bike path will be outside of the right-of-way and should be maintained by Parks..



View north of the future 8-foot-wide bike path adjacent to existing portion of Overlook Park Drive.

## PROJECT ANALYSIS

### Master Plan

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

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

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

➤ **Policy 2: Natural Environment**

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

➤ **Policy 3: Greenway Network**

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

➤ **Policy 4: Transit System**

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

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

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



➤ **Policy 6: Town Center**

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

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

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

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

➤ **Policy 8: Employment**

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

Master Plan Land Use Plan

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

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

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

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

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

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

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

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

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

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

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

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

also provides enhanced open space features for the Kings Pond Park, Murphy's Grove Recreational Area, John Clark Family Memorial, and Sinequa Square.

## **Transportation**

The transportation effects of 1,300 dwelling units, 150,000 square feet of retail uses, and 100,000 square feet of commercial office uses were evaluated as part of the Adequate Public Facilities Ordinance (APFO) review completed at the time of Project and Preliminary Plans according to the Local Area Transportation Review (LATR) Guidelines in effect at the time. The Project Plan identified the road improvements needed to provide enough capacity for the proposed development, and the Preliminary Plan established the phasing schedule for construction of the improvements. The approval of the Preliminary Plan also established a twelve-year period during which the APFO approval would remain valid. That initial validity period expired on March 26, 2008, but the Planning Board subsequently approved a six-year extension until March 26, 2014. Therefore, the Planning Board's APFO approval with regard to the transportation-related effects of the originally approved development is still valid and no new LATR review is required as part of the Project or Preliminary Plan amendments, or the Site Plan. Likewise, the plans are not subject to new requirements for policy area mobility review. The current proposal for 194,720 gross square feet of commercial development, including 69,720 square feet of specialty retail within live/work units; and 1, 213 residential dwelling units, is less than the previous development and does not generate any new trips that require LATR or PAMR review.

### ***Roadway Phasing Requirements***

The following phasing requirements, conditioned upon issuance of building permits, were established by Condition 16 of the original approval of the Preliminary Plan:

- (a) The first 44 dwelling units without any off-site road improvements.
- (b) After the 44<sup>th</sup> building permit, the developer must start reconstruction of the south bound right turn lane along MD 355 at MD 121 to provide a "free flowing" movement.
- (c) After the 400<sup>th</sup> building permit, the developer has two options:
  - (1) Construction of A-260 from MD 355 to the southern access road of the commercial site (commercial access road between A-260 and P-5) and construction of P-5 across the stream valley into the residential area north of stream valley.
  - (2) Construction of A-260 from MD 355 to the northern access road of the residential development and construction of a northbound right-turn lane along MD 355 at A-260 should be included in this phase.
- (d) After the 800<sup>th</sup> building permit, the developer must start construction of remaining section of A-260 to A-305, and intersection improvements at MD 355 and MD 121 to construct eastbound & westbound left-turn lanes along MD 121.
- (e) Construction of A-305 from A-260 to MD 121 must begin when the developer starts building any of the residential units on blocks 11, 12, 13, and the northern half of block 10.

The subsequent approval of Phase I Site Plan 819980010 required the following additional off-site roadway improvement:

- (a) Reconstruction of the southern half of Clarksburg Road (A-27) along the property frontage (station 8+10 to station 19+70).

Staff's review of the roadway development status indicates that the following road improvements are complete:

- the southbound right turn lane along MD 355 at MD 121 – conditions 16(b);
- two lanes of A-260 from MD 355 to the southern access road of the commercial site (commercial access road between A-260 and P-5) – part of condition 16(c)(1);
- a northbound right-turn lane along MD 355 at A-260 – part of condition 16(c)(2);
- a westbound left-turn lane along MD 121 at MD 355 – part of 16(d); and
- A-305 from A-260 to approximately 390 feet south of MD 121 – part of condition 16(e).

According to MCDPS, bonds have been posted and initial construction permits have been issued for the unconstructed sections of A-260 and for P-5 across the stream valley. Based on current staff practice, this meets the requirement for “construction” per the condition. Thus, the applicant is in compliance with the previously approved road phasing requirements. However, Staff has significant concerns that almost 800 residential building permits have been issued for this development and neither the A-260 (Stringtown Road) stream valley crossing, nor the P-5 (Clarksburg Square Road) stream valley crossing have been completed. Since the construction of the Stringtown Road crossing will require the existing road to be closed for an extended period of time, an alternate travel route from the northeast side of the stream valley to the MD 355/Stringtown Road intersection needs to be available. This need will be even greater once development of the retail area commences. Therefore it is staff's opinion that prior to additional residential development beyond 800 dwelling units, and prior to occupancy of any the commercial development, Overlook Park Drive from Stringtown Road to Clarksburg Square Drive, and the Clarksburg Square Drive connection to the residential area northeast of the stream valley must be open to traffic. The conditions for the preliminary plan amendment reflect this requirement.

#### ***Abandonment of Portions of Overlook Park Drive, Clarksburg Square Road and Clarksridge Road***

The applicant is requesting the abandonment of limited segments of Overlook Park Drive, Clarksburg Road, and Clarksridge Road so that the revised preliminary plan and site plan are consistent with the compliance plan approved by the Planning Board. The abandonments also include reductions in the previously dedicated rights-of-way for Clarksburg Square Road on the southwest side of the greenway and for Overlook Park Drive. The Clarksburg Square Road right-of-way is reduced from 70 feet to 60 feet. The Overlook Park Drive right-of-way is reduced from 60 feet to 53 feet. This change places the 8-foot greenway bike path on the outside edge of the right-of-way either in parkland, or in a public improvements easement. Staff recommends approval of the abandonments conditioned upon the applicant requesting abandonment from the County Council and obtaining the Council's approval prior to approval of the certified site plan. The realignment of the roads resulting from the abandonment will, in staff's opinion, provide an equally acceptable or better street pattern and circulation.



## ***Overlook Park Drive***

Staff supports the MCDOT-approved 53-foot right-of-way for Overlook Park Drive. This section will consist of a 5' planting strip, 36' of pavement, 6' planting strip, 5' sidewalk, and 1' offset. The 8-foot greenway bike path will be outside of the right-of-way. Staff finds that the roadway and associated bike trail and sidewalk will continue to be safe and adequate.

## **Environment**

The 269.13-acre property is located east of I-270 in Clarksburg within the Clarksburg Special Protection Area (SPA). The property lies within two watersheds: Little Seneca Creek (Use IV-P), inside the Clarksburg SPA; and Little Bennett Creek (Use III-P stream) which is outside of the SPA. The residential/commercial portion of the project is bisected by a southeast flowing Use IV perennial tributary stream, called the Town Center trib that originates in Kings Park and flows to the Little Seneca Creek. The smaller segment of this project contains a perennial Use III tributary stream that flows through the Piedmont Park and into the Little Bennett Creek. There are steep slopes (> 25%) on the property and highly erodible soils.

A revision to the Final Forest Conservation Plan (FFCP) was submitted by the Applicant in order to request changes to the FFCP approved on December 27, 2004 and amended July 24, 2006. This FFCP is also submitted to incorporate the Piedmont Woods Park area into the overall FFCP since it has not been a part of any previous FFCP submittal.

When originally approved, the subject site contained 48.49-acres of existing forest. The applicant was approved for the removal of 8.84 acres, with a 25.26 acres planting requirement for the entire project. The Applicant has claimed a 2.56 acre landscape credit leaving a total reforestation planting requirement of 22.70 acres. The currently submitted forest conservation plan indicates that the applicant will attempt to meet the conservation requirement with 8.91 acres of plantings on the residential/commercial section of Clarksburg Town Center, 13.39 acres of plantings at Piedmont Park and 2.56 acres of landscape credit. This results in a total afforestation planting of 24.86 acres, falling short of the necessary planting requirement by 0.40 acres. The applicant will need to identify where the additional 0.40 acres of forest will be planted in a revised final forest conservation plan. Environmental Planning requests that the applicant comply with all the conditions of approval of the FFCP dated December 27, 2004 and amended July 24, 2006 whereby all afforestation/reforestation planting requirements were being met.

Under the M-NCPPC's implementation of the Special Protection Area (SPA) regulations, the Environmental Guidelines require accelerated reforestation of stream buffers within SPAs. This project lies predominately within the Clarksburg SPA. A small segment of the site bordered by Snowden Farm Parkway, Burdette Forest Road and Clarks Crossing Road along with Piedmont Park lay outside the Clarksburg SPA. This small residential segment contains no stream buffers, however the Piedmont Park area contains large portions of stream buffers. Since the majority of

the project is within the Clarksburg SPA, Environmental Planning is requesting conditions on the forest conservation plan requiring the applicant to plant all forests in the first planting season after the Planning Department approves the certified site plan. Environmental Planning also requests a condition requiring a five-year maintenance period for all planting areas credited toward the forest conservation plan.

Environmental Planning is requiring that the remainder of the afforestation/reforestation plantings be installed in the first planting season following Certified Site Plan approval of Site Plan 820070220. Environmental Planning is requesting a condition that Newland Communities, L.L.C. replace the old financial bonds originally required of Terrabrook, LLC, prior to Certified Site Plan approval with new bonds at the rate of \$0.90 per square foot or based on a landscape estimate submitted to Environmental Planning staff for review and approval.

The encroachments into the environmental buffers associated with this plan are necessary to accommodate stormwater management structures and conveyances, some utilities, natural surface trails and construction of portions of Clarksburg Square Road and Clarks Crossing Drive.

### **Community Outreach**

The Applicant has presented the proposed development to various groups including: CTCAC (Clarksburg Town Center Advisory Center), CAC (Clarksburg Civic Association) and other Town Center residents to discuss updates to the plans. Staff attended many of the meetings and has met individually with the various groups to discuss their concerns about the proposed development, specifically with regard to compliance with the approved plan of compliance, the urgent need for retail in the Town Center, future maintenance concerns and environmental conditions. Staff has received many comments, both from residents and community organizations.

On June 18, 2008, the Applicant held a community meeting at Cedarbrook Community Church to present the Clarksburg Town Center Amendment to Project Plan No. 919940040. A group of residents voiced support for the proposed changes to the Plan of Compliance. There were also a group of residents who were concerned about the loss of a parking garage, the use of additional on-street parking to meet the parking requirements, the size of the retaining walls, the ongoing series of extensions that have been granted by the Planning Board for the project, the narrowness of the retail core sidewalks, lack of space for outdoor dining, cost of operating the lap pool, changes from the initial plans filed on April 25, 2007 (that the Town Center Advisory Committee supports), and other issues. See Attachment 1.

On April 16, 2008 and June 24, 2008, the Montgomery County Library Department held community meetings to discuss the space needs and location for a future library branch for Clarksburg. While the County staff outlined the issues with the proposed site (small building footprint, parking constraints, Town Center design guidelines, book drop off area, and proximity of the live/work units), community members voiced support for keeping a library within the

town center even if certain programming elements, such as rooms for tutoring have to be dropped.

### **Development Standards**

This property is located in the RDT and RMX-2 Zones. The RDT Zone is intended to foster agricultural uses while supporting one-family residential development. The RDT Zone primarily covers the Piedmont Woods Park on the east side of Snowden Farm Parkway. The RMX-2 Zone is intended to allow a variety of uses and flexibility for various types of development, specifically for comprehensively planned, mixed-use centers located outside central business districts and transit station development areas.

The following exhibits are taken from the Applicant's submittal and provide the associated land uses with the West Side of the development, an overall Land Use Map of the existing and proposed uses, building setbacks and heights. The project data table in Appendix E indicates the proposed development's compliance with the Zoning Ordinance and assigns new development standards in accordance with the Zoning Ordinance for the areas on the West Side.

The Index Plans that were submitted for review indicate the Applicant's compliance with the development standards for the "Grandfathered" lots.

A2  
**GENERAL DEVELOPMENT STANDARDS**  
**A2.1 LAND USE**

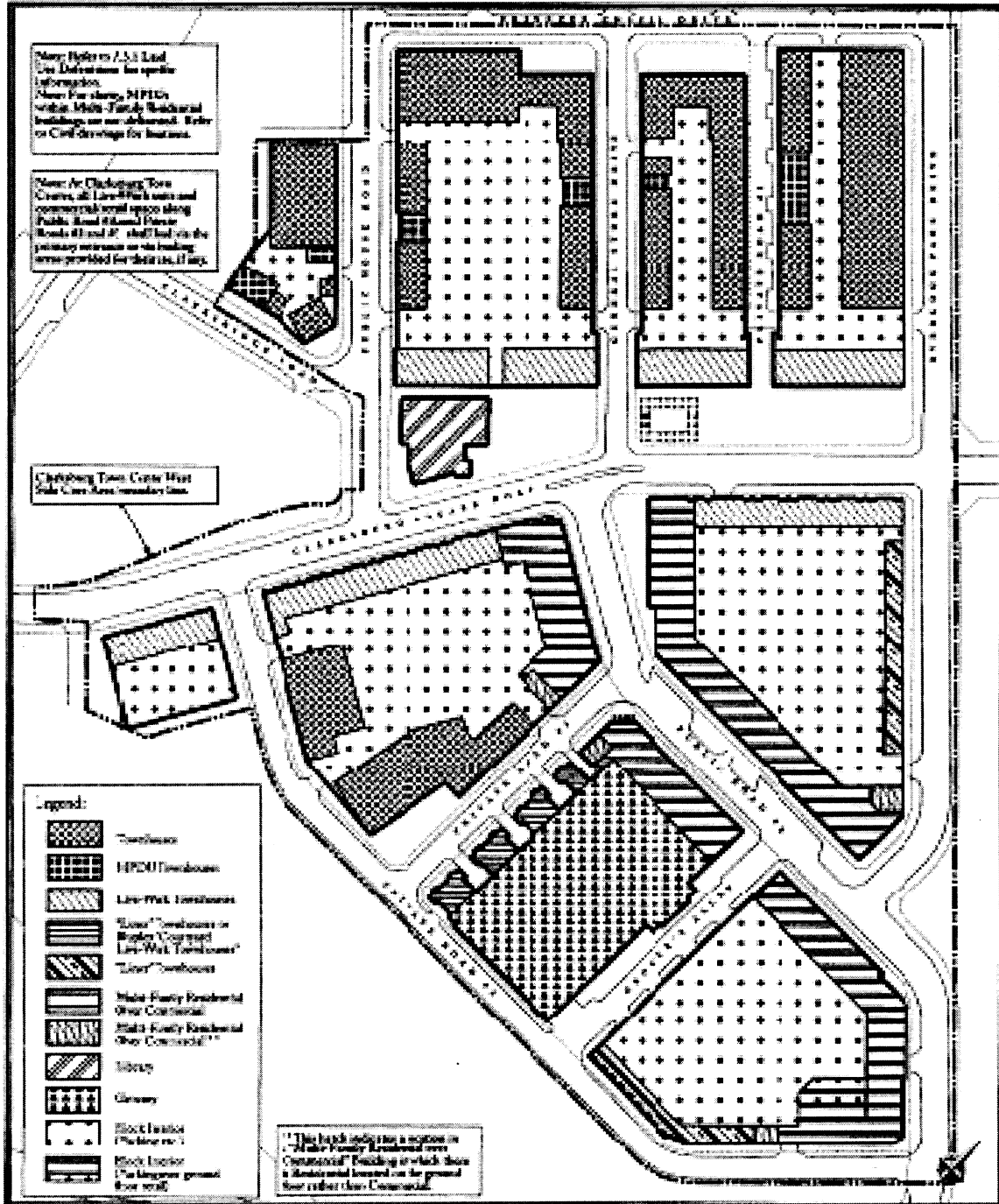


Figure A2.1 - Land Use



A2  
**GENERAL DEVELOPMENT STANDARDS**  
**A2.3 BUILDING HEIGHTS**

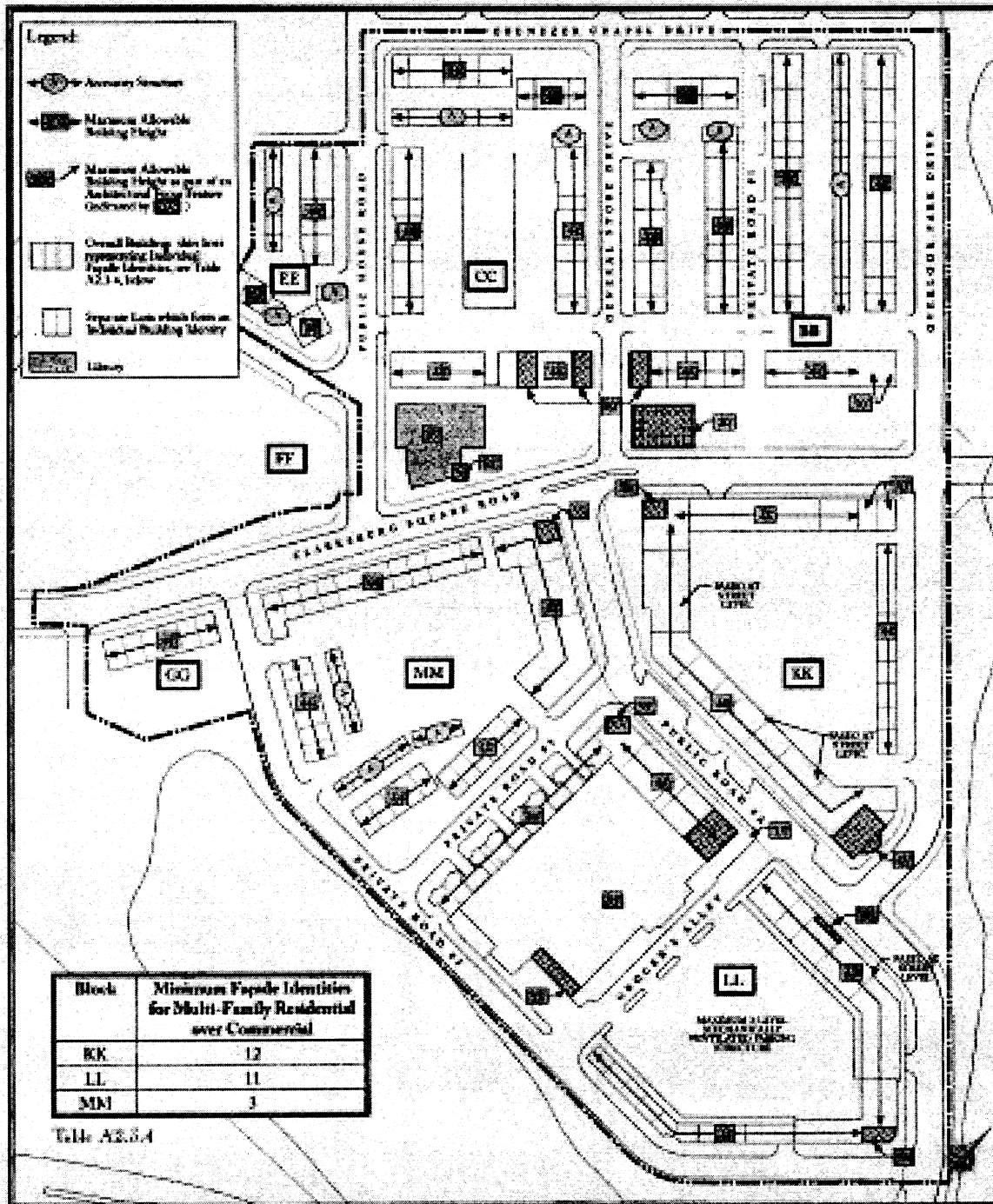


Figure A2.3.4 - Building Heights

May 2008



DSS-9

A2  
**GENERAL DEVELOPMENT STANDARDS**  
**A2.2 BUILDING SETBACKS**

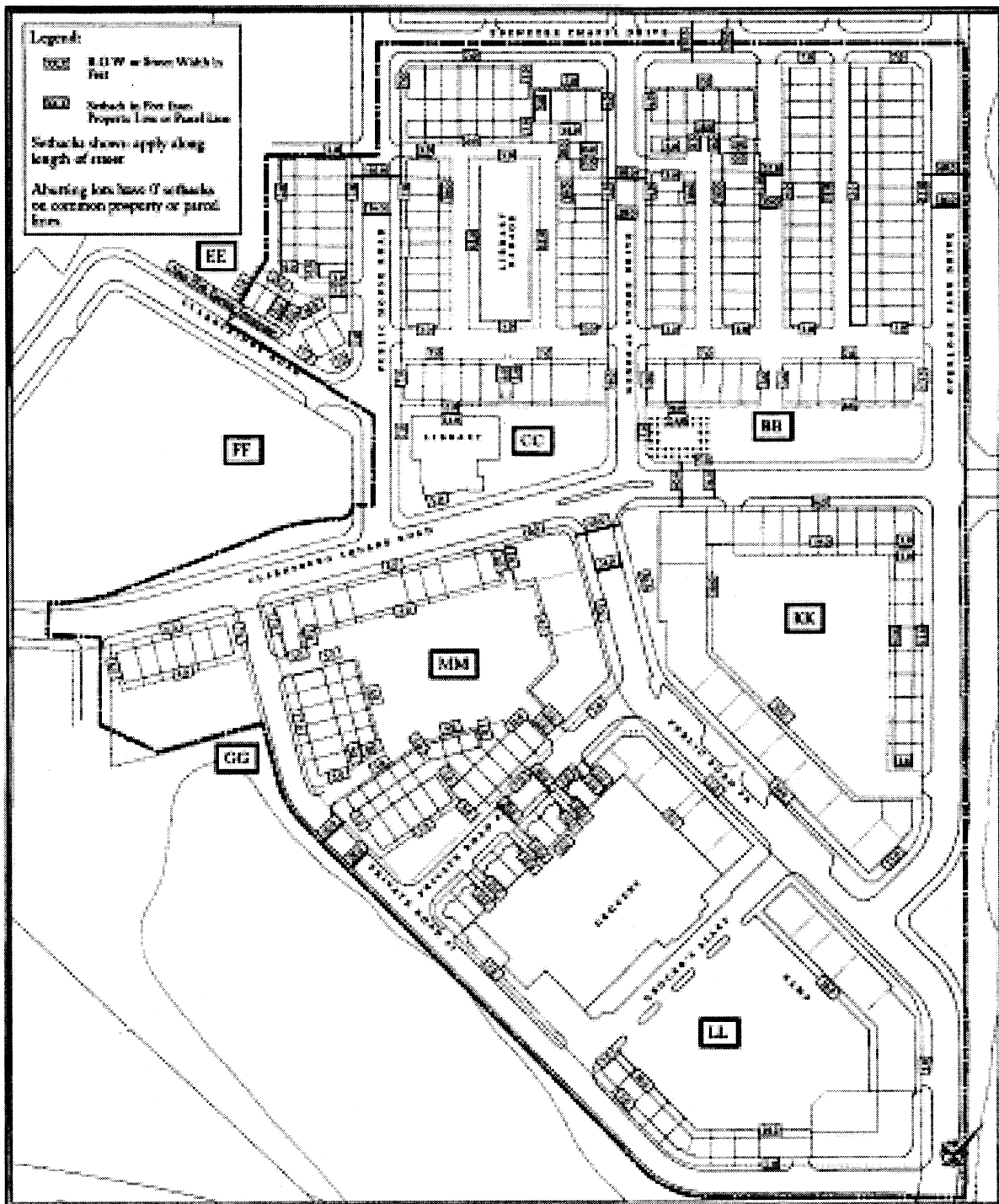


Figure A2.2.1 - Building Setbacks

May 2009



D2-7

## PROJECT PLAN BASIS FOR CONSIDERATION OF ISSUES

Per Sec. 59-D-2.43, in making its decision on an application for an optional method development in making the required findings, the Planning Board must consider the following:

- (a) *The nature of the proposed site and development, including its size and shape, and the proposed size, shape, height, arrangement and design of structures, and its consistency with an urban renewal plan approved under Chapter 56.*
- (b) *Whether the open spaces, including developed open space, would serve as convenient areas for recreation, relaxation and social activities for the residents and patrons of the development and are planned, designed and situated to function as necessary physical and aesthetic open areas among and between individuals structures and groups of structures, and whether the setbacks, yards and related walkways are located and of sufficient dimensions to provide for adequate light, air, pedestrian circulation and necessary vehicular access.*
- (c) *Whether the vehicular circulation system, including access and off-street and loading, is designed to provide an efficient, safe and convenient transportation system.*
- (d) *Whether the pedestrian circulation system is located, designed and of sufficient size to conveniently handle pedestrian traffic efficiently and without congestion; the extent to which the pedestrian circulation system is separated from vehicular roadways so as to be safe, pleasing and efficient for movement of pedestrians; and whether the pedestrian circulation system provides efficient, convenient and adequate linkages among residential areas, open spaces, recreational areas, commercial and employment areas and public facilities.*
- (e) *The adequacy of landscaping, screening, parking and loading areas, service areas, lighting and signs, in relation to the type of use and neighborhood.*
- (f) *The adequacy of provisions for construction of moderately priced dwelling units in accordance with Chapter 25A if that Chapter applies.*
- (g) *The staging program and schedule of development.*
- (h) *The adequacy of forest conservation measures proposed to meet any requirements under Chapter 22A.*
- (i) *The adequacy of water resource protection measures proposed to meet any requirements under Chapter 19.*

- (j) *Payment of a fee acceptable to the Planning Board may satisfy all or some of the requirements for any public use space, or public facilities and amenities under the requirements established elsewhere in this Section.*

**FINDINGS for Project Plan Review:**

Section 59-D-2.42 of the Zoning Ordinance establishes the findings, which must be made by the Planning Board and forms the basis for the Board's consideration of approval. In accordance herewith, the staff makes the following findings:

- (a) *It would comply with all of the intents and requirements of the zone.*

The Montgomery County Zoning Ordinance states the purposes, which the RMX-2 zone is designed to accomplish.

As conditioned, the Project Plan amendment continues to use the optional method of development and is in conformance with the Clarksburg Master Plan and Hyattstown Special Study Area. The plan utilizes the development standards of the RMX-2 Zone and conforms to the goals of the Master Plan. The existing and proposed development is comprised of residential and commercial retail uses permitted in the RMX-2 Zone. The application also complies with the development standards of the RDT Zone, separate and aside from the provisions for the optional method of development. The RDT Zone encompasses the proposed Piedmont Woods Park on the northeast side of Snowden Farm Parkway.

The project provides an acceptable residential and non-residential density that is below both the total FAR approved and the previously approved residential density of 1,300 dwelling units.

The Applicant is requesting a reconfirmation of the waiver of the compatibility requirements of Section 59-C-7.15(b) of the Zoning Ordinance to allow a proposed attached building to be within 25 feet of the northern property line, adjacent to the Clarksburg Elementary School. The Applicant requests a waiver to permit this setback line to be reduced from 100 feet to a minimum of 25 feet.

The parking requirements for the entire development (East Side and West Side) are evaluated in detail in the site plan section for all of the uses existing and proposed. The residential uses satisfy the parking requirements through garages, on-lot pad sites, surface parking facilities and on-street parking on public roads for some of the Manor Homes (multi-family uses).

Parking for the new development on the West Side that includes the retail, commercial and residential uses surrounding the retail core will need to satisfy their parking requirements according to the Montgomery County Zoning Ordinance without taking credit for on-street parking spaces on the East Side of the Greenway. On-street parking



for the multi-family units was previously approved through amendments to the site plan. The retail component must stand alone and satisfy the parking requirement over and above what is approved for the units outside the retail core, unless a waiver to the parking requirements is granted by the Planning Board.

Staff has determined that the parking required for the retail core is insufficient by a minimum of 184 spaces based upon the non-residential and mixed residential square-footages provided by the Applicant. This amount does not count on-street parking shown by the Applicant on the East Side of the development. Some on-street parking should be credited toward the non-residential component, but not the spaces on the East Side of the Greenway due to distance, practical relationship, and separation of the uses. Only on-street spaces on the West Side that are not dedicated to the Manor Houses (multi-family) should be credited to the non-residential.

As amended by the conditions of approval, the Applicant must provide a minimum of 100 spaces in a 2-level garage in Block MM, which is the surface lot currently proposed for 163 spaces. Staff supports a waiver to permit a reduction in the required number of parking spaces, reducing the acceptable parking ratio to 4.3 spaces per 1,000 square feet and an additional waiver of 20% to satisfy the parking requirement on the West Side.

***(b) The application would be consistent with the applicable sector plan or urban renewal plan. However, to permit the construction of all MPDUs required under Chapter 25A, including any bonus density units, on-site, a project plan may exceed, in proportion to the MPDUs to be built on site, including any bonus density units, any applicable residential density or building height limit established in a master or sector plan if a majority of an Alternative Review Committee composed of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunities Commission, and the Director of Park and Planning, or their respective designees, find that a development that includes all required MPDUs on site, including any bonus density units, would not be financially feasible within the constraints of any applicable density or height limit. If the Committee finds that the development should not be financially feasible, the Planning Board must decide which if any of the following measures authorized by Chapter 59 or Chapter 50 should be approved to assure the construction of all required MPDUs on site:***

- (1) Exceeding an applicable height limit, lower than the maximum height in the zone, that is recommended in a master plan or sector plan,***
- (2) Exceeding an applicable residential density limit, lower than the maximum density in the zone, that is recommended in a master plan or sector plan, or***
- (3) Locating any required public use space off-site.***

The application is not receiving a density bonus and is not subject to the bonus density provisions of this section. The application is providing 152 MPDUs in accordance with the provisions of the Plan of Compliance. This number represents 12.5 percent of the total number of units.

- (c) ***Because of its location, size, intensity, design, operational characteristics and staging, it would be compatible with and not detrimental to existing or potential development in the general neighborhood.***

The existing and proposed structures and uses are compatible with other existing and proposed uses and development in the general neighborhood, with respect to having similar heights and massing. The location of the structures is also comparable to the location of existing structures within the development and in surrounding communities.

As amended, the proposed uses are in scale with the overall development pattern envisioned by the Master Plan. Higher density uses and heights are planned within the future commercial center and retail core.

The clarification of heights with the current application promotes the size, intensity and design envisioned in the Master Plan, Plan of Compliance and current application for the amendment to the Project Plan.

- (d) ***The application would not overburden existing public services nor those programmed for availability concurrently with each stage of construction and, if located within a transportation management district designated under Chapter 42A, article II, is subject to a traffic mitigation agreement that meets the requirements of that article.***

The application does not overburden public services or facilities and, as amended, is staged, to accommodate construction of the facilities.

Public facilities and services continue to be available and will be adequate to serve the proposed development. The property will be served by public water and sewer systems. The application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the Growth Policy resolution in effect when the APFO approval was granted and will be adequate to serve the development.

Transportation Planning has recommended adding new conditions to the phasing of road improvements in order to facilitate completion of certain road segments that would be open to traffic prior to the release of a specific number of building permits. The phasing of the roads is further described in the Preliminary Plan findings and conditions of approval.

- (e) *The application would be more efficient and desirable than could be accomplished by the use of the standard method of development.*

The Optional Method of Development permits a more efficient and desirable product than by use of the standard method of development. This Project Plan continues to use the optional method of development and is in conformance with the goals and objectives of the Clarksburg Master Plan. The proposed development provides less than the maximum gross floor area for commercial development and fewer residential dwelling units on site; however, the total development is substantially more than permitted under the standard method of development.

- (f) *The application would include moderately priced dwelling units in accordance with Chapter 25A of this Code, if the requirements of that chapter apply.*

The Applicant is providing 152 Moderately Priced Dwelling Units (MPDUs) or 12.5% of the proposed residential dwelling units within the development, in accordance with the provisions of Chapter 25A.

- (g) *When a Project Plan includes more than one lot under common ownership, or is a single lot containing two or more CBD zones, and is shown to transfer public open space or development density from on lot to another or transfer densities, within a lot with two or more CBD zones, pursuant to the special standards of either section 59-C 6.2351 or 59-C 6.2352 (whichever is applicable), the Project Plan may be approved by the Planning Board based on the following findings:*

- (1) **The project will preserve an historic site, building, structure or area as shown on the Locational Atlas and Index of Historic Sites or the Master Plan for Historic Preservation; and/or**
- (2) **The project will implement an urban renewal plan adopted pursuant to Chapter 56 of the Montgomery County Code; and/or**
- (3) **The project will result in an overall land use configuration that is significantly superior in meeting the goals of the applicable master or sector plan and the zone than what could be achieved without the proposed transfer.**

This application is not subject to the provisions of this section.

- (h) **Any applicable requirements for forest conservation under Chapter 22A.**

The natural resources for the subject properties are characterized in Natural Resources Inventory/Forest Stand Delineation (NRI/FSD) plans 419941620 and 419952500. Staff approved the first NRI/FSD in April 1994 and the second in August 1995. The Planning Board approved a preliminary plan of subdivision and a preliminary forest conservation

plan, 119950420, on March 26, 1996. The Phase I site plan, 819980010, was approved by the Planning Board on March 3, 1998. The Phase II site plan 820020140 was approved by the Planning Board on June 17, 2002. The FFCP for the residential and commercial areas only was approved by Environmental Planning staff on June 30, 1999 with amendments to the FFCP approved on August 16, 2002, August 27, 2002, September 9, 2002, December 27, 2004 and July 24, 2006.

The Applicant will need to identify where an additional 0.40 acres of forest will be planted in the revised final forest conservation plan, in order to satisfy the Forest Conservation requirements. With the condition, the requirements will be satisfied through on-site planting of 8.91 acres of plantings on the residential/commercial section of Clarksburg Town Center, 13.39 acres of plantings at Piedmont Park and 2.56 acres of landscape credit of reforestation and afforestation areas as well as through street tree credits. The planting is in addition to the existing forest being preserved on site.

As amended, this application is satisfying the forest conservation requirements through on-site tree preservation and reforestation in accordance with Chapter 22A.

*(i) Any applicable requirements for water quality resources protection under Chapter 19.*

The applicant has been granted approval from the Montgomery County Department of Permitting Services (DPS) for Final Water Quality by letter dated October 6, 2008. The letter provides a reconfirmation of water quality and environmental protection for the Clarksburg Town Center, which is located within the Clarksburg Special Protection Area.

A Stormwater Management Concept Plan was approved on July 1, 2008 for the area comprised of Piedmont Woods Park, approximately 66 acres of RDT-zoned land outside the Special Protection Area.

*(j) When the Planning Board allows any public use space, or public facilities and amenities to be provide off-site, the Planning Board must find that the space or improvement:*

- (1) is consistent with the goals of the applicable master or sector plan; and*
- (2) serves the public interest better than providing the public use space or public facilities and amenities on-site.*

This section does not apply to the proposal.



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

**1. Development Ceiling**

The proposed development shall be limited to the following uses:

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

**2. Building Height/Mass**

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

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

**3. Live/Work Units**

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

**4. Moderately Priced Dwelling Units (MPDUs)**

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

**5. Civic Space (Library Site)**

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

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

**6. Clarksburg Overlook Connection**

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

**7. Parking**

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

**8. Staging of Amenity Features**

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

**9. Maintenance and Management Organization**

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

**STAFF RECOMMENDATION FOR FINAL WATER QUALITY PLAN:** Approval of Final Water Quality Plan for Site Plan 820070220 as described in the letter dated October 6, 2008 [Attachment D], unless amended and approved by DPS and DEP, with the following conditions:

1. Provide easements around all stormwater management structures with clear access from a public right-of-way.
2. A geotechnical report is required to verify recharge feasibility and infiltration rates at any proposed infiltration and recharge structure locations.
3. Planting/Landscaping shall not be shown in areas intended for stormwater management structures on the site plan. Proposed planting/landscaping will be reviewed during the DPS detailed plan review process. Additionally, all non-stormwater management structures, and or auxiliary structures to be constructed, placed, or otherwise located within any stormwater management maintenance easement, must be reviewed and approved by the County Departments of Permitting Services and Environmental Protection prior to construction or placement.
4. A detailed plan review of the stormwater management computations will occur at the time of DPS's detailed plan review.
5. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.

Note that all of the previous conditions and requirements for other portions of Clarksburg Town Center and related development still apply.

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## **PRELIMINARY PLAN ANALYSIS AND FINDINGS**

### *1. The Preliminary Plan substantially conforms to the Clarksburg Master Plan.*

The amended Preliminary Plan continues to substantially conform to the recommendations of the Clarksburg Master Plan by creating a transit- and pedestrian-oriented community with a Town Center as the focus of community life. The plan includes an interconnected network of public and private streets that provide both local access within neighborhoods, and connections to nearby commuter roadways and the proposed Clarksburg Town Center Transit Station.

The plan conforms to the Master Plan's vision for a mix of uses. The revised plan now includes live/work units along with single-family attached and detached residential dwellings, multi-family residential dwellings, and a Town Center with a retail core and a civic plaza and building. The Master Plan greenway with its natural surface trail system and recreational bikeway that links to major surrounding parks is preserved in the amended plan, along with the elementary school site that has already been dedicated and built, and a new public park that will be dedicated to MNCPPC on the north side of Piedmont Road.



The proposed plan also addresses goals for protection of natural features and water quality. The plan retains and enhances a forested buffer along all streams, and a “no net loss” of wetlands policy has been established. A variety of green spaces and landscaping are also incorporated into the development. Stormwater management is provided to mitigate the impacts of the development on water quality by a network of facilities that are included in the Final Water Quality Plan.

*2. Public facilities will be adequate to support and service the area of the proposed subdivision.*

An extension of the validity period for the Adequate Public Facilities Ordinance (APFO) review for the Preliminary Plan was granted on March 20, 2008. The APFO review remains valid until March 26, 2014. Prior to this date, the applicant must obtain building permits for the entire development or request an additional extension.

Roads and Transportation Facilities

No additional trips beyond those associated with the previous approval of the preliminary plan are being generated as a result of this amendment. The previously required transportation improvements for surrounding roads and intersections provide sufficient transportation capacity and meet the applicable APFO test. Several of these improvements have been constructed and the recommended modifications to the previous conditions of approval incorporate a more specific phasing schedule for the completion of the remaining improvements to ensure that the roads are open to traffic in a timely manner and critical connections are made as development is occurring.

The revised internal road network includes realignment of portions of Overlook Park Drive, Clarksburg Square Road, and Clarksridge Road. Portions of the previously dedicated road rights-of-way for Overlook Park Drive and Clarksburg Square Road on the southwest side of the greenway are proposed for abandonment. In addition, some of the previously approved public roads that were never dedicated have been redesigned as private streets. Staff supports the revised road network and the necessary abandonments. The County Council must grant the abandonments, but staff recommends approval of the amended preliminary plan conditioned upon this action taking place prior to the certification of the site plan. The newly designed road network and associated sidewalks and bikeways will continue to provide safe and adequate access and circulation for vehicles and pedestrians.

Other Public Facilities and Services

Public facilities and services continue to be available and will be adequate to serve the proposed development. The property is served by public water and sewer systems. The amended plan has been reviewed and conditionally approved by the Montgomery County Fire and Rescue Service who have determined that the Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the Growth Policy resolution in effect when the APFO approval was granted and will be adequate to serve the development.

*3. Practical difficulties exist which prevent the development from complying with Section 50-29(a)(2) requirements for lot frontage on a public street.*

Section 50-29(a)(2) requires, except as otherwise provided in the zoning ordinance, that every lot shall abut on a street or road which has been dedicated to public use, or which has acquired the status of a public road. The subject plan includes several lots without frontage on public streets. Some of these lots will have frontage on private streets. For these lots, a finding needs to be made that they abut at least one street that can otherwise attain the status of a public road. In staff's opinion, the proposed private streets will meet the minimum standards necessary to make this finding because they will be fully accessible to the public; accessible to fire and rescue vehicles, as needed; and they are designed to minimum public road standards, except for right-of-way and pavement widths.

There are several other lots that do not have frontage on either a public or private street. Instead, the frontage is either on private driveways or on green space. Since these driveways and green spaces are the only frontage provided for the lots, it is staff's opinion that a waiver of Section 50-29(a)(2) is needed to permit the proposed configuration. Section 50-38(a) authorizes the Planning Board to grant waivers of any part of the Subdivision Regulations based upon a finding that practical difficulties or unusual circumstances exist which prevent full compliance with the requirements. Staff finds that waivers of lot frontage are justified based on the practical difficulties associated with implementing neo-traditional design principles within Clarksburg Town Center if lot frontage is always required. Such a design implements the intent and recommendations of the Clarksburg Master Plan by facilitating a community which has a hierarchy of streets, including a series of alleyways, with a mix of housing types and densities, and green areas dispersed throughout. Staff finds that the proposed neo-traditional neighborhood design best implements the intent of the Clarksburg Master Plan, particularly with regard to integrating green spaces throughout the development. The waiver facilitates the replacement of certain roads with green spaces that reduce the amount of paving in the development, increase the areas available for treatment of stormwater runoff, and create visible open areas and gathering spaces for the community.

Staff finds that all houses will be adequately served and accessed by proposed private driveways. Therefore, staff recommends a waiver of Section 50-29(a)(2), pursuant to Section 50-38(a) and finds that the waiver is the minimum needed, is not contrary to the recommendations of the General Plan, and is not adverse to the public interest.

4. *Practical difficulties exist which prevent the Applicant from complying with the minimum centerline radii requirements for Sugar View Drive, Clarksmeade Drive, Trading Post Drive, Benton Park Circle, and Basil Park Circle.*

Section 50-26(d) of the Subdivision Regulations requires that the horizontal alignment of roadways be designed so that all curves have specific minimum centerline radii. For tertiary streets, the minimum centerline radii are 100 feet. Several tertiary streets on the amended preliminary plan (specifically, Sugar View Drive, Clarksmeade Drive, Trading Post Drive, Benton Park Circle, Basil Park Circle, and Clarksridge Road) are designed with curves that have less than 100-foot centerline radii. These roads were approved as part of the original site plan, but no specific findings concerning the reduced centerline radii were made. All of the roads have been recorded, and all are constructed except for a small section of Clarksridge Road.

Section 50-38(a) authorizes the Planning Board to grant waivers of any part of the Subdivision Regulations based upon a finding that practical difficulties or unusual circumstances exist which prevent full compliance with the requirements. Staff finds that the waivers of the minimum centerline radii requirements for the above-referenced roads are justified based on the practical difficulties associated with creating a neighborhood that is urban in character and pedestrian-oriented. The design of the subject roads reduces vehicle speeds and makes the roads safer for pedestrians. It also permits open spaces to be incorporated which promote a pedestrian friendly environment.

5. *Minimum 25' corner truncations must be provided for the northeastern side of the intersection of Clarksburg Square Road and Overlook Park Drive, and for public street intersections with Clarksburg Road and Stringtown Road as shown on the preliminary plan, but are not needed for other internal public roads.*

Section 50-26(e)(3) requires corner lots at intersections to be truncated for road dedication purposes by straight lines joining points 25 feet back from the theoretical property line intersection in each quadrant, however, the Planning Board may specify a greater or lesser cut-off if it is needed for safe sight distance or traffic channelization. The preliminary plan supports the master plan goal of providing a pedestrian-friendly, transit-oriented community by reducing corner truncations to the minimum necessary to provide safe site distance and turning movements for vehicles. Thus, the intersections with Clarksburg Road and Stringtown Road have truncations that meet the minimum standard, but most of the internal street intersections have reduced truncations, or none at all. These non-standard intersections, many of which are already constructed, are narrower and more pedestrian friendly because they shorten road crossing distance and slow down traffic.

The non-standard corner truncations were included in the previously approved preliminary and site plans, and staff supports the additional instances that are included as part of the subject plan amendments. Montgomery County Department of Transportation (DOT) and Fire and Rescue Service (MCFRS) staff have also recommended approval.

6. *Previous waiver granted by the Planning Board to permit less than 600' between road intersections on Clarksburg Road still applies.*

Section 50-26(c)(2) of the Subdivision Regulations (Section 50-26(e)(2) when the original preliminary plan was approved) states that proposed intersections with an arterial or major highway must be spaced no closer together than 600 feet. As part of the approval of the original preliminary plan, the Board granted a waiver of this section to permit certain road intersections to be closer together. The waiver (granted pursuant to Section 50-38 of the Subdivision Regulations) was necessary to provide a stronger grid system for the town center with more interconnections between the east and west sides of Clarksburg Road. The roadways involved have already been dedicated pursuant to the original plan.

7. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

The current revision to the Final Forest Conservation Plan (FFCP) revises the previously approved plans and incorporates proposed Piedmont Park. The application will meet forest conservation requirements by retaining 39.65 acres of existing forest, planting 22.7 acres, and using 2.56 acres of landscape credit. In order to accomplish this, the applicant will need to identify an additional 0.40-acre planting area in a revised final forest conservation plan to be submitted with the certified site plan.

8. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.*

The Final Water Quality Plan for the amended plans was approved by MCDPS Stormwater Management Section on October 6, 2008. The stormwater management concept includes a variety of interconnected stormwater management facilities including, bioretention areas, infiltration trenches, dry ponds and a wet pond that will provide both water quantity and quality control.

**STAFF RECOMMENDATION AND CONDITIONS FOR PRELIMINARY PLAN:**

Approval of the proposed amendment to Preliminary Plan 11995042A, including a waiver of Section 50-29(a)(2) of the Subdivision Regulations pursuant to Section 50-38 to permit lots without frontage on a public street, a waiver of Section 50-26(d) of the Subdivision Regulations pursuant to Section 50-38 to permit streets with less than the minimum permitted centerline radii, a finding pursuant to Section 50-26(c)(3) of the Subdivision Regulations to permit less than 25' corner truncations at certain intersections, and subject to the following conditions:

- 1) Development under this approval is limited to 194,720 gross square feet of commercial development, including 69,720 square feet of specialty retail; and 1, 213 residential dwelling units, including 152 MPDUs, consisting of 219 one-family detached units, 656 one-family attached units (includes live/work units) and 338 multi-family units.
- 2) The following phasing requirements are conditioned upon issuance of building permits for the subject preliminary plan:
  - a. Construction of (1) Overlook Park Drive from Stringtown Road to Clarksburg Square Drive and (2) Clarksburg Square Drive connection to the residential area north of stream valley must be complete and open to traffic prior to release of 901st residential building permit and prior to issuance of Use & Occupancy permit for any of Clarksburg Town Center retail development.
  - b. Construction of Stringtown Road from Overlook Park Drive to Snowden Farm Parkway must be complete and open to traffic prior to release of 1,101<sup>st</sup> residential building permit.
  - c. Reconstruction of Clarksburg Road from Overlook Park Drive to Snowden Farm Parkway must be complete and open to traffic prior to release of 1,101<sup>st</sup> residential building permit.



- d. Construction of Snowden Farm Parkway for a length of approximately 400? feet east of Clarksburg Road to complete the gap that currently exists at this location must be complete and open to traffic prior to release of 1,101<sup>st</sup> residential building permit.
  - e. Reconstruction of Clarksburg Road from Overlook Park Drive to MD 355 must be completed and open to traffic prior to release of Use & Occupancy permit for any of the Clarksburg Town Center retail development. This condition is subject to the MCDOT's participation in reconstruction of Clarksburg Road between MD 355 and Spire Street.
  - f. Construction of an eastbound left-turn lane along MD 121 onto southbound MD 355 must be completed and open to traffic prior to release of 901<sup>st</sup> building permit.
- 3) Prior to certification of the site plan, the Applicant must submit a copy of the County Council Resolution confirming the necessary abandonment of portions of the previously dedicated rights-of-way for Overlook Park Drive, Clarksburg Square Road, and Clarksridge Road.
  - 4) Prior to certification of the site plan, the Applicant must submit traffic signal warrant analyses for projected traffic volumes at the intersections of Overlook Park Drive with Clarksburg Road, and Public Road "A" with Stringtown Road for M-NCPPC and MCDOT approval. If a traffic signal is warranted at either location, the Applicant must bear the costs of design and construction of the traffic signal(s).
  - 5) Compliance with Environmental Planning Division conditions approval regarding the requirements of the forest conservation law. Applicant must meet all conditions prior to recording of all remaining plats or MCDEP issuance of sediment and erosion control permit, as appropriate.
  - 6) The Applicant must comply with the conditions of the MCDPS stormwater management and final water quality plan approval dated October 6, 2008.
  - 7) The Applicant must comply with the conditions of the MCDOT approval letter dated October 6, 2008, unless otherwise amended by MCDOT.
  - 8) The Preliminary Plan must be in conformance with the requirements of Project Plan 91994004B and is expressly tied to and interdependent upon the continued validity of Project Plan. Each term, condition, and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are, therefore, not automatically severable. Should any term, condition, or requirement associated with the approved plans be invalidated, then the entirety of the approved plan must be remanded to the Planning Board for further consideration. At that time, the Board shall determine if all applicable requirements under State and County law will be met in the absence of such term, condition and

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

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

- f. The Applicant will provide site grading, infield preparation and seeding of the replacement athletic fields on the approximately 8 acres of dedicated land at a time which insures that there will be no disruption in the continued use of the existing athletic fields prior to completion of the replacement athletic fields.
  - i. In the event that dedication occurs when funds for the proposed school are shown in the CIP, Applicant will complete work on the replacement fields prior to the construction of the proposed school.
  - ii. In the event that dedication occurs prior to funding for the school being shown in the CIP, then upon construction of Street "F", as shown on the revised preliminary plan, Applicant will commence work on replacement of the baseball field. In addition, if at site plan it is determined that there is sufficient earth material on site to construct both replacement fields, then Applicant will also rough grade and seed the replacement soccer field when construction of Street "F" begins. Area tabulations for the proposed park/school complexes to be submitted for technical staff review at site plan. Final grading plan for the park/school site to be submitted for technical staff approval as part of the site plan application.
  
- g. In accordance with Condition f above, Applicant to enter into an agreement with the Planning Board to provide for site grading, infield preparation and seeding of the replacement athletic fields in accordance with Parks Department specifications, as shown on the preliminary plan drawing, and as specified in the Department of Parks' Memorandum dated September 22, 1995. The construction of the replacement athletic fields must occur as specified in Condition f.
  
- h. Record plats to reflect delineation of conservation easements over the areas of the 100 year floodplain, stream valley buffer, wetland buffer and tree preservation and/or reforestation and greenway dedications.
  
- i. Final number and location of units to be determined at site plan.
  
- j. Access and improvements as required to be approved by MCDOT and MDSHA.

14) The following previous condition of approval for Preliminary Plan 11995042R as contained in the Planning Board Opinion dated August 14, 2001, remains in full force and effect:

- a) Stockpiling and borrow of dirt for use in a timely fashion only in connection with this preliminary plan, at designated locations, prior to site plan approval provided:
  - i. M-NCPPC technical staff review and approval of sediment control plans prior to issuance of permits by MCDPS; and
  - ii. Applicant to enter into agreement with the Planning Board in advance of any land disturbance that they will conform with all aspects of stockpile and borrow plans.

**FINDINGS:** For Site Plan Review

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

As amended, the subject development is in conformance with an approved project plan number 91994004B as required by the RMX-2 Zone for the optional method of development.

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

If amended in accordance with recommended conditions, the Site Plan meets all of the requirements of the RDT and RMX-2 Zones as demonstrated in the project Data Table on page 42 and in Attachment D.

The reduction in setbacks by 50 percent for the commercial and residential properties from the boundary and by 100 percent for the proposed commercial from the street is in conformance with the provisions of the RMX-2 zone of the Montgomery County Zoning Ordinance. The reduction in setbacks was previously approved by the Planning Board with the original approvals.

The parking requirements for the East Side are being satisfied through garage and pad spaces outside the one-family detached and attached units and through surface and garage parking for the multi-family units. Previous allocation of on-street parking spaces for primarily self-parked units was excessive; however, provide for ample additional spaces for resident activities.

Staff has determined that the parking required for the retail core is insufficient by a minimum of 184 spaces based upon the non-residential and mixed residential square-footages provided by the Applicant. This amount does not count on-street parking shown by the Applicant on the East Side of the development. Some on-street parking should be credited toward the non-residential component, but not the spaces on the East Side of the Greenway due to distance, practical relationship, and separation of the uses. Only on-street spaces on the West Side that are not dedicated to the Manor Houses (multi-family) should be credited to the non-residential.

As amended by the conditions of approval, the Applicant must provide a minimum of 100 spaces in a 2-level garage in Block MM, which is the surface lot currently proposed for 163 spaces. Staff supports a waiver to permit a reduction in the required number of parking spaces, reducing the acceptable parking ratio to 4.3 spaces per 1,000 square feet and an additional waiver of 20% to satisfy the parking requirement on the West Side.



3. *The locations of buildings and structures, open spaces, landscaping, recreation facilities, and pedestrian and vehicular circulation systems are adequate, safe, and efficient.*

a. Locations of buildings and structures

The location of the residential buildings and structures are appropriately and efficiently sited on the various lots and parcels. As amended by the conditions of approval, the retail buildings are appropriately designed to accommodate the liner units, multi-family and live-work units around the periphery of the commercial center. The MPDUs are both clustered into the multi-family buildings and integrated into the townhouse sticks. The dumpster areas for the multi-family buildings are located directly adjacent to the units and are enclosed and screened adequately.

The proposed civic building (library) site appropriately locates a future building by taking advantage of the views and access with a focus on key design elements. Parking for the civic building will need to be evaluated with the design of the building and access to the public and civic space. The proposed changes to the pool complex, including the addition of a building for community meetings and events and an all-sports court, makes better use of the available land and significantly enhances the functionality of this recreational space.

Further, the location, phasing and total number of MPDUs is in conformance with the Plan of Compliance and Chapter 25A.

As amended with the proposed conditions of approval, the parking structures associated with the retail adequately provide service and are conveniently located and tucked into the shell of the center. Staff recommends that the retail center (Pcl. B) provide a second parking structure as originally envisioned to accommodate an additional 100 parking spaces over and above those shown in the proposed surface parking lot to better satisfy the parking needs of the mix of uses proposed in the core.

The extensive retaining walls on the west side of the retail center provide further encroachment into the stream buffer.

b. Open Spaces

The plan continues to provide open space and green space throughout the development. The greenway running through the center of the site, as well as the Piedmont Woods Park provides the majority of the open space on the property. There are also small squares and play areas dispersed throughout the community and green along the perimeter of the property. The open space along with

existing and new trees will provide an attractive setting and visual character throughout the neighborhood.

The new “Town Green” and Sinequa Square will adequately provide additional open space for civic and community gathering and satisfy the program elements associated with the approved Plan of Compliance.

c. Landscaping and Lighting

The proposed landscaping on the site is comprised of street trees for the public and private road network and around the parking facilities. Foundation planting is provided around the residential units and includes a mix of shade, evergreen and flowering trees and shrubs. Supplemental planting is called for along the perimeter and within buffer areas throughout, as well as enhancements to the streetscapes to account for previously built areas that are devoid of planting.

Staff is recommending amended soil panels and street trees, brick sidewalks, benches and light fixtures. Staff does not support the Applicant’s current application for asphalt paving as special paving in the retail core and is conditioning brick sidewalks for a more adequate pavement material.

The \$1 million for enhancement planting and streetscaping as conditioned in the Plan of Compliance is in addition to the Staff recommended conditions, and will provide for additional landscaping throughout the development and further enhancements to the existing and proposed streetscape.

The lighting plan for the subject amendment has been modified with respect to the design changes to the retail center and house sitings.

d. Recreation Facilities

Recreation facilities in CTC will increase through the Project Plan amendment and Site Plan with the addition of the Piedmont Woods Park, and additional amenities associated with Kings Local Park, Sinequa Square and the Residents’ Club community building. Existing facilities have been installed on both the east and west sides of the greenway and include a variety of activities, including tot lot and multi-age play areas, open play areas and community areas. Not all of the recreational facilities were installed in a manner consistent with the originally approved site plans but are being enhanced through this application.

As amended with the conditions of approval, the recreational facilities and amenities conform to the M-NCPPC Recreation Guidelines and are adequate, safe and efficient.

e. Pedestrian and Vehicular Circulation Systems

The majority of the infrastructure is in place on the East Side of the Greenway; to provide access from the street network directly to the units or to garage structures; however, the connection from the East Side to the West Side (“landbridge”) has not been constructed, but will need to be open to traffic prior to the construction of Overlook Park Drive to Stringtown Road.

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

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

Future access to Piedmont Woods Park will align with Clarksburg Square Road on the east side of Snowden Farm Parkway. This access will not be permitted until the Applicant satisfies DOT and DPS requirements that pedestrian access across Snowden Farm Parkway is safe, adequate and efficient.

The future vehicular connection to MD 355 is supported by this application and County agencies with stipulations for the required right-of-way and relocation of the historic Horace Willson house by the Applicant.

The Fire Marshall of Montgomery County has reviewed existing and proposed road connections and finds, that, as amended, the application provides safe, adequate and efficient access to the structures.

Pedestrian circulation is provided within the public right-of-way through five-foot-wide internal sidewalks to facilitate pedestrian circulation throughout the development. Five-foot-wide internal sidewalks are also provided in front of each unit type to facilitate pedestrian circulation throughout the development. Additionally, striped crosswalks in the private alleys have been provided from the Manor House buildings to the dumpster enclosures.

Pedestrian circulation should be enhanced to signify the entrance to the Grocery from the public road with special paving, lighting, awnings and landscaping. Staff is recommending a secondary entrance to the Grocery from the main street to better improve the pedestrian activity and visibility from the street.

The eight-foot-wide bike trail (asphalt) is located on the east side of Overlook Park Drive and is an integral part of the Greenway trail system, linking Clarksburg Road to Stringtown Road and beyond. In order to maintain the green strip for planting, protect the environmental buffers and provide for the necessary stormwater management facilities, the path has been relocated outside of the PUE and the right-of-way while respecting the other site elements.

Staff supports the MCDOT's approved right-of-way and typical cross section for Overlook Park Drive as shown on the Site Plan and finds that the roadway and associated bike trail will continue to be safe and adequate.

4. *Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.*

The structures and uses are compatible with other existing uses and site plans in the adjacent development with respect to having similar heights and massing. The location of the structures is also comparable to the location of existing structures within the development and surrounding communities.

The proposed uses are in scale with the overall development pattern envisioned with the original Project Plan. Higher density uses and heights are located internally near and within the future commercial center.

The reduction in the setbacks for the residential and commercial adequately responds to the type of development associated within the town center and properly respects the site boundaries and adjacent land and property.

5. *The Site Plan meets all applicable requirements of Chapter 22A regarding forest conservation, Chapter 19 regarding water resource protection, and any other applicable law.*

The FFCP for the residential and commercial areas only was approved by Environmental Planning staff on June 30, 1999 with amendments to the FFCP approved on August 16, 2002, August 27, 2002, September 9, 2002, December 27, 2004 and July 24, 2006. The Applicant will need to identify where an additional 0.40 acres of forest will be planted in the revised final forest conservation plan, in order to satisfy the Forest Conservation requirements. As conditioned, the requirements will be satisfied through on-site planting of 8.91 acres of plantings on the residential/commercial section of Clarksburg Town Center, 13.39 acres of plantings at the Piedmont Park and 2.56 acres of landscape credit



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

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

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

## **RECOMMENDATION AND CONDITIONS**

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

1. Project Plan Conformance  
The proposed development must comply with the conditions of approval for Project Plan 91994004B included herein.
2. Preliminary Plan Conformance  
The proposed development must comply with the conditions of approval for Preliminary Plan 11995042A, or as amended by the Planning Board during the November 6, 2008 hearing.
3. Plan of Compliance  
The proposed development must comply with the conditions of approval for the Plan of Compliance Resolution dated August 17, 2006, or as amended by the Planning Board during the November 6, 2008 hearing.

4. Retail Center

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

5. Recreation Facilities

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

6. Parking

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

7. Environmental

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

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

- b. A five-year maintenance period shall be required for all planted areas credited toward meeting the requirements of the forest conservation plan.
- c. All afforestation plantings on the Piedmont Park are to begin in the first planting season after the issuance of the first sediment control permit by the Montgomery County Department of Permitting Services for any work to be conducted on Piedmont Park.
- d. Reforestation/afforestation plantings on the Clarksburg Town Center development are to begin in the first planting season following approval of the Certified Site Plan.
- e. Applicant must replace all financial security instruments submitted by Terrabrook Clarksburg, L.L.C. with new financial security instruments from Newland Communities, L.L.C... The financial security instruments must be based at a rate of \$0.90 per square foot or on a landscape estimate approved by the Planning Department. The new financial security to be reviewed and approved by Environmental Planning staff prior to Certified Site Plan approval.
- f. Applicant must submit a revised final forest conservation plan and obtain approval from Environmental Planning prior to approval of the certified site plan.
- g. All revised plans must be sealed and signed by a qualified professional.
- h. Applicant must remove the "Certified Site Plan" stamp from the final forest conservation plan (FFCP).
- i. Applicant must clearly delineate which trees are being taken for the landscape credit claimed in the FCP Worksheets. Any trees not claimed for landscape credit must not be shown on the FFCP.
- j. Applicant must remove the designation "Off-Site" planting that is proposed for Piedmont Park since this area has been part of the project since preliminary plan approval.
- k. Applicant must change all of the 5-ft natural surface trails from the Kings Pond area south through the Greenway and in the Piedmont Park to 4-ft trails as per the approved FFCP dated July 24, 2006.
- l. Applicant must provide a detail of the natural surface trail that matches the detail on the Land Design, Inc. plan.
- m. There should be no changes in the size of any afforestation or reforestation planting area from what was approved in 2004 and revised in 2006. If changes are necessary, the applicant must provide a written explanation and justification for the area size changes and compensate for the loss of that planting area.
- n. The applicant must provide afforestation plantings totaling at least 9.31 acres on the residential portion if 13.39 acres are being planted at Piedmont Park. The total afforestation planting requirement is 22.7 acres.
- o. The applicant must provide a planting schedule for the Greenway area since the applicant is requesting reforestation credit in the FFCP. In turn, call this area out on the Certified Site Plan as part of the FFCP.
- p. Applicant must: combine afforestation areas Q and S on Sheet 8 to one planting area; combine afforestation areas A-1, A-3 and B-1 on Sheet 11; and combine afforestation areas C-1 and K on Sheet 13.
- q. Applicant must clearly delineate Category I forest conservation easement lines or forest conservation areas as dedicated to the Parks Department, whichever is appropriate on the final forest conservation plan.

- r. Applicant must move the forest retention line adjacent to the SWM facility on Sheet 8 back to its original position as per final forest conservation plan approved in 2004.
  - s. Applicant must correct the size of afforestation area G. In one location on the submitted plan it is listed as 2.15 acres and in a second it is listed as 1.78 acres.
  - t. Applicant must correct the size of afforestation area H. On page 21 it is listed as 0.40 acres in size but in the data table states it is 0.31 acres.
  - u. Applicant must move the line for afforestation areas H and G on Sheet 21 back to the location shown on the final forest conservation plan approved in 2004. If the slope exceeds a 3:1 grade the slope must be graded to less than 3:1 to accommodate planting.
  - v. Applicant must include a note on Sheet 21 stating that planting must occur within the sewer line area but not within 5 feet off the pipe centerline.
  - w. Applicant must move the line for afforestation area G on Sheet 22 back to the location adjacent to the utility easement line. If the slope exceeds a 3:1 grade the slope must be graded to less than 3:1 to accommodate planting..
  - x. Applicant must afforest all stream valley buffers (SVB) on Sheet 22 as shown on the approved final forest conservation plan and final water quality plans.
  - y. Applicant must correct the spelling of “afforestation” and “area” on Sheet 24.
  - z. Applicant must show the SVB on Sheets 33, 34, and 35.
  - aa. Applicant must clarify why the LOD extends out into afforestation area Z on Sheet 36.
  - bb. Applicant must clarify why the LOD extends out into afforestation areas Z and HH on Sheet 37.
  - cc. Applicant must use the correct updated FCP worksheet available on the MNCPPC website at <http://www.mcparkandplanning.org/Environment/forest/index.shtm>.
  - dd. Applicant must include the data table as required by Section 109-A(2) of the Forest Conservation Regulations.
  - ee. Applicant must replace all Norway Maple (*Acer platanoides*) trees requested for landscape credit with native canopy trees.
  - ff. Applicant must correct typographic errors in the table for Afforestation Area CC on Sheet 39.
  - gg. Applicant must correct all applicable notes throughout the document to identify that all reforestation/afforestation plantings have a 5-year maintenance period from the date the forest conservation inspector inspects the planted materials..
8. Site Design
- a. Revise the site plans to provide brick pavers or masonry equivalent within all sections of the retail core in-lieu-of asphalt.
  - b. Eliminate the angled parking on the private street in the retail core and provide parallel parking.
  - c. Private Street #1 shall be revised to become a public street with a 50-foot right-way, as approved by the Department of Transportation.
  - d. Provide amended soil treatment a minimum of 10 feet back from the curb continuously along the public and private streets for the entire retail core, civic building and town green. The depth of the soil treatment shall be a minimum of 3 feet.



9. Landscape and Lighting

- a. Provide additional landscaping in the following alleys within planting islands in the common areas:  
East Side-Snow Hill, Block F;  
West Side-Dowden Mews, Block EE; Clarksridge Hideaway, Block FF  
At a minimum, the landscaping shall include ornamental/flowering trees, evergreen shrubs and grasses or groundcover in the islands to be installed by the Applicant. Existing green areas or panels shall be planted with shade or ornamental/flowering trees, where space permits. The Applicant shall provide, in writing, a letter to the affected homeowners of the additional landscaping to be installed. A copy of the letter shall be provided to the M-NCPPC.
- b. Eliminate the shrubs on the edge of the porous pavement in Basil Park Square Circle and group similar shrubs around the proposed ornamental/flowering trees on the east side of the park. Remove the elliptical area on the east side of the park.
- c. Revise the concrete wall in Sinequa Square with a stone wall similar in material to the material used on the Resident's Club/Community Center. The wall should be extended in a circular fashion, working with the grading to frame the view from Clarksburg Square Road. The proposed street trees shall be aligned to promote this visual viewshed.
- d. Provide additional flowering/ornamental and shade trees and/or a trellis/ pergola to serve as the focal feature to enhance the view from Clarksburg Square Road that will align on axis with the pool building.
- e. Expand the base of the Grand Staircase to include a seating area with additional planting.

10. Enhancement Planting/Streetscaping and Amenities

Consistent with the provisions of the approved Plan of Compliance, the community has identified the following elements as additional enhancements and amenities to be provided by the Applicant, and at the Applicant's expense.

- a. Provide amended soil panels within the existing right-of-way for Clarksburg Square Road (East Side). The amended panels shall start at 5-feet off of the existing tree and run continuously along the public street. At a minimum, the Applicant shall aerate and amend the soil to a minimum depth of 3 feet and provide the necessary soil modifications based upon the recommendations of a geotechnical engineer and arborist chosen by CTCAC. The recommendations shall be based upon a soil test performed by the geotechnical engineer and should include at a minimum, recommendations for pH, organic matter, magnesium, phosphorus, and potassium. Provide soil testing results after amending to M-NCPPC Staff. Provide continuous double brick edging along the entire sidewalk on Clarks Crossing Road and Burdette Road from Stringtown Road to Snowden Farm Parkway.
- b. Provide a continuous 5-foot-wide brick paver sidewalk within the right-of-way of Clarksburg Square Road, excluding the areas associated with the retail core from Overlook Park Drive to Public House Road. This will result in the removal of existing concrete sidewalk, primarily on the East Side.

- c. Provide additional plant materials at all entrance signs into the development to include evergreen and flowering shrubs, backdrop flowering and shade trees and annuals/perennials flowers at the base.
- d. Provide a minimum of six additional flowering trees (min. 8-foot in height) near the Clark Memorial.
- e. Increase the size of the London Planes in the Market Square Bosque from 2" caliper to 4" caliper.
- f. Provide additional landscaping (foundation planting) around the Community Center addition.
- g. Provide additional landscaping and recreational improvements in the Block H Triangle Park (East Side) to include an open play area, picnic/sitting areas and landscaping.
- h. Increase the size of the London Plane Trees in the Sinequa Square parking areas from 2" caliper to 5" caliper. The additional landscaping in the park area shall include shade and flowering trees and shall be incorporated into the Sinequa Square Park.
- i. Provide decorative fencing in the Snow Hill tot lot.
- j. Provide decorative sign poles to be fitted with flags chosen by CTCAC along Clarksburg Road.
- k. Provide additional 6-8 foot-tall evergreens and ornamental/flowering trees (cherries) on the north side of Stringtown Road.
- l. Provide upgraded mailbox structures and notice boards throughout the development in the locations identified on the site plan, consistent with the approvals from DPS and the U.S. Postal Service. Details of the mailboxes shall be provided on the site plans.

11. MPDUs

The proposed development shall comply with the following conditions of approval from the Department of Housing and Community Affairs in their letter dated September 29, 2008:

- a. The Applicant must provide a minimum of 152 MPDUs (12.5% of the total number of units), in accordance with the requirements of Chapter 25A.
- b. The Applicant must comply with all conditions of the DHCA Memorandum dated September 29, 2008, regarding this plan.
- c. The Applicant must enter into an "Agreement to Build" with the Department of Housing and Community Affairs prior to approval of the Certified Site Plans.

12. Maintenance Responsibility

- a. The Applicant shall provide \$1 million dollars to the Clarksburg Homeowner's Association for Community-Wide features associated with the improvements that are part of this application, as approved by the Planning Board to assist toward future maintenance of non-standard elements within the rights-of-way, site amenities, retaining walls and landscaping.
- b. The developer for the Retail Core shall be responsible for the future maintenance associated with the improvements to the Retail Center, including, but not limited to non-standard elements within the right-of-way, benches, lighting, landscaping, and parking areas.

### 13. Retaining Walls

- a. The Applicant shall provide for an independent inspector to monitor the review, installation and maintenance needs of any retaining walls over 5 feet. The inspector shall be chosen by the M-NPPC from at least three qualified professional engineering firms not currently performing work in Clarksburg Town Center.
- b. The retaining walls facing Stringtown Road shall be decorative to include a stone or brick veneer with a suitable continuous decorative cap.

### 14. Park Development

The Applicant shall comply with the memorandum dated October 20, 2008 from Park Planning and Stewardship as outlined in the following conditions:

#### **Piedmont Woods Recreational Park:**

- a. Applicant to dedicate and convey to M-NCPPC in fee simple the approximately 65 acre parcel of land located on the northeast side of Snowden Farm Parkway to be used as a recreational park facility. Land to be conveyed at time of record plat.
- b. Applicant to construct at its expense within the park area the following recreational amenities:

Multi-age Playground - A multi-age playground within an approximately 10,000 square foot area. Playground equipment to include enough equipment, including challenging equipment, so that the play equipment use zones fill the entire playground boundary. Overlap the play equipment use zones as much as is allowable by ASTM guidelines to maximize the amount of equipment and provide varied play activities for all ages. Play equipment shall be acceptable to Department of Parks staff and certified by the International Play Equipment Manufacturers Association (IPEMA), meet all ASTM requirements for public playgrounds and shall meet M-NCPPC park standards.

Dog Exercise Area - A fenced dog exercise area of approximately the size and configuration shown on the proposed site plan. Fencing around the dog exercise area to include park standard concrete mow strip and to be located entirely outside the utility right of way. No stormwater management facilities to be located within the fenced areas. Include a maintenance vehicle access gate and a drinking water source for dogs within each section of the dog exercise area.

Hard Surface Courts - Two full sized tennis courts and a full sized basketball court approximately as shown on the site plan. Provide fencing at tennis courts and on the backside of the basketball courts (at least 4' high) with park standard concrete mow strips.

Picnic Shelters - Three picnic shelters sufficiently sized to contain at least 3 picnic tables in each shelter. Each shelter to include a grill and at least 3 picnic tables.

Restroom and Water Fountain – Centrally located restroom facility and frost free water fountain.

Parking Lot - Parking for a minimum of 55 cars approximately as shown on the site plan.

Trails - Hard surface and natural surface trails to connect facilities and provide recreational benefits approximately as set forth on the site plan, to be located and sized as acceptable to M-NCPPC Department of Parks staff.

Landscaping, Benches and Signage – Landscaping and signage acceptable to M-NCPPC Department of Parks staff, and adequate benches for needed seating.

- c. A park permit is required before construction of all park amenities. All facilities to be constructed by Applicant must be acceptable to M-NCPPC Department of Parks staff and meet the Parks Design Standards and Specifications. Minor changes may be made to location and construction details of amenities in the park during the park permit process without the need to amend the site plan.
- d. Applicant to address the following comments to the satisfaction of M-NCPPC Department of Parks staff prior to the approval of the Certified Site Plan:
  - i. The style of the picnic shelters and proposed restroom building should fit with the character of the Clarksburg Town Center. The proposed structures are constructed of heavy timber, laminated wood, have a rustic appearance and are inappropriate in character for use in this park. Per previous comments, provide shelters and restroom building equal to Classic Recreation Systems, Inc. “Campion” style steel frame shelter with custom ornamentation, cupola, 10:12 pitch metal roof with 2”x6” tongue and groove sub-roof, stone veneer piers and base.
  - ii. The landscape plan does not include enough trees. There should be many more trees in clustered, informal groupings, particularly along the main path on Snowden Farm Parkway, along all other walkways, near the picnic shelters, at the edges of the parking lot, within parking lot planting islands, near the basketball court, around the playground, near all seating areas, and on open slopes within the park. Trees should be set back a minimum of 10 feet from paths and 15 feet from structures and fencing. The general quantities and locations of plants shall be determined prior to approval of the certified site plan. The exact types, sizes, spacing, locations and

quantities of plants shall be reviewed and may be adjusted during the park permit approval process.

- iii. Provide additional paths or relocate paths at the tennis courts to meet ADA guidelines for accessible sports facilities. The guidelines require an accessible route to be connected to each court. The paving around the restrooms and tennis courts could be simplified.
- iv. The minimum paved path width shall be five feet to meet ADA requirements. The minimum paved path width for multi-use trails and paths that require maintenance vehicle access is eight feet wide. The path from the parking lot to the dog park shall be ten feet wide and fully paved with ample vehicle turn-around room, as the dog park requires frequent maintenance access. The path around the playground area with its connections to the parking lot shall be widened to 8 feet to allow vehicle access to replenish playground surfacing. The paths around the edges of the parking lot may be narrowed in width if necessary to balance the amount of impervious surface in the park. The approximate alignments of trails and paths in the park shall be shown on the certified site plan however they may be adjusted some during the park permit review process.
- v. Provide additional missing elements from the park program of requirements, including the following: a kiosk near the park entrance or restroom building (equal to Classic Recreation Systems, Inc. "Campion" style), a shade structure with seating in the dog park that could be shared by both areas, four nature interpretation signs with durable colored graphics along the natural surface trails, wild bird boxes in natural areas, and three seating areas with benches along the natural surface trail including a story-telling circle.
- vi. Remove the bio-retention area from the interior of the dog park, so that plantings are not trampled. Relocate the area outside of the fence.
- vii. If possible, reduce the number of bio-retention areas in the park, as these beds have high maintenance requirements and herbicides are not allowed to be used in these areas.
- viii. Provide a safe pedestrian crossing of Snowden Farm Parkway, in order to provide pedestrian access to the park from the surrounding neighborhood.
- ix. The park entrance pier and sign are too small to be effective. Provide a larger entrance sign for the park constructed of masonry and wood,



designed to fit with the character of the Clarksburg Town Center as well as provide identity for the park.

- x. The plan does not provide enough seating in the park. Provide at least one additional bench on each side of the dog park, at least 3 additional benches or a seat wall in or near the playground area, at least 3 additional benches along the trail on Snowden Farm Parkway, and benches along the natural surface trail system as described previously. The two benches in the lawn area adjacent to the playground should be moved into the playground surfacing for ease of maintenance/mowing. Provide occasional groupings of two benches, rather than just single benches near the playground. The exact locations and selection of bench type shall be reviewed and approved prior to park permit, however there will likely be two types: a decorative type within the park, and a simpler version in the playground mulch areas and along natural surface trails. The catalog cut included in the drawings is an example of a simple bench, rather than a decorative bench.
- xi. Provide a hose bib on the exterior of the restroom and quick coupler connections on each side of the dog park for watering and maintenance.
- xii. The general quality of the park and all elements within the park (such as site furnishings, structures, pedestrian paving, fencing, walls and landscaping) shall be equal to or better than those provided at Arora Hills Local Park and Dowden's Ordinary Historic Park, which are other developer-built parks in Clarksburg.
- xiii. Department of Parks staff would prefer to have no lighting in the park, since the park is closed at dark. However, parking lot lighting was indicated as a requirement in the plan of compliance. If lighting is provided within the park, all park facilities should be lighted, including the courts, dog park and restroom so that the park may be used after dark. Lighting the parking lot on its own could encourage illicit use of the park at night. Any decision regarding lighting should be reviewed and confirmed that it would be acceptable to the community.
- xiv. The lighting footcandle levels in the parking lot were reduced to 0.5 footcandles. If lighting is to be provided within the park, confirm that the lighting levels are appropriate, based on applicable standards (IESNA) and confirm that Park Police concurs with these recommendations. If Park Police recommends higher levels of lighting, additional fixtures may be required.

- e. Applicant to address the comments in the memorandum dated October 20, 2008 to the satisfaction of M-NCPPC Department of Park staff at the time of park permitting.

### **Kings Local Park**

Applicant to construct at its expense within the Local Park area the following recreational amenities:

Playground/Seating Area-A playground and seating area comparable to similar facilities in Aurora Hills Local Park (as shown on construction documents dated May 2007. The required facilities in King's Local Park shall be comparable in size and design quality, including, but not limited to the quantity and quality of play equipment, surfacing, colored concrete edging and site furnishings. The facilities shall be shown on the certified site plan. Complete construction details and specifications shall be included and approved as part of the Park Permit for construction.

Fishing Pier-A minimum 8 foot wide, handicap accessible pier terminating in a 12' x 24' fishing pier platform shall be provided. The structure shall be constructed of recycled, engineered marine plastic such as Trelleborg or equal quality, and to include railings if determined by M-NCPPC Department of Park staff to be needed.

Handicap Accessible, Asphalt Trail-An eight-foot-wide, handicap accessible asphalt trail shall be provided from the corner of Overlook Park Drive and Clarksburg Road to the pond area and shall access the picnic shelters and playground area. The approximate alignment of the trail shall be shown on the certified site plan and may be adjusted during the park permit process.

Site Furnishings- Approximately 6 benches and a bike rack capable of holding 6 bikes shall be provided. Location and type shall be approved at the time of park permit.

Landscaping-A landscape plan shall be approved as part of the certified site plan. The exact species, size and number of plants may be adjusted during the park permit approval process.

Park entrance signage- Two (2) wood and stone park entrance signs shall be provided near (1) the parking area, and (2) at the corner of Clarksburg Road and Overlook Park Drive. Concept drawings shall be approved and included with the certified site plan. Construction details shall be approved as part of the park permit.

Retaining Walls-Any needed retaining walls on park property shall be constructed of concrete block, similar to the existing walls at the corner of the school. Location, design, and height of the walls shall be shown on the certified site plan and may be modified at

the time of park permit. Construction details and specifications shall be provided with the park permit.

A park permit is required before construction of all park amenities. All facilities to be constructed by Applicant must be acceptable to M-NCPPC Department of Parks staff and meet the Parks Design Standards and Specifications. Minor changes may be made to location and construction details of amenities in the park during the park permit process without the need to amend the site plan.

### **Clarksburg Greenway and Greenway Trail**

Applicant to dedicate and convey to M-NCPPC in fee simple, the land east of Overlook Park Drive along the stream valley from Stringtown Road to Clarksburg Road, approximately as set forth in the site plan. Land to be conveyed is not to include any stormwater control facilities or stormwater access roads and to be conveyed free of trash and unnatural debris. Final detailed park property boundaries to be finalized and clearly set forth on the certified site plan. Land to be conveyed at time of record plat.

Applicant to construct, at its expense, an 8' wide, hard surface trail along the southwest side of the Overlook Park Drive alignment, within publicly owned or controlled land. Trail to be constructed to park standards and specifications and construction to be coordinated with M-NCPPC Department of Parks and Montgomery County Department of Transportation staff.

Applicant to construct a 5' wide, natural surface trail system within the dedicated Clarksburg Greenway from Kings Local Park lake area to Stringtown Road. Trail to include a safe road crossing at Clarksburg Square Road, and a safe, adequate and well lighted alignment under Clarksburg Square Road. Alignment to be substantially as set forth on the site plan with final details of the alignment and construction details to be set forth on the certified site plan.

All trails to include bridges and boardwalk where determined by M-NCPPC Department of Parks staff to be needed. Adequate number of benches to be located along trails.

Provide a safe hard surface trail crossing of Stringtown Road and natural surface trail crossing of Clarksburg Square Road. Provide details of Greenway Trail connection to Clarksburg Village section of trail, including crossing of Stringtown Road and crossing of road bridge. Details to be provided by Applicant on certified site plan.

All plantings and landscaping in the Clarksburg Greenway, Kings Local Park and Piedmont Woods Recreational Park to be approved by M-NCPPC Department of Parks staff. All plantings and landscaping to be consistent with the guidance set forth in the letters dated 6/20/08 and 6/23/08 to Doug Powell from Holly Thomas, County-wide Horticulturist and with the Standards and Specifications set forth in the document titled

“Planting Requirements for Land-Disturbing Activities and Related Mitigation on M-NCPPC Montgomery County Parkland Revised January, 2008.

All hard surface and natural surface trail alignments and construction details for trails, bridges, boardwalk, and other trail amenities to be specified on the certified site plan and be acceptable to M-NCPPC Department of Parks staff. Minor adjustments or modifications to the trail alignments, and construction and amenities details may be made at time of park permitting without the need to amend the site plan.

15. Landscape Surety

The Applicant shall provide a surety (letter of credit, performance bond) in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a. The amount of the surety shall include plant material, on-site lighting, recreational facilities, and site furniture within the relevant block of development. Surety to be posted prior to issuance of first building permit within each relevant block of development and shall be tied to the development program.
- b. Provide a cost estimate of the materials and facilities, which will establish the initial bond amount.
- c. Completion of plantings by block, to be followed by inspection and bond reduction. Inspection approval starts the 1 year maintenance period and bond release occurs at the expiration of the one year maintenance period.
- d. Provide a screening/landscape amenities agreement that outlines the responsibilities of the respective parties and incorporates the cost estimate. Agreement to be executed prior to issuance of the first building permit.

16. Development Program

The Applicant must construct the proposed development in accordance with a development program that will be reviewed and approved by staff prior to the approval of the Certified Site Plan. The development program replaces the approved Site Plan Enforcement agreement, with the exception of the MPDU phasing outlined by DHCA, and institutes timing mechanisms related to building permit release. The development program must include the following items in its phasing schedule:

- a. Street tree planting shall progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
- b. Local Recreational Facilities
  - i. All remaining Local Recreational Facilities on the East Side of the Greenway shall be completed prior to the issuance of any remaining building permits on the East Side. The remaining recreation facilities on the East Side, which have not been constructed include sitting areas and an open play area associated with Basil Square Park, which shall be installed within 6 months of the completion of Basil Square Park Road.

Landscaping and lighting associated with the Recreational Facilities shall be installed no later than 6 months after the completion of those facilities.

- ii. The Local Recreational Facilities on the West Side shall be completed prior to the issuance of the following building permits for the units in the respective blocks. (This number represents 70 percent of the number of units located in each block). The recreation facilities to be constructed on the West Side include the tot lot and sitting areas associated with Harness Point. Landscaping and lighting associated with the Recreational Facilities shall be installed no later than 6 months after the completion of those facilities.

c. Community-Wide Recreational Facilities

- iii. All Community-Wide Recreational Facilities shall be completed prior to the issuance of any additional building permits. Community-wide facilities include the pool, pool house and Resident's Club/Community Center, Sinequa Square, and the improvements associated with Murphy's Grove Pond. Landscaping and lighting associated with the community-wide facilities shall be installed no later than 6 months after the completion of those facilities.
- iv. Community-wide facilities on the West Side include the natural surface connections within the Greenway and necessary bridges or boardwalks, Town Green and Market shall be completed as follows: 1) the improvements within the Greenway shall be constructed/installed within 6 months of the completion of Overlook Park Drive; and 2) the Town Green and Market shall be completed upon the completion of the Live/Work units adjacent to the Town Green and Market. Landscaping and lighting associated with the community-wide facilities shall be installed no later than 6 months after the completion of those facilities.
- v. The 8-foot-wide bike path connection on the east side of Overlook Park Drive shall be constructed in conjunction with the road connection.

b. Kings Local Park

The recreation facilities, landscaping and trails/paths shall be constructed prior to the release of the 850<sup>th</sup> building permit for the entire development.

c. Piedmont Woods Park

The recreation facilities, landscaping, roads, and trails/paths shall be constructed prior to the release of the 850<sup>th</sup> building permit for the entire development.

- d. Clearing and grading shall correspond to the construction phasing, to minimize soil erosion.



- d. On-site landscaping and lighting associated with the construction of the private roads and common areas shall be installed no later than 6 months after the completion of those roads and common areas, with the exception of the additional landscaping required for the existing areas, which shall be installed within 6 months of the approval of the Certified Site Plan.
- e. The retail center including the parking garage, streetscape, retail stores and live-work units must be under construction prior to the release of the 850<sup>th</sup> residential building permit for the entire development.
- f. Provide each section of the development with necessary roads.
- g. Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.

#### 17. Penalties

The Applicant must submit the Certified Site Plan no later than 90 days from the issuance of mailing of the resolution, or, if a timely administrative appeal is filed by any party authorized to take an appeal, 90 days after the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods. If the Certified Site Plan is not timely submitted, the Applicant must pay a \$500/day fine for each day the Certified Site Plan is late. If the Planning Board determines that the Certified Site Plan does not conform to all conditions of site plan approval, the Planning Board may assess the Applicant a fine of up to \$500/day for each day after the later of the Certified Site Plan due date or the submittal date until such time as plans have been submitted that conform to all conditions of approval.

#### 18. Certified Site Plan

Prior to approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a. Include the final forest conservation approval, stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b. Add a note to the site plan stating that “M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading”.
- c. Revised parking calculations.
- d. Modify notes to include M-NCPPC Staff approval required for planting plan substitutions.
- e. Ensure consistency off all details and layout between site plan and landscape plan.
- f. Graphically delineate the Limits of Disturbance.

- g. Revised parking exhibit showing the dedicated residential spaces in the retail core and the updated permitted on-street parking spaces as determined by the Fire Marshall and the Montgomery County Department of Permitting Services.
- h. Show the locations of the MPDUs on all Site Plans.
- i. Detail of the amended soil treatment.
- j. Heights of the proposed units in Blocks GG, H, A and R.
- k. Provide the additional landscaping in the common areas as specified in the conditions of approval.
- l. Details of the upgraded mailboxes, notice boards and flagpoles.
- m. Provide internal green area computations for the parking facilities.
- n. Provide details of the signs and locations of signs for the reserved/dedicated parking spaces.
- o. Letter from the Clarksburg United Methodist Church agreeing to details of the pedestrian connection and provision of parking.