

Appendix B
Applicant's Parking Analysis and Correspondence

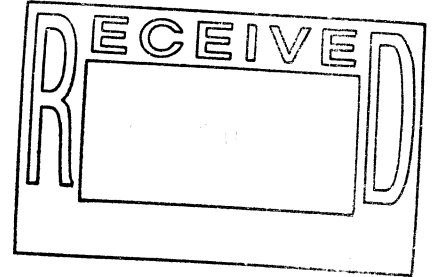


AT THE HEART OF GREAT LIVING

November 20, 2008

By Hand Delivery

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



Re: Clarksburg Town Center – Supplemental Site Plan Information

Dear Dr. Hanson and Members of the Planning Board,

This letter transmits the additional information related to the recommendation and conditions for the approval of Site Plan 820070220 contained within the October 23, 2008 Staff Report that were requested by the Planning Board at the November 6, 2008 hearing on the Clarksburg Town Center. Please include this letter and its attachments in the public hearing record.

At the November 6, 2008 hearing, the Planning Board requested additional information on the following recommended conditions:

5. Recreation Facilities

- [a. The Applicant shall meet the square footage requirements for all the applicable proposed recreational amenities and demonstrate that each element is in conformance with the approved M-NCPPC Recreational Guidelines.]

7. Environmental

- d. Reforestation/afforestation plantings outside Piedmont Woods Park and outside the limits of disturbance on the Clarksburg Town Center Development are to begin in the first planting season following approval of the Certified Site Plan. Plantings within areas of future disturbance [are to begin] must occur in the first planting season following the stabilization of the applicable disturbed area.
- k. Applicant must change all of the 5-ft natural surface trails from Kings Pond area south through the Greenway and in Piedmont Park to 4-ft trails as per the approved FFCP dated July 24, 2006.
- n. The Applicant must provide afforestation plantings totaling [at least 9.31] 8.91 acres on the residential portion if 13.39 acres are being planted at Piedmont Park. The total afforestation planting requirement is [22.7] 22.3 acres.

9. Landscape and Lighting

- e. Expand the base of the Grand Staircase to include a seating area with additional planting.

Dr. Royce Hanson, Chair
and Members of the Montgomery County
Planning Board
November 20, 2008
Page 2

Enclosed with this letter are the following materials which address each of the aforementioned recommended conditions:

- 1) Proposed New Recreational Facilities Compliance to Recreational Guidelines statement, with attachments.
- 2) The Applicant's consultants met with Environmental Planning staff to discuss the afforestation planting requirements. Unfortunately, a meeting could not be held until in the afternoon on November 19 and minutes of that meeting are attached. We are confident the minor refinements referenced in the minutes will be resolved prior to the Board's next hearing on the site plan.
- 3) Conceptual renderings of the modified United Methodist Church (UMC) stairs to address planning staff comments.

The Applicant looks forward to discussing the enclosed materials with the Board at the next hearing. In the interim, if additional information is needed, please let us know.

Very truly yours,

Newland Communities for
NNPII-Clarksburg, LLC



Robert K. Ditthardt
Sr. Project Manager

cc: Mr. Steven Z. Kaufman
Mr. Todd D. Brown
Mr. Douglas Delano
Douglas Hageman, Esq.
Ms. Rose Krasnow
Mr. Robert Kronenberg
Ms. Lyn Fantel (CTCAC)
David Brown, Esq.

**CLARKSBURG TOWN CENTER
11/20/08 ADDITIONAL INFORMATION SUBMISSION TO M-NCPPC**

**PROPOSED NEW RECREATIONAL FACILITIES COMPLIANCE TO RECREATIONAL
GUIDELINES**

Page 1 of 2

All proposed new recreational facilities that are required for the Clarksburg Town Center to meet the recreation amenity supply requirements will comply with the M-NCPPC Recreation Guidelines: Guidelines for Recreation Amenities In Residential Developments, approved by the Montgomery County Planning Board, dated September 1992, with the exception of the Town Green Open Play Area II, the Piedmont Woods tennis courts, and the Residents Club (Community Center) expanded main swimming pool, sport court and indoor fitness facility expansion.

Residents Club (Community Center)

Planning Staff recommended, in its October 23, 2008 Staff Report, replacing the year-round, two-lane indoor lap pool and the 800-square foot snack bar building (both called for in the Plan of Compliance) with an all-sport court. In response, the Applicant provided Staff with a design concept dated April 11, 2008 ("Plan 'A'"). During the November 6, 2008 hearing, there was some discussion regarding further community input. As a result of comments provided by the HOA Pool & Recreation Committee an alternate design concept is submitted for staff review ("Plan 'B'"). Plan "A", HOA Pool & Recreation Committee review comments to it, and Plan "B" are attached for reference as Attachment 1, Attachment 2, and Attachment 3, respectively.

The Applicant prefers Plan "A" over Plan "B" for the following reasons; 1) the sport-court is considerably closer to the recommended M-NCPPC guideline, 2) the larger sport-court affords greater flexibility in the activities that can be accommodated, 3) its construction will be less disruptive to the use of the existing facility, 4) the ceiling height of the community room better accommodates movie projection, if desired, and 5) more direct handicap accessibility is provided to the building addition. However, the Applicant is willing to construct either improvement as required by the Board.

Swimming Pool

The Plan of Compliance approved the replacement of, in part, a once contemplated swimming pool on the west-side of the community with an extension of the existing pool on the east-side of the community to a length of 25-meters and widened by 8-feet. Under the Compliance Program (and under both Plan "A" and Plan "B" referred to above), the pool area provided is approximately 67-percent of the pool area required under Section IV of the Montgomery County Health Department Manual on Public Swimming Pool Construction, Executive Regulation No. 61-91, dated April 23, 1992:

**CLARKSBURG TOWN CENTER
11/20/08 ADDITIONAL INFORMATION SUBMISSION TO M-NCPPC**

PROPOSED NEW RECREATIONAL FACILITIES COMPLIANCE TO RECREATIONAL GUIDELINES

Page 2 of 2

Number of Dwelling Units	1,207	Residential du	
Community/Neighborhood Pool Multiplier	0.86		
Design Population	1,039	persons	(# Dwellings x Pool Multiplier)
Required Pool Area	12,468	sq. ft.	(State Code @ 12 sq. ft./person)
Pool Area Provided:	8,395	sq. ft.	67 % of Required Pool Area

Indoor Exercise Room

Plan "A" and Plan "B" provide for a sport court with approximate interior dimensions of 32-ft. x 66-ft. and 25-ft. x 47-ft., respectively (these dimensions are subject to change during preparation of the permit/construction documents). Due to site constraints, Plan "B" cannot provide a larger sport-court.

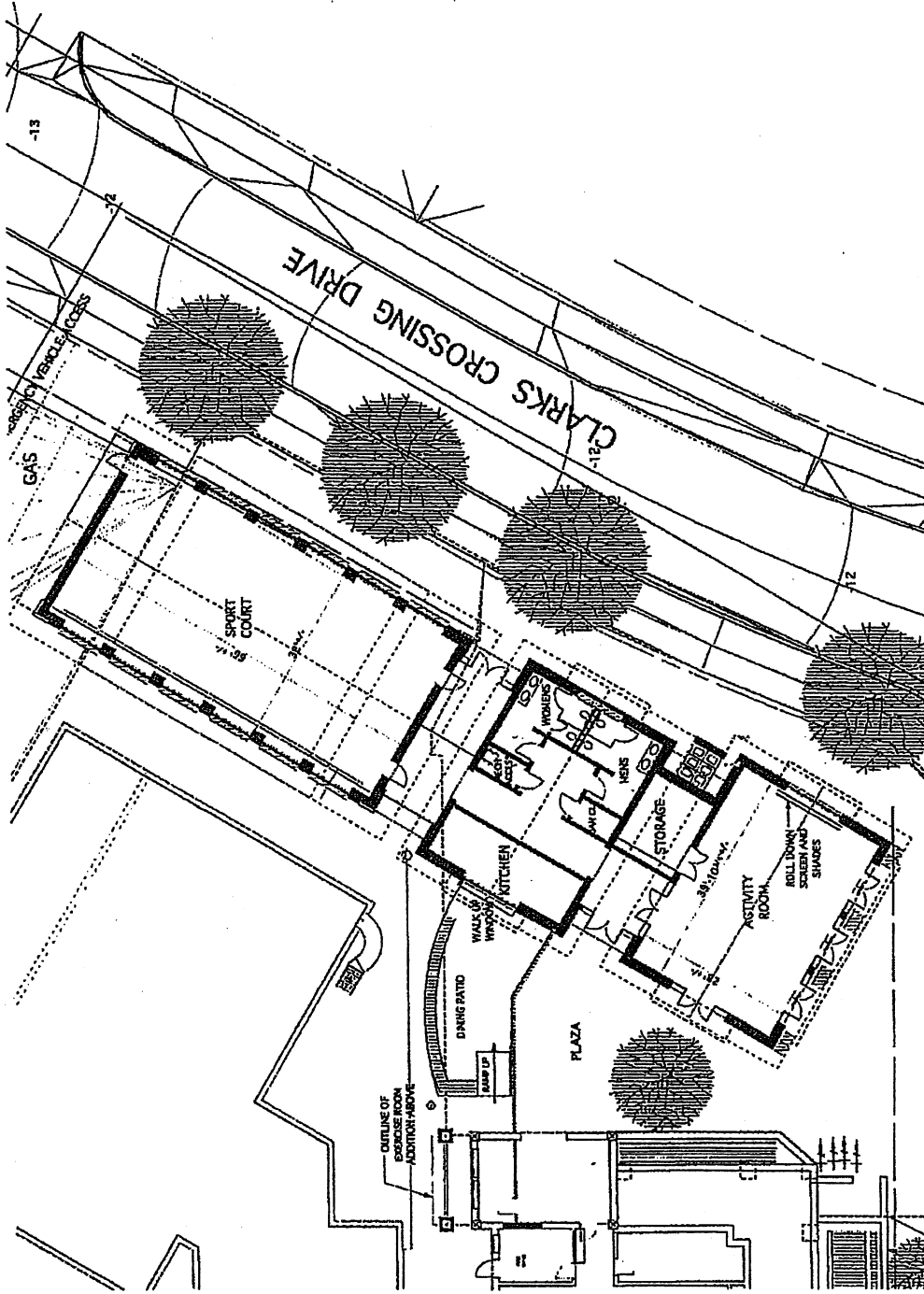
Because of existing site constraints neither facility can meet the minimum 50-ft. x 80-ft. dimension guideline for a full-size basketball court or the minimum 50-ft. x 56-ft. MP Court I (cross-court) or MP Court II (half-court) dimension. However, both Plan "A" and Plan "B" provide quality indoor exercise space that will meet the community's needs and provide for the flexible scheduling of different indoor exercise activities. It is also important to recall that Piedmont Woods park will contain both full-size tennis and full-size basketball facilities.

Indoor Fitness Facility

Although not included as part of the recreation supply calculations, an approximate 110 sq. ft. expansion of the existing fitness room is proposed. The expansion will include an additional four (4) aerobic stations.

Based upon the Recreation Guidelines, an incremental expansion of the facility should include 350 square feet and contain six (6) aerobic and one (1) weight training stations. Because of site constraints, it is not possible to meet these guidelines. However, the proposed 110 square foot expanded facility, including four (4) additional aerobic stations, will provide additional recreation and fitness opportunities for the community.

ATTACHMENT 1



O'Neil & Manion Architects P.A.

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Clarksburg Community Center

Design Concept - PLAN "A"
APRIL 11, 2008

ATTACHMENT 2

Robert Ditthardt

From: Schottland [bigschott@yahoo.com]
Sent: Monday, November 17, 2008 3:40 PM
To: Robert Ditthardt; Lisen Edwards
Cc: Doug Delano; Carol Gregoire; Alicia Wilson; Tim DeArros; Dave Ziffer
Subject: RE: Proposed Sport-Court improvements at the Residents Club

Hi Lisen,

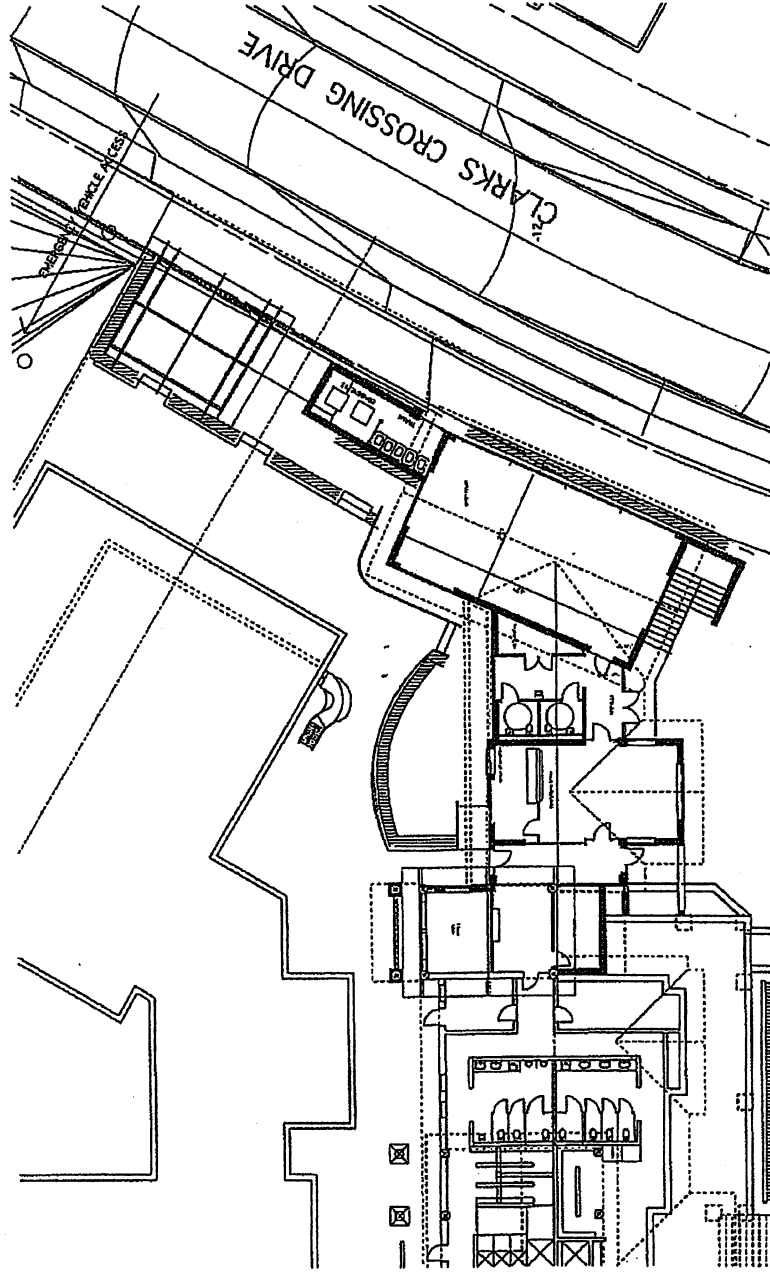
I would like to clarify the sport court item. None of the plans we saw had a "full court" sport court and we did much prefer the plan with the extension on the existing building, even though it had a smaller sport court.

Thanks,
Sue

--- On Mon, 11/17/08, Lisen Edwards <lisen.edwards@casinc.biz> wrote:

> From: Lisen Edwards <lisen.edwards@casinc.biz>
> Subject: RE: Proposed Sport-Court improvements at the Residents Club
> To: "Robert Ditthardt" <rditthardt@newlandcommunities.com>, "Lisen.Edwards@casinc.biz" <lisen.edwards@casinc.biz>
> Cc: "Doug Delano" <ddelano@newlandcommunities.com>, bigschott@yahoo.com, "Carol Gregoire" <carolgregoire@yahoo.com>, "Alicia Wilson" <mygrlz3@gmail.com>, "Tim DeArros" <timdearros@comcast.net>, "Dave Ziffer" <dtziffer@yahoo.com>
> Date: Monday, November 17, 2008, 12:56 PM
> Hi Bob,
> After speaking to Sue Schottland, I emailed the drawings to
> the Pool and Rec
> committee.
> They have responded with the following comments:
> 1. The drawing looks as though the pool deck near Clark's
> Crossing will be
> greatly reduced. They don't want to lose that pool
> deck area.
> 2. They prefer an extension from the existing building as
> shown on the
> March 19, 2008 drawings. They don't like to sport
> court being a separate
> building.
> 3. They are also concerned that the new building will be
> intrusive to the
> existing view that the town home residents currently enjoy.
> 4. They prefer the sport court to be full court size.
> 5. They would like to have the largest fitness center
> possible.
> 6. The covered seating area is definitely a plus.
> If additional information is needed, please let me know.
> Thanks, Lisen
>
>
> Lisen Edwards
> Community Manager
> Clarksburg Homeowners Association
> 12901 Sugarloaf Chapel Drive #15
> Clarksburg, MD 20871
> Phone: 301-444-8680
> Fax: 301-444-8682
>
> Note: Due to the increasing risk of e-mail borne viruses,
> CAS, Inc. is forced to no longer accept e-mails without
> a subject or containing a non-descriptive subject.
> Our system will filter out all messages with informal
> greetings or subjects such as "Hi, Hello, Greetings,

ATTACHMENT 3



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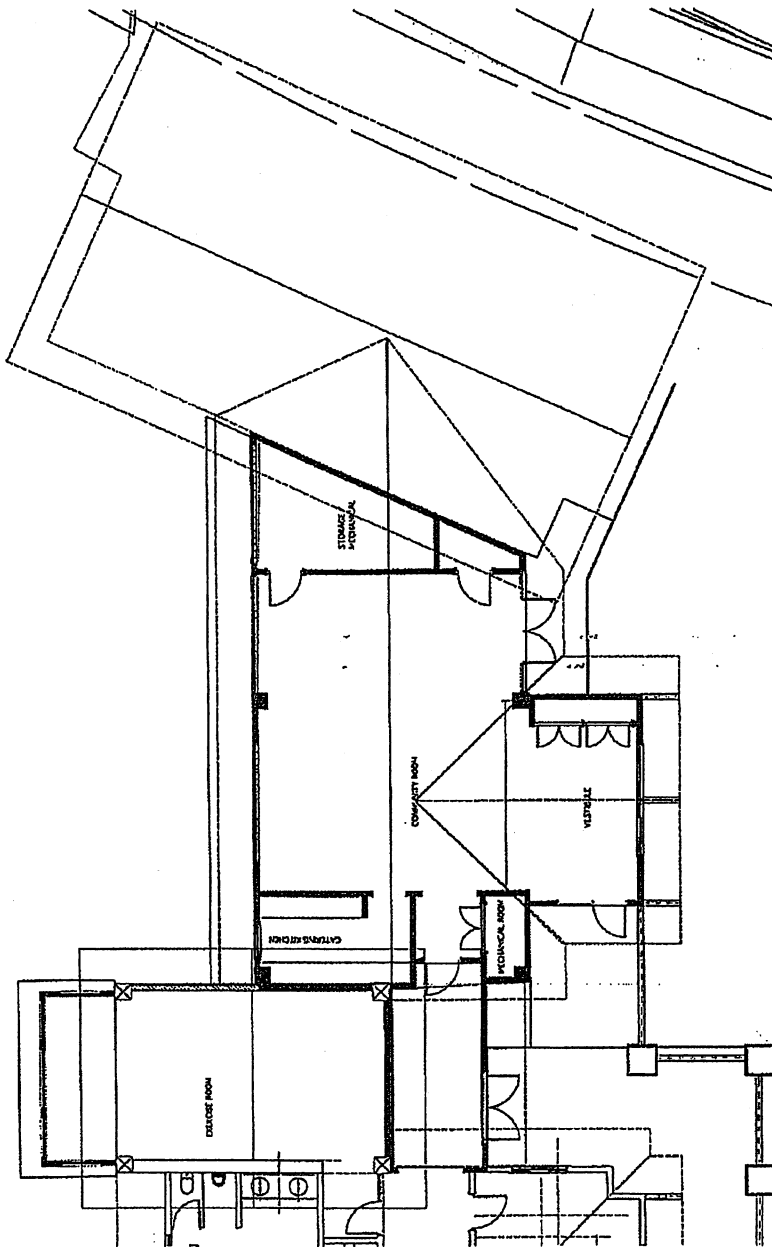
DRAFT CONCEPT

Clarksburg Community Center

Program Discovery and Definition

March 19, 2008 Revised November 20, 2008 to include required fire egress stair

PLAN "B"



O'Neil & Manion Architects P.A.

DRAFT CONCEPT

Clarksville Community Center

Program Discovery and Definition

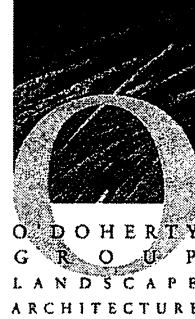
March 19, 2008 Revised November 20, 2008 to include required fire egress stair

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PLAN "B"

**O'DOHERTY GROUP
LANDSCAPE ARCHITECTURE, PC**

**91 Cathedral Street
Annapolis, MD 21401
Phone: 410-269-4101 / 866-500-4102 Fax: 410-263-6087**



MEMORANDUM

To: Bob Ditthardt
CC:
From: Debby Smith
Date: 11-19-08
RE: Meeting Minutes - Forest Conservation Plan Meeting with M-NCCPC

ATTENDEES:

Mark Pfefferle – M-NCPPC
Doug Johnsen – M-NCPPC
Kevin Tankersley – Land Design
Tim Longfellow - GLW
Debby Smith – O’Doherty Group
Sara Thiel – O’Doherty Group

Conditions are in bold and the discussion of the condition follows.

Item 7n. 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.

DISCUSSION: We understand and agree with the afforestation requirement stated earlier in the report of 25.26 acres. In our Reforestation Summary Table on sheet FC-38, we incorrectly carried down a number of 3.70 for the commercial area when it should have been 0. Once this correction is made the Total Required (after Landscape Credits are applied) will equal that provided. We provided a marked up sheet FC-38 to correct the error to M-NCPPC at the meeting and they were in agreement with the correction. M-NCPPC also requested we send them a corrected sheet with these numbers for their records.

Item 7u. 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.

Item 7w. 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.

DISCUSSION: This area is along Clarks Crossing Road and is already existing as a 3:1 slope. M-NCPPC requested that we regrade the slope so that this area can be added back into the onsite afforestation numbers. There is sufficient room at the bottom of the slope to regrade.

Item 7p. 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 on K on Sheet 13.

DISCUSSION: Combine adjacent areas into one area. At time of next submission provide a separate spreadsheet to track which areas were combined. Remove the 2002 and 2004 tracking information from sheet FC-38 in future submissions.

Item 7c. Reforestation/afforestation plantings on the Clarksburg Town Center development are to begin in the first planting season following approval of the Certified Site Plan.

DISCUSSION: M-NCPPC initially asked that we provide a phasing spreadsheet by area. We noted that rewording for this was agreed upon at the board hearing to the effect that areas to be disturbed will be planted in the planting season following the end of disturbance, however, we did not have a final copy of the wording at this meeting.

Item 7i. 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.

DISCUSSION: It was agreed that we would hatch the trees that will be counted towards the credit and delete shrubs from the plan for clarity purposes. M-NCPPC confirmed that the Landscape Credit for afforestation is counted as a full credit.

M-NCPPC raised the question on the street tree spacing. They stated that MDOT standards are 50' O.C. M-NCPPC wants to nail down the requirement and make sure the plans comply so that during installation and final inspections changes aren't made that would take away promised trees for the Landscape Credit. We are typically showing 40' O.C. throughout the site and 30' in the Town Center on Clarksburg Square Road. There was some kind of approval granted for 40' O.C., however, we need to research by whom and whether it applies to proposed areas.

Item 7k. 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.

DISCUSSION: We noted that the last comment we had from the Parks Department had requested the trail be 5-ft or wider. Doug Johnsen to confirm width of trail with Doug Powell.

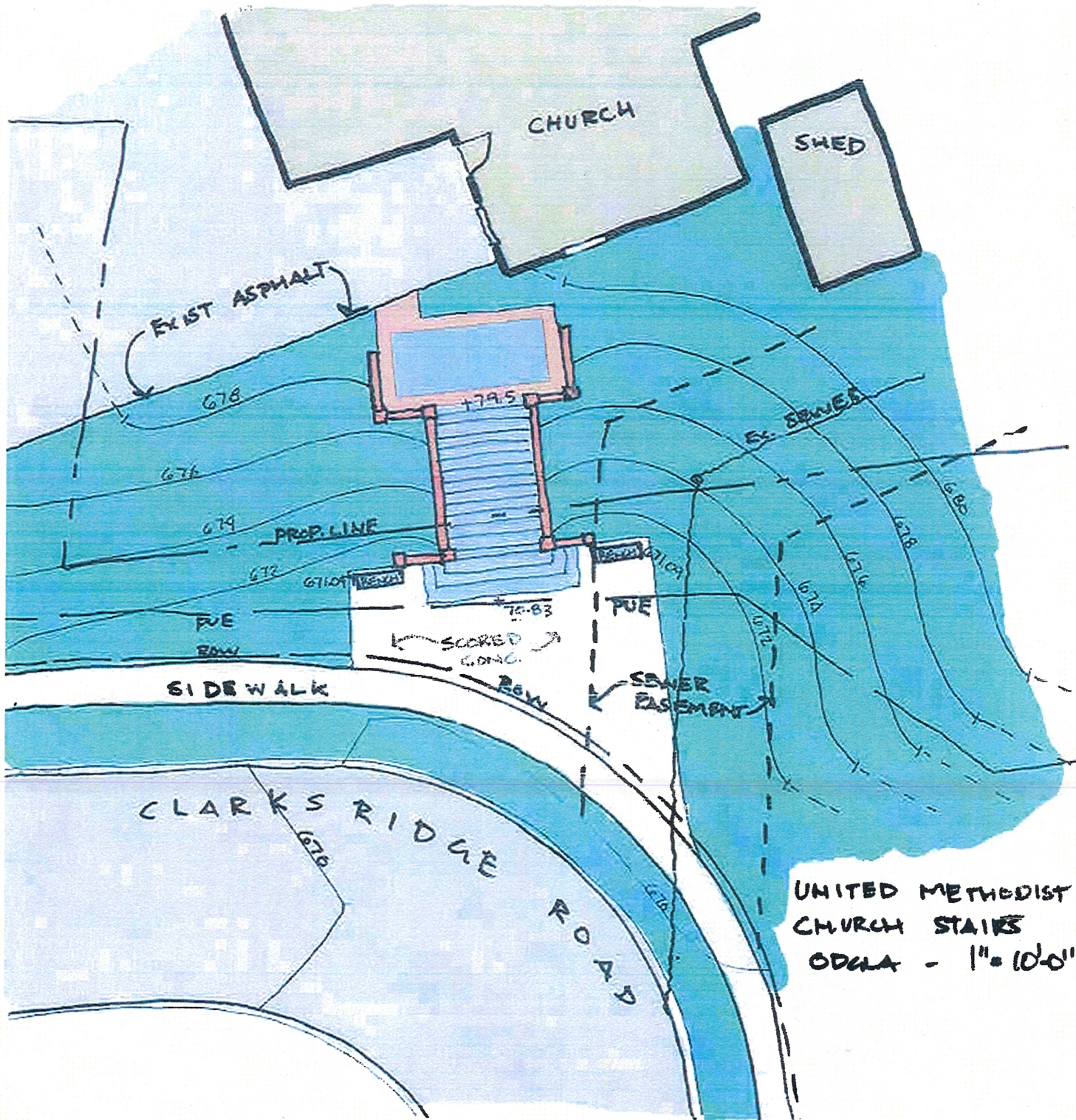
Item 7m. There should be no changes in the size of any afforestation or reforestation planting area from what was approved in 2004 and revised in 2006. If changes are necessary, the applicant must provide a written explanation and justification for the area size changes and compensate for the loss of that planting area.

DISCUSSION: We provided a spreadsheet of the changes. Small changes were not a concern. The larger changes were reviewed. One is addressed with Items 7u and 7w. The other two areas of concern were areas A-2 and B-3 which were reduced by exactly 1.00 acre. The reduction was due to the shifted Wetland Mitigation Area and the requirement to stay out of the SWM easements. M-NCPPC suggested that because there is no SWM facility in this area that perhaps we could still afforest and there were be overlapping SWM and FCP easements. Tim Longfellow is looking into the existing easements and will provide information to M-NCPPC. If allowed, this area will be picked up as afforestation for the certified site plan submission.

Item 7aa. Applicant must clarify why the LOD extends out into afforestation areas Z and HH on Sheet 37.

Item 7bb. Applicant must clarify why the LOD extends out into afforestation areas Z and HH on Sheet 37.

DISCUSSION: We clarified that these areas were included in the LOD because there will be temporary sediment traps in these locations. The final disturbance will not be within the afforestation area. M-NCPPC requested that none of the afforestation be south of the utility easement running through the center of the site. With the reduced amount of plantings required we don't anticipate this will be an issue.



UNITED METHODIST
 CHURCH STAIRS
 ODLA - 1" = 10'-0"

NOVEMBER 20, 2008 - CONCEPTUAL RENDERING OF UMC STAIRS TO ADDRESS PLANNING STAFF COMMENTS



NOVEMBER 20, 2008 - CONCEPTUAL RENDERING OF UMC STAIRS TO ADDRESS PLANNING STAFF COMMENTS

Kronenberg, Robert

From: Brown, Todd D. - TDB [tbrown@linowes-law.com]
Sent: Thursday, November 20, 2008 3:35 PM
To: Krasnow, Rose; Kronenberg, Robert
Cc: ddelano@newlandcommunities.com; rditthardt@newlandcommunities.com; Kaufman, Stephen Z. - SZK; brown@knopf-brown.com; lfantle@aol.com
Subject: Clarksburg Town Center - Parking
Attachments: Parking Letter_Clarksburg.PDF

Good afternoon, Rose and Robert. Attached is an additional letter concerning parking at the Town Center. The letter is from Norman Garrick and Wesley Marshall at the Center for Transportation & Urban Planning. The letter should have been included in the materials filed with the Commission this afternoon. Please provide each Boardmember with a copy of this letter. Thank you

<<Parking Letter_Clarksburg.PDF>>

NORMAN W. GARRICK TRANSPORTATION AND PLACEMAKING

November 20, 2008

Dr. Royce Hanson, Chairman
Montgomery County Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Dr. Hanson:

This letter is being sent with regard to the Clarksburg, Maryland town center proposed by Newland Communities. It is our understanding that the town center will have approximately 170,000 square feet of retail space including a grocery store. The buildings in the Clarksburg town center will typically be three levels with residential on the upper two levels. Our experience in parking is specific to the parking of town centers in small cities. The developer has requested that we review the Clarksburg plans and make recommendations as to an appropriate amount of parking for the retail space and for each live/work unit.

Based upon the proposed Clarksburg project and our experience with similarly-sized town centers of comparable site characteristics, we recommend the following:

- A range of 2.1 to 2.3 parking spaces per 1,000 square feet of retail space
- One parking space for each live/work space less than 2,500 square feet and one parking space for every 1,000 square feet of additional space

The recommended parking rate for retail space is based upon our own research as well as a June 2006 report by Nelson Nygaard. Our 2004 parking study entitled "Parking at Mixed-Use Centers in Small Cities" looked at the town centers of six smaller New England cities (average population of approximately 30,000 residents). All six sites are some of the most economically vibrant centers in the area. Three of these centers (West Hartford, Connecticut, Northampton, Massachusetts, and Brattleboro, Vermont) characterize the mixed-use and walkable qualities proposed in the Clarksburg town center and are of similar retail size. According to the U.S. Census means of transportation to work data, mode choice for these cities is similar to that found in Montgomery County.

In this study, we determined a typical parking demand of 1.5 vehicles per 1,000 square feet (SF) of total occupied building space and a peak demand of 1.8 vehicles per 1,000 SF. Although the parking ordinances in these locations specified over 5 spaces per 1,000 SF, the sites supply 2.3 spaces per 1,000 SF. This left over 20% of the total town center spaces empty at peak demand. The building space numbers are inclusive of retail space, office space, and residential.

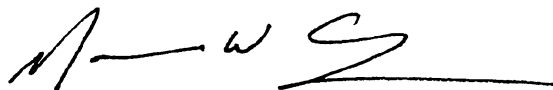
A similar study by Nelson Nygaard associates within a document called the "Parking & TDM Toolkit" observed the main street areas of Palo Alto, Chico, and Santa Monica, California as well as Kirkland, Washington. These cities were all slightly larger than those in our study and ranged from 45,000 to 84,000 residents. Overall, these cities averaged a peak parking demand of 1.8 occupied spaces per 1,000 SF of non-residential land use.

The range we recommend is based upon the peak demand rates observed in the parking studies. Using the peak demand rate average of 1.8 spaces per 1,000 SF and assuming 85% occupancy equates to 2.1 spaces per 1,000 SF. If we increase the average observed peak demand by 10% to 2.0 spaces per 1,000 SF and perform the same calculation, we get the high side of the range being 2.3 spaces per 1,000 SF.

The live/work recommendations are based upon an examination of the American Planning Association Model Smart Land Development Regulations, information from the Live/Work Institute, and a review of some current ordinances. The existing regulations examined include those in Oakland and San Jose, California, and Seattle Washington.

Please do not hesitate to contact us with any questions or if you would like a copy of the aforementioned parking studies.

Sincerely,



Norman W. Garrick, PhD
Center for Transportation & Urban Planning



Wesley E. Marshall, P.E.
Center for Transportation & Urban Planning

cc: Douglas C. Delano, Newland Communities; Robert Gibbs, Gibbs Planning Group

35 STORRS HEIGHTS ROAD NORMAN W. GARRICK
STORRS CONNECTICUT 06268 USA 860.429.4124

Krasnow, Rose

From: Brown, Todd D. - TDB [tbrown@linowes-law.com]
Sent: Thursday, November 20, 2008 3:35 PM
To: Krasnow, Rose; Kronenberg, Robert
Cc: ddelano@newlandcommunities.com; rditthardt@newlandcommunities.com; Kaufman, Stephen Z. - SZK; brown@knopf-brown.com; lfantle@aol.com
Subject: Clarksburg Town Center - Parking
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<<Parking Letter_Clarksburg.PDF>>

LINOWES
AND | BLOCHER LLP
ATTORNEYS AT LAW

December 1, 2008

Stephen Z. Kaufman
301.961.5156
skauffman@linowes-law.com
Todd D. Brown
301.961.5218
tbrown@linowes-law.com

By Hand Delivery

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

Re: Clarksburg Town Center – Response to November 20, 2008 Written Submission of
CTCAC

Dear Dr. Hanson and Members of the Planning Board:

On behalf of the Applicant, NNP II – Clarksburg, LLC, and in accordance with your request, this letter responds to the November 20, 2008 Statement of the Clarksburg Town Center Advisory Committee (“CTCAC”). Please include this letter in the public hearing Record.

The Statement submitted by CTCAC addresses four issues: (i) conformity to the Compliance Program; (ii) economics of the Settlement Agreement and Compliance Program; (iii) retail store depth; and (iv) structured parking. We also note that CTCAC has not submitted any additional landscaping designations for use of the \$1 Million landscape enhancement fund. Our notes indicate the Board directed CTCAC to make such designations by November 20, 2008 (discussed below).

Conformity to the Compliance Program

At the beginning of the November 6, 2008 hearing, the Board stated the question before it was whether the Project Plan Amendment, Preliminary Plan Amendment and Site Plan applications satisfied the conditions of the Compliance Program. The Board also stated that reasonable modifications to the Compliance Program would be allowed to accomplish its objectives. In this regard, the Board recognized that improvements to the Compliance Program, including the addition of the sport court, the expanded library space and adjustments to the live/work units were appropriate. The Applicant agrees with that position and further emphasizes that blind obedience to the Compliance Program might render the project unbuildable based upon the considerable feedback received from prospective retail developers.

Hon. Royce Hanson, Chair
and Members of the Montgomery County Planning Board
December 1, 2008
Page 2

As Judge Howe testified at the November 6, 2008 hearing, the plan filed with the Board pursuant to her Order was consistent with the Compliance Program. In addition, the Applicant's November 20, 2008 submission contained a concise summary of the additional changes to the plan made in response to staff and Board comments and demonstrated the plan's continued consistency with the Compliance Program (Document 4 of the Applicant's November 20, 2008 submission). Mr. Torti also emphasized in Document 1 to the November 20 submission ("Design Narrative for Clarksburg Town Center") that (i) "all parking for the Retail District (which is totally contained in the Retail District) are at the identical ratios used at the Charrette and used in the Compliance Plan," and (ii) "we have adjusted and fine tuned this Urban Design Plan to be virtually identical in program and design to the original intent of the Charrette and to the Compliance Plan."

We also note the Board's Compliance Program provided that the parking facility in Block 5 (now Block LL) of the retail center could be two or three levels and the parking facility in Block 3 (now Block KK) could be one or two levels. (Circle 23 – Circle 24):

"Block 3 immediately to the east of Block 4 with frontage on both Clarksburg Square Road and General Store Drive will contain first floor retail with two-story residential above, live/work units, and liner townhomes, all constructed around a 1-2 story parking structure."

* * *

"The footprint of the grocery use in Block 5 shall be approximately 51,000 square feet. The grocery store may also include mezzanine space, but the total leaseable square footage of the grocery store shall not exceed 65,000 square feet. Block 5 will also contain a structured 2 or 3 story parking garage with the upper parking level at grade to accommodate the grocery store."

In the arbitration proceedings between the parties, Judge Howe stated the Compliance Program provided the parking in Block 5 (Block LL) could be either two or three levels, and the parking in Block 3 (Block KK) could be one or two levels. During the course of the final arbitration hearing on May 14-15, 2008, Judge Howe approved the revised project plan and site plans that were to be submitted to the Board, including a parking facility in Block 5 (Block LL) with two levels and a parking facility in Block 3 (Block KK) with one level. This parking configuration is consistent with the Compliance Program and what is shown on the Applicant's November 20, 2008 submission (Documents 1 and 2).

Hon. Royce Hanson, Chair
and Members of the Montgomery County Planning Board
December 1, 2008
Page 3

Economics of the Settlement Agreement and Compliance Program

Judge Howe testified on November 6, 2008 that the plan she ordered the Applicant to file was consistent with both the Settlement Agreement and the Compliance Program. CTCAC disputes Judge Howe's rulings, but the plain fact is that Judge Howe reached this conclusion after a lengthy evidentiary hearing where both parties presented witnesses and were represented by counsel; CTCAC agreed to be bound by the Judge's ruling; and CTCAC specifically agreed to Judge Howe as arbitrator. Further, although the Board recognized the agreement between CTCAC and the Applicant, the Board stated the agreement is not before it.

In fact, contrary to CTCAC's assertion, structured parking was never considered by the parties as "an amenity in lieu of fines". Rather, it was thought by all at best to be a necessary evil to park the highly intensive mixed use development on a very small site. Unfortunately, the market has rejected this configuration. Moreover, the value to the Applicant of the underlying land will be reduced by any structured parking or other unusual requirements imposed upon the retail center. Thus, the Applicant clearly will be "paying" for any structured parking. The fact that consumers reject the use of structured parking in this type of location addresses more closely the issue of whether the center will be built and succeed.

Retail Store Depths

The Applicant's November 20, 2008 submission reflects modifications to the plans that include revisions to the retail store depths in Block KK. Retail buildings in Block KK are now 60 feet deep. The Applicant, as required by the County and dictated by the Board, replaced the previously proposed angled parking adjacent to Block KK with parallel parking, thus freeing up additional space for the increased retail store depth. Adjacent sidewalk widths have also been adjusted. The retail adjacent to the Grocery building is also 60 feet deep. It is interesting to note that CTCAC references "working with Streetsense" as a foundation for its opinion on retail store depths and parking ratios. We recall that CTCAC was strongly opposed to Streetsense making a presentation during the original design charrette as that speaker was then seen as representing typical suburban strip center thinking and not a supporter of New Urbanist retail design concepts.

Structured Parking

With no apparent experience in designing, building, or leasing shopping centers, CTCAC argues for parking ratios that are substantially in excess of the agreed upon parking ratios used by its own consultant, Duany Plater-Zyberk, and Mr. Torti in developing the charrette plan and the

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and Members of the Montgomery County Planning Board
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Plan of Compliance. As Mr. Torti emphasized in his statement concerning the latest modified plan (Documents 1 and 2 in the Applicant's November 20, 2008 submission), "***All parking for the Retail District (which is contained in the Retail District) are at the identical ratios used at the Charrette and used in the Compliance Plan.***" Moreover, the overwhelming evidence in this case demonstrates the parking ratios reflected in the charette plan and Compliance Program are conservative based upon the mix of uses and the design of the Town Center.

As discussed by retail and new urbanist experts in the Applicant's November 20, 2008 submission, structured parking in Block KK will be a major negative to shoppers as compared to a well landscaped surface lot. Decked parking is not pedestrian friendly, and to our knowledge none of the other shopping areas in the Clarksburg area will use decks. As a result, the Town Center's retailers would be at a serious disadvantage. Moreover, parking ratios of 4.0 per 1000 sf of gross retail area or less are widely accepted for all types of shopping centers and town centers. Even Wal-Mart and suburban strip centers only require 4.0/1000 or less. Quality planned mixed use centers such as Clarksburg will only need 3.0 to 3.5 per 1000. This ratio is not dependent on transit availability and is a well-documented fact (*see* letters included with November 20, 2008 submission (Document 3)). The plan as shown is pedestrian friendly. According to industry experts, the 5.0/1000 ratio demanded by CTCAC has not been used by the industry for years. It is a holdover in our County Code and a standard, which the Board previously has waived to reduce on-site parking. Based on the evidence, the center is not "grossly under-parked" as CTCAC contends and CTCAC offers little support for its position.¹

Lastly, as noted above, CTCAC has not identified additional enhancements to be funded with the landscape enhancement fund. The Board directed CTCAC to do so by November 20, 2008. The Applicant's agreement to modify Condition No. 10 (Site Plan Review) as requested by CTCAC at the November 6, 2008 hearing was based on the Board's direction to CTCAC to make such designations by November 20, 2008. It is imperative that CTCAC's efforts in this regard not delay preparation of the certified Site Plans, particularly considering the financial penalty to the Applicant attendant to such delay. Therefore, the Applicant requests the Board direct CTCAC to identify not later than December 31, 2008 the suggested landscape enhancements to be funded with the remaining landscape enhancement fund. Upon receipt of CTCAC's designations, the Applicant will (i) work with Staff to determine which enhancements are appropriate and within the funding limits of the enhancement fund, and (ii) show the approved enhancements on the certified Site Plans. If CTCAC fails to identify its suggested enhancements by December 31, 2008, the Applicant requests that the entirety of the remaining enhancement fund be provided to the homeowners association to defer future community maintenance expenses.

¹ Additional comments by Robert Gibbs of Gibbs Planning Group, Inc. are enclosed as Attachment 1.

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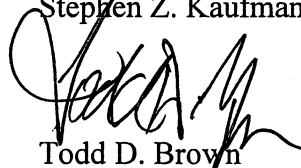
Thank you for your consideration. We look forward to the December 11, 2008 proceeding before the Board.

Sincerely

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman



Todd D. Brown

cc: Mr. Douglas Delano
Mr. Robert Ditthardt
Ms. Rose Krasnow
Mr. Robert Kronenberg
Mr. John Torti
Mr. Robert Gibbs
David Lieb, Esq.
Kurt Fischer, Esq.
David Brown, Esq.

Attachment 1

GIBBS PLANNING GROUP

Comparison of Town Centers and Super Regional Anchors

Clarksburg Town Center's "main street" will be made up of dozens of small to medium sized specialty retailers and restaurants, anchored with a supermarket. These businesses will offer a variety of unique local, regional and national goods and services grouped in street front shops that must appeal to a broad range of market segments and demographic groups. Clarksburg's success will depend on its ability to attract the casual afternoon browser, the purpose driven purchaser and the extended multi-store destination shopper as well as those living in the surrounding neighborhoods.

The Clarksburg's town center will have more than adequate parking to accommodate a variety of restaurants and specialty food businesses. Many of the town center's visitors will park once and make multiple stops, often including a coffee, snack or full meal. The industry's (APA, CNU, ICSC, ULI, etc.) proven parking ratios of 3.0 to 4.0 per 1000 square feet of gross space for walkable mixed use town centers anticipates a mixture of restaurant, retail and office tenants. In addition, the entire town center will be professionally managed to monitor parking activities.

Clarksburg's business district must also compete with the region's multiple new larger suburban lifestyle shopping centers. These small shops and cafes can best compete with major super stores and retail centers by offering quality goods and services that are combined with the needs of the modern shopper.

The Town Center's many individually owned shops will be in sharp contrast to the large discount or regional superstore anchors such as Costco, Target and Wegmans. At 140,000 to 200,000 square feet in size each, these super regional anchors are often larger than all the retail in many small towns. These major retailers pull from large trade areas and their shoppers plan on extended shopping times.

Wegman's superstores for example, offer a combination of departments that could easily fill a small village of shops, including a bakery, a book store, a card shop, a coffee shop, a gift shop, an organic grocery, a seafood market, a restaurant, a wine shop, all in addition to a full sized supermarket.

As a result of their massive size and inventory, the super store or regional mall shopper is willing to park in large surface lots and/or parking decks. Imposing the large surface lots and parking decks on a traditional town center such as Clarksburg would diminish its competitive advantage over supersized anchors and reduce the town's viability. Comparing superstore and regional shopping destinations to traditional town centers such as Clarksburg is inappropriate and simply does not make sense.

LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

RECEIVED

NOV 26 2008

DEVELOPMENT REVIEW

November 26, 2008

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BY HAND DELIVERY

The Honorable Royce Hanson and Members
of the Montgomery County Planning Board
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Clarksburg Town Center - November 20, 2008 Supplemental Parking Analysis -
Corrected Exhibits

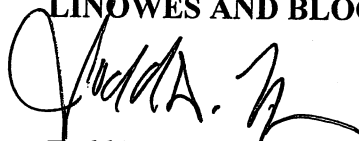
Dear Dr. Hanson and Members of the Planning Board:

Enclosed on behalf of the Applicant are two corrected exhibits from the November 20, 2008 Supplemental Parking Submission. The two exhibits were a part of the materials included under Tab 2 and consist of a revised Use and Parking table (identified as page 6) and a revised West Side Retail Core plan (identified as page 3). On the West Side Retail Core plan the square footage for the liner retail and grocery were transposed, and this has now been corrected. In the Use and Parking table, the retail square footage has been revised slightly to be consistent with the corrected West Side Retail Core plan.

If you have any questions concerning these materials, please contact us.

Sincerely,

LINOWES AND BLOCHER LLP



Todd D. Brown

TDB:kec
Enclosures

Cc: Rose Krasnow
Robert Kronenberg

Ms. Rose G. Krasnow

November 26, 2008

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Doug Delano
Robert Ditthardt
John Torti
Robert Gibbs
David Brown, Esquire
Stephen Z. Kaufman, Esquire

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Compliance Plan			November 19th, 2008 Plan		
Uses	Program	Parking Required	Program	Parking Required	Parking Provided
RETAIL					Curb Spaces: 160 Spaces
Super Market			48,994 SF		Parking Lots
Pharmacy			11,017 SF		Block KK: 156 Spaces
In line Retail			67,989 SF		Block MM: 105 Spaces
Subtotal Retail	128,000 SF (With or Without Mezzanine)	4.3/ 1000sf = 550 Spaces	128,000SF (Without Mezzanine)	4.3/ 1000sf = 550 Spaces	Block GG: 33 Spaces
Flex	7,680 SF	No Parking Required	9,150 SF	No Parking Required	Block BB: 12 Spaces
Live/Work	50 Units = 50,000 SF	4/ Unit = 200 Spaces	46 Units = 46,000 SF	4/ Unit = 184 Spaces	Block CC: 28 Spaces
Total Retail	185,680 SF		183,150 SF		Parking Lots: 334 Spaces
RESIDENTIAL					Parking Garage
Apartments including Accessibles	72 Units	1.7/ Unit = 122 Spaces	90 Units	1.7/ Unit = 153 Spaces	Block LL Lower Level: 225 Spaces
Liner Town Homes	19 Units	1.7/ Unit = 32 Spaces	16 Units	1.7/ Unit = 27 Spaces	Block LL Upper Level: 195 Spaces
Town Homes	19 Units	2/ Unit = 38 Spaces, Self Park	17 Units	2/ Unit = 34 Spaces, Self Park	Parking Garage: 420 Spaces
Courtyard Town Homes	12 Units	2/ Unit = 24 Spaces, Self Park	7 Units	2/ Unit = 14 Spaces, Self Park	
Total Housing	122 Units		130 Units		
Total Parking Spaces		904 Spaces Required		914 Spaces Required	914 Spaces Provided

GROCERY	48,994 SF.
PHARMACY	11,017 SF.
LINER RETAIL	67,989 SF.
TOTAL RETAIL	128,000 SF.

COURTYARD TH	7 UNITS
LIVE/WORK	46 UNITS
LINER T.H.	16 UNITS
TOWN HOME	17 UNITS

