



MEMORANDUM

DATE: April 8, 2005
 TO: Montgomery County Planning Board
 VIA: Rose Krasnow, Chief **RK**
 Michael Ma, Supervisor
 Development Review Division
 FROM: Wynn E. Withans, RLA, AICP **WW**
 Development Review Division
 (301) 495-4584
 REVIEW TYPE: Site Plan Compliance pursuant to Montgomery County Code
 Section 59-D-3.6 (Failure to Comply)
 CASE #: **8-98001, 8-98001B and 8-02014**
 PROJECT NAME: Clarksburg Town Center
 ZONE: RMX-2
 LOCATION: In the northeastern quadrant of the intersection of MD Route 355
 and Stringtown Road
 MASTER PLAN: Clarksburg and Vicinity Master Plan
 HEARING DATE: April 14, 2005



STAFF RECOMMENDATION:

Planning Board finding that building heights of subject structures comply with site plan approvals.

Issue: Alleged Building Height Violation – Citizen Complaint

A resident citizen group, the Clarksburg Town Center Advisory Committee (“CTCAC”), has filed a complaint alleging that certain buildings constructed and/or not yet constructed within the Clarksburg Town Center do not comply with Planning Board approvals. They contend that the approval of (five) four-story buildings, of which two are constructed and three are either under construction or not yet started, do not conform to the Master Plan and Project Plan approvals. This complaint is directed to Buildings 3 and 6 (one built and occupied, the other un-built) by Bozzuto Homes and three structures

containing two over two units (one built and two un-built, all unoccupied) by Craftstar (collectively referred to as the "Subject Buildings").

CTCAC has asked the Planning Board to issue a stop work order pursuant to the authority granted to the Planning Board by Section 59-D-3.6 of the Montgomery County Zoning Ordinance. (See Attachments B and D dated December 8, 2004 and January 25, 2005, respectively). This would halt construction on buildings approved but not yet constructed.

Staff has had numerous meetings, conversations and e-mail exchanges with the CTCAC to discuss the allegation that the heights of the Subject Buildings are not in conformance with Planning Board Approvals. Commission staff responded to CTCAC in a letter dated December 30, 2004 (See Attachment C). Staff does not agree with CTCAC's allegations and described why, in staff's view, the project conformed to earlier approvals.

Letters in response to the complaint from the developers, builders, and builders' attorneys can be found in Attachments E, F and G.

A number of letters both pro and con regarding the building height issue were received from residents of Clarksburg Town Center, including residents of the condominiums in question, and from the Clarksburg Civic Association. They are labeled sequentially starting with Attachment I.

For reference, the earlier staff reports and opinions in question are attached to the Planning Board staff report and are available to the public by request from staff files at the M-NCPPC information counter. Attachment H is a pullout listing of the Data Tables from each approval.

Process

The Zoning Ordinance sets forth the process to be followed when an allegation of noncompliance with a site plan approval arises. Section 59-D-3.6 of the County Code (Failure to comply) states, in relevant part, that:

If the Planning Board finds, for any plan approved under this section, on its own motion or after a complaint is filed with the Planning Board or the Department, that any of the terms, conditions or restrictions upon which the site plan was approved are not being complied with, the Planning Board, after due notice to all parties concerned and a hearing, may revoke its approval of the site plan or approve a plan of compliance which would permit the applicant to take corrective action to comply with the site plan. If at the end of the term of the plan of compliance sufficient corrective action has not taken place to cause compliance, the Planning Board may revoke its approval of the site plan or take other action necessary to ensure compliance, including imposing civil fines, penalties, stop work orders and corrective orders under Chapter 50. The Planning Board may request and obtain investigations and reports as to compliance from appropriate County or State agencies.

Upon decision by the Planning Board to revoke approval of a site plan, any applicable building permits and use-and-occupancy permits issued pursuant to a prior Planning Board approval are hereby declared invalid.

The above-quoted section of the Code establishes a multi-stepped process, as described below:

1. Threshold Determination of Noncompliance

If it comes to the attention of the Planning Board that a term, condition or restriction of site plan approval is not being complied with, the Board must first make a finding that the allegation of noncompliance has merit. The Board must hold a public hearing to determine whether a violation of site plan approval exists (“Threshold Hearing”). The Board will receive testimony from the complainant(s) (if applicable), the alleged violating party, and any other interested persons and entities, to determine whether a violation of site plan approval exists.

Following consideration of the evidence of record, including testimony and any evidence received at the Threshold Hearing, the Board will make a finding as to whether the alleged violation constitutes noncompliance with any term, condition or restriction of site plan approval.

2. Compliance Hearing

If the Planning Board finds following the Threshold Hearing that an allegation of non-compliance has merit, Staff will prepare a recommended plan of compliance. A second hearing public hearing will then be scheduled for Planning Board

consideration of, and action on, the recommended plan of compliance (“Compliance Hearing”).

Following consideration of the evidence of record, including testimony and any evidence received at the Compliance Hearing, the Board may either (1) approve a plan of compliance (“Compliance Plan”) or (2) revoke its approval of the site plan.

3. Subsequent Board Action

If the conditions of the Compliance Plan are not satisfied by the end of the specified time period, the Board may revoke its approval of the site plan or take other action, such as imposing civil fines, penalties, stop work orders and corrective orders, pursuant to authority granted to the Board for enforcement under Section 50-41 of the Subdivision Regulations (Enforcement). Among other things, Section 50-41 sets forth the process for the imposition of civil fines and penalties, the issuance of stop work or corrective orders, and judicial remedies.

Project Background

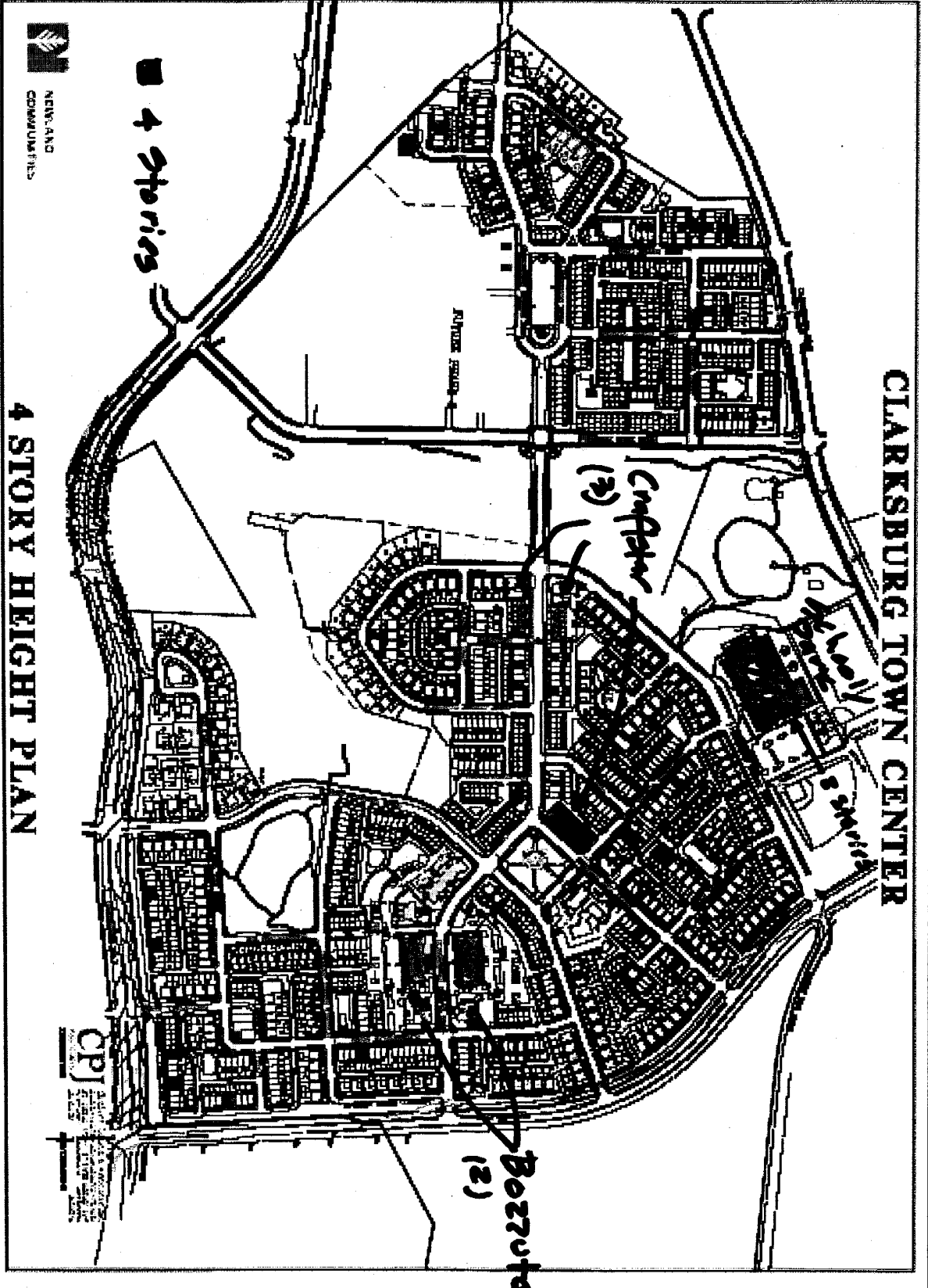
The Clarksburg Master Plan and Hyattstown Special Study Area (“Master Plan”) was approved in June 1994 with a vision for a new town in Montgomery County. The Master Plan calls for the creation of a Town Center in Clarksburg, which would include the historic district as a focal point. Surrounding the Historic District is zoning that allows a mix of uses, including office, residential, and retail. A strong interrelationship between the historic district and new development was proposed to help blend the “old” with the “new.”

Of particular relevance to this issue is the Master Plan objective relating to mixed use development in the Town Center that recommends that: *all apartment buildings in the Town Center be four stories or less except within walking distance of the transit stop, where building height of six to eight stories may be allowed if Master Plan recommendations concerning compatibility with the historic district can be achieved.* A memo from the Community Based Planning, I-270 Team, dated April 7, 2005 (see Attachment A) states that the height of the Subject Buildings does conform to Master Plan objectives. The CBP memo further notes the conformance of all the Subject Buildings to the height-control buffer areas established for the Historic District (see the map within Attachment A from page 50 of the Master Plan).

In December of 1994, both a Project Plan (#9-94004) and a Preliminary Plan (#1-95042) application for Clarksburg Town Center were submitted for review. The developers were known as Piedmont and Clarksburg Associates and were represented by Steve Klebenoff and Mark Montgomery. The plans were approved in June 1995 and March 1996, respectively. The plans embodied the elements of what is known as neo-traditional land use planning – now a major force in current subdivision design. These projects include a layout of units with a grid street pattern with sidewalks, street trees, common open spaces and a mix of land uses. The plans preserved natural features and buffers to the historic district.

Site Plan Background

The first site plan for Phase One (#8-98001) was approved in March 3, 1998 and Phase Two (#8-02014) was approved June 17, 2002. Piedmont and Clarksburg Associates, represented by Steve Klebenoff and Mark Montgomery, submitted the Phase One Site Plan and sold the first lots to builders for the first townhouses and single family homes. The development of Phase One was taken over later by a second developer, Terrabrooke, in February 2000. Terrabrooke oversaw the construction of additional townhouse units in Phase One. In October 2003, Newland Communities became the Master developer for Clarksburg Town Center. Newland Communities submitted the Phase II site plans and proceeded to construct the remainder of Phase I and Phase II. Currently, Newland Communities has submitted plans for amendments to Phase I. New plans will soon be submitted review for retail and housing in Phase III.



Location of Buildings:

The Subject Buildings are located on both sides of Clarksburg Square Road – the “Main Street” of the project. The multifamily buildings are paired across the street from one another. The two over two buildings are integrated into blocks and adjoin the manor homes and townhouses and alleys and garages of single family detached homes. They either face each other across the street or they are opposite the uphill town green and community center (see Map). The heights of the buildings are as follows:

Clarksburg Town Center			
Building Height			
Product	Builder	Stories	Height
22' Townhouse	NVHomes	3 stories	42' 6"
24' Townhouse	NVHomes	3 stories	42' 6"
20' Townhouse	Craftstar	3 stories	37' 8"
22' Townhouse	Craftstar	3 stories	37' 8"
22' Townhouse	Miller & Smith	3 stories	40'
2-over-2 TH	Craftstar - 3 Bldgs.	4 stories	48' 5" - 51' 7"
Condominiums	Bozzuto		
	Bldg 1	3 stories	43' 4"
	Bldg 2	3 stories	41' 5"
	Bldg 3	4 stories	53' 8"
	Bldg 4	3 stories	42' 2"
	Bldg 5	3 stories	42' 7"
	Bldg 6	4 stories	50' 10"
	Manor Houses	3 stories	40' 8"

Subject Buildings are shown in **BOLD** typeface.

Each site plan approval for Phase I and II included identical development tables that listed the residential building height at 4 stories. (See Attachment I.)

Staff Analysis:

RMX-2 Zone Conformance:

The RMX-2 zone has no height limit. The only height limit is the “Required” height limit imposed by the Project Plan and Site Plan approvals (See Attachment I).

Project Plan:

A Project Plan application submittal is required to provide, among other things, “the **general** bulk and height of principal buildings,” as stated in Section 59-D-2.12 of the M.C. Zoning Ordinance. The Opinion for the approval of the Project Plan included a data table that listed the “**REQUIRED**” height of buildings as “4 stories.” and “**PROPOSED**” as 4 stories (45 ft). There is no other descriptive discussion within the Project Plan report on building height other than the aforementioned data table. It is staff’s view that the table was included in the Project Plan opinion to demonstrate conformance of the project with the requirements and intent of the RMX-2 Zone. The table listed “four stories” under the “Required” column, which is the limitation drawn from the Master Plan recommendations for the Town Center District.¹ Notably, the Master Plan language does not set a numerical cap on the maximum height of residential buildings, stating in relevant part only that “[a]ll apartment buildings in the future Town Center will be four stories or less” Clarksburg Master Plan p. 44 (emphasis added). Therefore, it is staff’s view that the proposed “four-story” limitation was deemed to conform to the applicable requirements of the RMX-2 Zone, irrespective of any specific numerical limitation. Additionally, the height of the buildings was not included as a condition of approval.

Site Plan:

One of the findings for Site Plan Approval is that the site plan be “consistent” with the Project Plan, which finding the Planning Board expressly made in approving the Site Plans. The Clarksburg Town Center Site Plans are consistent with the Project Plan approval in regards to building height and this recommendation has been communicated to the Planning Board for each site plan within the staff reports— **the 4-stories “REQUIRED” by the Project Plan are “PROPOSED” by the site plan.**

In the Site Plan staff report, as is the case in the Project Plan, the proposed height limitation for residential buildings was set at four stories; however, no specific numerical limitation was recommended. It was, and continues to be, Commission Staff’s view that no specific numerical limitation is necessary in order to conform with the requirements of the zoning ordinance and the master plan; and, moreover, a delineation of four proposed stories, with no specific numerical limitation, is consistent with the Project Plan approval. On Staff’s recommendation, the Board determined that the Site Plan was consistent with

¹ The Zoning Ordinance permits higher density residential uses under the optional method in the RMX Zones, provided that they are in accordance with, among other things, the limitations contained in the applicable master plan.

the Project Plan, which determination necessarily includes a finding that the proposed height limitation of four stories in the Site Plan is consistent with that proposed in the Project Plan.

Site plans describe the proposed architecture and indicate the proposed building type and number of floors and include other detailed site and landscape plan information i.e. grades, landscaping, lighting etc. At Site Plan, Planning Board findings on building height are based on the requirements of the zone, Master Plan guidance, Project Plan approvals and the subsequent Site Plan data table. In this case, the RMX-2 zone has no height limit except the 4-story limitation imposed by the Project Plan. As with the Project Plan, the Site Plan contains no discussion on building height other than the information contained in the data table.

Following approval of a Site Plan, builders purchase lots, apply for building permits with M-NCPPC staff review and construct their buildings utilizing the development standards contained within the site plan data table in the approved site plan. Because of this separation of the site plan review process from the ultimate detailed architecture for residential subdivision development, exact building heights are not always available for staff to review or to include in the data tables. Of note, pursuant to Section 8-26 of the County Code, the Montgomery County Division of Permitting Services (DPS) requires as a condition of permit that a building comply with "development standards attached to a **site plan**," not a Project Plan. The Planning Board should note that DPS has not issued any "stop work" orders associated with any building height violations. All the residential buildings within Clarksburg Town Center conform to the 4 story building height limit.

Summary:

Staff is of the opinion that Site Plan #8-98001 is consistent with Project Plan #9-94004 and that finding was properly made by the Planning Board. Staff recommends that the Planning Board find the heights of the Subject Buildings comply with all conditions and development standards related to building heights attached to the Site Plan.

Attachments: As listed in report.