

Witthans, Wynn

From: El-Baba, Tariq
Sent: Friday, April 08, 2005 12:06 PM
To: Witthans, Wynn
Subject: FW: Building Heights in Clarksburg Town Center

From: Pugh, Carolyn
Sent: Thursday, December 30, 2004 11:16 AM
To: 'Synergiensinc@aol.com'
Subject: Building Heights in Clarksburg Town Center

Ms. Presley, attached please find response to your letter of 12/14/2004.



CTCHeightIssue.ltr.
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Ms. Amy Presley
(On behalf of CTCAC)

Subject: Building Heights in Clarksburg Town Center
Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014

Dear Ms. Presley,

Thank you for your continued interest in the regulatory plan approvals for the Clarksburg Town Center.

At the December 13, 2004 meeting between M-NCPPC Staff and representatives of CTCAC, you and the other CTCAC members present expressed your collective view that the developer of the Clarksburg Town Center knowingly submitted a site plan that deviated from the project plan conditions and findings, specifically with respect to the heights of certain buildings. You also stated your opinion that, pursuant to the optional method of development in the RMX-2 zone, under which Clarksburg Town Center was approved, the site plan conditions and findings are tied to and are not severable from the Project Plan. In light of this, you have requested that the Commission issue a notice of violation.

Following a review of all the pertinent documents and careful consideration of your concerns and your position respecting this matter, Commission Staff has concluded that: the Planning Board made the required finding that Site Plan No. 8-98001 ("Site Plan") is consistent with Project Plan No. 9-94004 ("Project Plan"); (2) that finding was properly made; and (3) the buildings in question comply with all conditions and development standards attached to the Site Plan. Having so concluded, Commission Staff finds no basis upon which to cite the developer or builder with a violation and is disinclined to do so.

As you know, the approval of the Project Plan was subject to a number of conditions; however, the height of the buildings was not included as a condition of approval. Rather, the reference to a proposed height of forty-five feet was included parenthetically within the "Proposed" column of a table entitled "Data Summary: Clarksburg Town Center." That table was included in the Project Plan opinion to demonstrate conformance of the project with the requirements and intent of the RMX-2 Zone. As you know, that table listed "four stories" under the "Required" column, which limitation is drawn from the Clarksburg Master Plan ("Master Plan") Land Use Plan recommendations for the Town Center District.¹ Notably, the Master Plan language does not set a numerical cap on the maximum height of apartment 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, the proposed "four-story" limitation was

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.



deemed to conform to the applicable requirements of the RMX-2 Zone, irrespective of any specific numerical limitation. In the Site Plan staff report, the proposed height limitation for residential buildings was similarly 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, that 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 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.

The Site Plan constitutes a detailed review of the proposed project and assigns the final site plan data limits, with which limits the buildings must conform, in order to comply with conditions of the building permit. With respect to their height, the buildings in question comply with the Zoning Ordinance/Master Plan and Site Plan development standards; and, therefore, in Commission Staff's view, the height of the buildings do not violate the condition of the building permit that the buildings comply with zoning regulations.² At the December 13 meeting, there appeared to be consensus among Commission Staff and attending CTCAC members that the site plan does not specify a height limitation—it only specifies that the buildings will be four stories—and, further, that the buildings in question are four-story buildings. As such, it is not disputed that the buildings in question (including the other multi-story buildings proposed but not yet built, as well as the “two-story over two-story” (2/2) buildings) are in conformance with the Planning Board's approval of the Site Plan.

We appreciate your interest in the Clarksburg Town Center community and recognize that you have a strong vision of what that community should look like. These four-story buildings are, apparently, taller than what you had anticipated and may, therefore, intrude on that vision. However, for the reasons stated above, we have concluded that there exists no basis upon which the Commission can cite the builder or developer for a violation of the regulatory approvals; and, furthermore, any question concerning a potential violation of a condition of the permit is outside of the Commission's authority.

As you know, site plan proposals for the amendment of Phase I (8-98001E) residential and Phase III (8-04034) retail are still pending. The proposals consist of an amendment for a new site plan for the commercial area; and, additionally, an amendment to both Phase I and II residential site plans, in order to modify the “Manor Homes” from 9 units to 12 units. We encourage you to make your views known to Commission Staff and the Planning Board as we proceed with the review and consideration of these amendments.

² It is, of course, outside of the scope of the Commission's authority to make a determination as to compliance with a building permit. Such a determination is properly made by the Montgomery County Department of Permitting Services.



Please contact me if I can be of any further assistance. My Staff will inform you of our future Planning Board dates and will be available to meet with you on the projects currently under review.

Sincerely,

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CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

January 25, 2004

The Honorable Derick Berlage
Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Subject: Building Heights in Clarksburg Town Center
Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014

Dear Mr. Berlage:

We are writing to you in response to the letter we received from Rose Krasnow relative to height violations within Clarksburg Town Center development. The Clarksburg Town Center Advisory Committee (CTCAC) has reviewed the letter and is astounded by the determination of the Staff on this issue.

The CTCAC, and the entire Clarksburg community, had placed its faith in M-NCPPC, expecting M-NCPPC to faithfully serve as guardians of the Master Plan intent and to ensure adherence to the Board-approved Project Plan. Unfortunately, we find not only that the M-NCPPC Staff has been grossly negligent in the Site Plan review process, but, based on the subsequent Staff determination regarding the height violations, has fallen abysmally short of serving the citizens of Clarksburg. Therefore, we respectfully request a full Board hearing on this issue.

For your record, we have attached a copy of Rose's letter with our specific response to each point. We have also attached our document reference table highlighting supporting detail for our case and position on the matter.

We would like the Board to consider this letter as an issuance of a formal complaint regarding height violations within Clarksburg Town Center development. Based on the provisions of Zoning Ordinance 59-D-3.6, we would also ask the Board to exercise its right to issue a stop work order pursuant to Site Plans previously approved for buildings not yet built, but also having the potential to exceed the height guidelines as defined in the Board-approved Project Plan Findings. Without such action on the Board's part, we fear that development of other buildings will proceed and the community will have no recourse.

Please respond to us with the earliest possible date and time for scheduling of a full Board hearing on this issue. In view of the pending development of other buildings in question, we believe action must be taken immediately. Scheduling of a hearing date prior to February 10th will be greatly appreciated.

Sincerely,

Amy Presley, Kim Shiley, Carol Smith, CTCAC Co-Chairs,
on behalf of the CTCAC



Ms. Amy Presley
(On behalf of CTCAC)

Subject: Building Heights in Clarksburg Town Center
Phase I Site Plan #8-98001 and Phase II Site Plan #8-02014

Dear Ms. Presley,

Thank you for your continued interest in the regulatory plan approvals for the Clarksburg Town Center.

At the December 13, 2004 meeting between M-NCPPC Staff and representatives of CTCAC, you and the other CTCAC members present expressed your collective view that the developer of the Clarksburg Town Center knowingly submitted a site plan that deviated from the project plan conditions and findings, specifically with respect to the heights of certain buildings (Note: CTCAC did not state that the developer knowingly submitted a Site Plan than deviated from the Project Plan. We did state that the Developer would have been well aware of the Data Table height definitions, as contained within the Project Plan Findings and that perhaps the Developer's submission of "four stories" was deliberately vague. We also pointed out that, even with a Site Plan that stated "four stories," those "four stories" would still be subject to the height limitations defined for "four stories" per the Data Table of the Findings contained within the Board-approved and adopted Project Plan.) You also stated your opinion that, pursuant to the optional method of development in the RMX-2 zone, under which Clarksburg Town Center was approved, the site plan conditions and findings are tied to and are not severable from the Project Plan. This is not merely the "opinion" of CTCAC – it is the Planning Board's determination according to the language of Condition #14 of the Board-approved Preliminary Plan. Under Condition #14, it is stated that:

“... 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.”

In light of this, you have requested that the Commission issue a notice of violation.

Following a review of all the pertinent documents (Specifically which pertinent documents did the Staff review? CTCAC has attached pertinent document information and requests that the Board review and reply specifically to the sections highlighted and also to our response to this letter relative to the height violations.) and careful consideration of your concerns and your position respecting this matter, Commission Staff has concluded that: the Planning Board made the required finding that Site Plan No. 8-98001 (“Site Plan”) is consistent with Project Plan No. 9-94004 (“Project Plan”); (2) that finding was properly made (We would like specific accountability and explanation as to why a revised Data Table was created and submitted to the Board along with Wynn Witthan's Site Plan Review submission, rather than using the Data Table contained in the Board-approved and adopted Project Plan Findings. We maintain that, based on submission of erroneous Data Table information, the finding could not possibly have been “properly made” by the Board.) ; and (3) the buildings in question comply with all



conditions and development standards attached to the Site Plan. (The building in question may or may not comply with conditions and standards of the Site Plan itself, but that Site Plan is subject to the requirements of the Optional Method of Development – under which, compliance with the Project Plan is mandatory.) Having so concluded, Commission Staff finds no basis upon which to cite the developer or builder with a violation and is disinclined to do so. (It has been stated to CTCAC members, on more than one occasion and by more than one person within M-NCPPC – including Michael Ma, Wynn Witthans and even Derick Berlage, that the action, or lack of appropriate action surrounding initial submission and approval of the Site Plan in question was an “oversight” on the part of M-NCPPC...and that “M-NCPPC will do all it can to avoid such oversight in the future.” Based on these admissions, it is incumbent upon M-NCPPC to call the error out as such and do all in its power to rectify the situation – including calling back into review the other Site Plans erroneously approved. Not to take such actions constitutes negligence on the part of M-NCPPC to abide by its own standards and procedural requirements.)

As you know, the approval of the Project Plan was subject to a number of conditions; however, the height of the buildings was not included as a condition of approval. (Height limitations were contained within the “Findings” of the Board-approved Project Plan. The Conditions of the Preliminary Plan serve to support – under Condition #14 – the requirement to uphold those Findings.) Rather, the reference to a proposed height of forty-five feet was included parenthetically within the “Proposed” column of a table entitled “Data Summary: Clarksburg Town Center.” That table was included in the Project Plan opinion to demonstrate conformance of the project with the requirements and intent of the RMX-2 Zone. As you know, that table listed “four stories” under the “Required” column, which limitation is drawn from the Clarksburg Master Plan (“Master Plan”) Land Use Plan recommendations for the Town Center District.¹ (It is critical here to note that a specific definition of the “four stories” as proposed for the CTC development is shown within the “Proposed” column. This definition is stated as 45’ for residential and 50’ for commercial buildings. It is evident to the CTCAC, the CTC residents the CCA and the Clarksburg Community at large, that the “Proposed” heights were included as a means of ensuring development compatible with the scale and character of the Clarksburg Historic District. This reasoning was confirmed by John Carter, Chief of Community Based Planning. The necessity for and sensitivity to development compatible with the Historic District was clearly a driver throughout development of the Master Plan.

Within the “Ten Key Policies Guiding the Master Plan”:

1. “Town Scale of Development”
6. “Plan proposes a transit-oriented, multi-use *Town Center which is compatible with the scale and character of the Clarksburg Historic District*”.....

“Assuring compatibility of future development with the historic district has been a guiding principle of the planning process.” (Master Plan p26).

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.



Notably, the Master Plan language does not set a numerical cap on the maximum height of apartment buildings (– which is exactly why Community Based Planning felt it necessary to include a numerical cap within the Project Plan Findings submitted to and approved by the Board. The goal of assuring compatibility with the future development of the historic district, relative to scale, was a driver for specification of the height limitations within the Project Plan Findings.) , 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, the proposed “four-story” limitation was deemed to conform to the applicable requirements of the RMX-2 Zone, irrespective of any specific numerical limitation (However, this limitation was not deemed sufficient by Community Based Planning at the time of preparing the Project Plan Findings. Had Community Based Planning felt that “four stories” as allowed within the Master Plan and RMX-2 Zone, without a specified height cap, was sufficient language to ensure “scale and compatibility” with the Historic District, they would not have specified a 45’ residential and 50’ commercial height cap within the Data Table contained within the Findings of the Project Plan.) In the Site Plan staff report, the proposed height limitation for residential buildings was similarly set at four stories, however, no specific numerical limitation was recommended (Please note that the Development Review staff was not at liberty to independently and arbitrarily change or omit at Site Plan review/submission any of the requirements, conditions and findings previously approved by the Board and contained within the Project Plan. If the Staff intended to do such, it would have been required to create an Amendment. Under the rules and guidelines for “Minor Amendment” a change of this nature would not have been allowed without full Board hearing. There is no existing documentation of any amendment to the Project Plan Findings. Please refer to document table and pertinent notes attached – 59-D-2.6.) 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 (It is astounding to the CTCAC that the Commission Staff would state that “no specific numerical limitation is necessary.” According to M-NCPPC Board, by way of approval of the Project Plan Findings, it *is* necessary for development within CTC to conform to the “specific numerical limitations” contained within the Project Plan conditions and findings as approved and adopted, not just the Master Plan and Zoning Ordinances in general. It is a necessity for all development within the Clarksburg Town Center, under the Optional Method of Development, to comply with *all* requirements, conditions and findings of the Project Plan.); and, moreover, that a delineation of four proposed stories, with no specific numerical limitation, is consistent with the Project Plan approval (The Project Plan was approved with Findings containing a specific delineation of the height for those “proposed” four stories. Therefore, with a generic delineation of “four stories” on the Site Plan, it must be expected – and if not, then confirmed by Development Review – that those “four stories” would be in compliance with the specific definition of “four stories” as proposed within the Board-approved and adopted Project Plan Findings. Please refer to the Project Plan Findings – Data Table – and our document table and pertinent notes attached.). On Staff’s recommendation (“Staff” submitted to the Board a revised Data Table along with its recommendation. This Data Table was inconsistent with the Data Table contained in the Project Plan Findings previously approved by the Board. It



removed from the “Proposed” standards for the CTC Development the actual height caps of 45’ for residential and 50’ for commercial. Submission to the Board of this revised Data Table represents, at best, gross negligence on the part of the Development Review Staff preparing the report. At worst, it represents action which could appear as being unduly influenced by the Developer. In either case, it was clearly a submission of erroneous information to the Board, resulting in an erroneous approval of the Site Plans submitted. This action alone is cause for re-examination of the Site Plans and previous approval process, and grounds, in the opinion of CTCAC, for action under Zoning Ordinance 59-D-3.6.), the Board determined that the Site Plan was consistent with the Project Plan (based on erroneous information presented by the Staff), 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 (only because Staff conveniently removed the height caps that were present in the Data Table contained in the Project Plan previously approved by the Board. The CTCAC requests a full investigation of this action and accountability from M-NCPPC regarding the matter.).

The Site Plan constitutes a detailed review of the proposed project and assigns the final site plan data limits, with which limits the buildings must conform, in order to comply with conditions of the building permit (According to M-NCPPC Staff’s own statements to the CTCAC, it is customary and expected that documents from the Master Plan through to the Site Plan follow in increasing level of detail – i.e. that the Site Plan should show a level of detail even greater than that of the Project Plan. The Project Plan, according to the Board’s ruling and statements within the Preliminary Plan, serves as the “development authority” for the CTC development – Please refer to our document table and notations attached. Without a specific definition of the “four stories” shown on the Site Plan in question, the Staff would either have had to assume that those “four stories” would comply with the previously defined and approved height caps as contained within the Project Plan, or would have had to seek definition from the Developer. It is the responsibility of the Development Review Staff to ensure that Site Plans submitted comply with Project Plan conditions and findings. It is the duty of the Staff to report responsibly to the Board, as the Board relies on the Staff’s review and opinions. As we have stated, we believe Staff actions relative to the submission represent a gross negligence at best.) With respect to their height, the buildings in question comply with the Zoning Ordinance/Master Plan and Site Plan development standards (but they DO NOT COMPLY with the Project Plan Findings... which are the “underlying development authority” for CTC development according to the Board); and, therefore, in Commission Staff’s view (The Commission Staff’s view was based on erroneous information), the height of the buildings do not violate the condition of the building permit that the buildings comply with zoning regulations.² At the December 13 meeting, there appeared to be consensus among Commission Staff and attending CTCAC members that the site plan does not specify a height limitation (There was no such “consensus”...there was merely a reporting to the CTCAC by Wynn Witthans, and a confirmation by Michael Ma, that the Site Plans in question did not specify height detail, that they merely noted “four

² It is, of course, outside of the scope of the Commission’s authority to make a determination as to compliance with a building permit. Such a determination is properly made by the Montgomery County Department of Permitting Services.



stories.” CTCAC can only presume that the information shared was accurate.) —it only specifies that the buildings will be four stories—and, further, that the buildings in question are four-story buildings. As such, it is not disputed that the buildings in question (including the other multi-story buildings proposed but not yet built, as well as the “two-story over two-story” (2/2) buildings) are in conformance (A mere confirmation that the Site Plans state “four stories” and that the buildings built and to be built are “four stories” does not constitute conformance with the Project Plan Findings...to which all development within CTC must conform.)with the Planning Board’s approval of the Site Plan.

We appreciate your interest in the Clarksburg Town Center community and recognize that you have a strong vision of what that community should look like. (Our “vision” is merely that as defined by the Master and Project Plans. It also the community’s vision, as incorporated into those plans by Community Based Planning. It is also the Board-approved vision that Development Review has a duty to uphold in the Site Plan review process.) These four-story buildings are, apparently, taller than what you had anticipated (They are taller than what Community Based Planning had specified, based on the Historic District and need for sensitivity to the scale and character of that district, and what the Board had previously approved based on the Project Plan Findings.) and may, therefore, intrude on that vision (LITERALLY. The building towers above everything within the development – totally out of character with the Historic District and also incompatible with adjacent residences. The Board must not allow further development of this scale. We implore the Board to stop work on other buildings not yet built, but also erroneously approved in previously submitted Site Plans.) However, for the reasons stated above, we have concluded that there exists no basis upon which the Commission can cite the builder or developer for a violation of the regulatory approvals; and, furthermore, any question concerning a potential violation of a condition of the permit is outside of the Commission’s authority. (We remain in disagreement as to the existence of a violation. The CTCAC requests a full Board hearing on this issue, as there were clearly several internal violations relative to M-NCPPC’s standard procedures and specifically relative to the Data Table alteration in the Site Plan review submission by Development Review Staff to the Board for approval.)

As you know, site plan proposals for the amendment of Phase I (8-98001E) residential and Phase III (8-04034) retail are still pending. The proposals consist of an amendment for a new site plan for the commercial area; and, additionally, an amendment to both Phase I and II residential site plans, in order to modify the “Manor Homes” from 9 units to 12 units. We encourage you to make your views known to Commission Staff and the Planning Board as we proceed with the review and consideration of these amendments.

Please contact me if I can be of any further assistance. My Staff will inform you of our future Planning Board dates and will be available to meet with you on the projects currently under review.

Sincerely,



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Clarksburg Town Center Development – Documentation Relative to Height Restrictions

Document	Approvals	Pertinent Data	Notes
Master Plan	Planning Board Approval - June, 1994	<p>Within the "Ten Key Policies Guiding the Master Plan":</p> <p>1. "Town Scale of Development"</p> <p>6. "Plan proposes a transit-oriented, multi-use <i>Town Center which is compatible with the scale and character of the Clarksburg Historic District</i>".....</p> <p><i>"Assuring compatibility of future development with the historic district has been a guiding principle of the planning process."</i> (p26)</p>	<p>The goal of assuring compatibility with the future development of the historic district, relative to scale, was a driver for specification of the height limitations within the Project Plan findings. This is apparent, as the existing RMX2 guidelines would have been sufficient, and not required explicit specification of height limitations, had Community Based Planning felt that "4 stories" was adequate language to ensure "scale and compatibility" with the historic district.</p>
Project Plan	Planning Board Approved – May 11, 1995	<p>"Based on the oral testimony, written evidence submitted for the record, and the staff report, the following <i>conditions and findings</i> are hereby adopted."</p> <p>"Finding #1: The Planning Board finds that Project Plan #9-94004 as conditioned meets all of the purposes and requirements of the RMX2 zone. A summary follows that compares the development standards shown* with the development standards required in the RMX2 zone." (Page 1 of the Project Plan).</p> <p><i>*(i.e. those proposed for CTC)</i></p> <p>The findings include the data sheet outlining the standard RMX2 zone height ("4 stories") with the proposed heights for Clarksburg Town Center:</p> <p>" 4 stories/45' " for residential buildings</p> <p>" 4 stories/50' " for commercial buildings</p>	<p>The Project Plan includes a data table outlining the permitted standards under RMX2 development (as was also outlined within the Master Plan) compared to the specific limitations proposed for the Clarksburg Town Center. This data table specifically denotes a limit of 45' for residential buildings and 50' for commercial buildings.</p> <p>Compatibility with the "scale and character" of the Clarksburg Historic District was unarguably one of the "guiding principles" behind the Master Plan (and adamantly promoted by the Clarksburg Civic Association, the Historic Society and others who participated in the planning process). The specific height limitations were included within the data sheet of the Project Plan to ensure the desired compatibility with the historic district. John Carter, Nellie Maskall, and Michael Ma have all confirmed that the data sheet attached to the approved Project Plan is valid. It was included within the Project Plan to ensure compatibility with the historic district and, having been approved with the Project Plan "findings," the limitations within the data sheet become</p>



			"necessary elements" of development for Clarksburg Town Center.
Preliminary Plan	Planning Board Approved – March 26, 1996	<p>Background: "...the underlying development authority, Project Plan #9-94004, was approved by the planning board on May 11, 1995, after two prior planning board meetings (held on April 6 and 20, 1995). The record for the preliminary plan #1-95042 specifically includes the records from those prior hearings...</p> <p>Therefore, the planning board approves the plan. The approval is subject to the following conditions:</p> <p>...</p> <p>#14. "Preliminary plan #1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan #9-94004. Each term, condition and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are therefore not automatically severable."</p>	<p>The Planning Board itself determined all conditions, findings, or "requirements", as outlined in the Project Plan to be "essential components" of the approved plans and "NOT automatically severable." Therefore, the data sheet containing height definitions of 45' for residential and 50' for commercial can neither be ignored at Site Plan approval, nor arbitrarily over-ridden by any member of the M-NCPPC staff or by the developer. (See definition of "Minor Amendment" under Zoning Ordinance #59... Removing the height definitions would NOT be considered a Minor Amendment – i.e. not allowable without amendment hearing.)</p>
Montgomery County Zoning Ordinance #59	Various dates of acceptance/ amendment	<p>59-C-10.2 Methods of Development 2. Optional Method of Development –</p> <p>Under this method, general commercial uses and higher density residential uses are allowed in the RMX zone provided they are in accordance with the provisions of Section 59-C-10.3 as well as the density, <i>numerical limitations</i> and other guidelines contained in the applicable Master Plan approved by the district Council. In addition, a Project Plan and Site Plan must be approved by the Planning Board.</p> <p>59-C-10.3 Optional Method of Development Regulations –</p> <p>This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County. <i>This method of development is a means to encourage development in accordance with the recommendations and guidelines of approved and adopted Master</i></p>	<p>The Optional Method of Development, is the option under which CTC is zoned for RMX2 development. This option explicitly requires adherence to the Master Plan/Project Plan and Site Plans in accordance with the Project Plan.</p> <p>According to 59-C-10.2, #2, under the Optional Method of Development, the commercial uses and higher density residential uses are allowed only provided that they are in accordance with "<i>numerical limitations</i>" and guidelines of the plans approved.</p> <p>59-C-10.3 states that the Optional Method of Development is a "means to encourage development in accordance with" recommended guidelines. (Clearly shows the intent to regulate development under "Optional Method" vs. leaving development open to interpretation under general</p>

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		<p><i>Plans.</i> Approval of this optional method of development is dependent upon the provision of certain public facilities and amenities by the developer. The requirement for public facilities and amenities is essential to support the mixture of uses at the increased densities of development allowed in this zone.</p> <p>59-C-10.3 Optional Method of Development Regulations – This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County...</p> <p>59-C-10.3.11 Development Procedure – A. The procedure for approval for an <i>optional method of development in these zones requires a Project Plan in accordance with division 59-D-2 and a site plan in accordance with division 59-D-3.</i></p> <p>59-D-A-2 – Optional Method requires a Project Plan and Site Plan ... precondition for the use of the optional method of development</p> <p>59-D-3-23 – Proposed Development – ... (Referencing what must be included within the site plan) ... (a) The location, height, ground coverage and use of all structures.</p> <p>59-D-3.4 – Action by Planning Board (1) ...the Site Plan is <i>consistent with an approved development plan or a Project Plan for the Optional Method of development</i>, if required... (4) ...each structure and use is <i>compatible with other uses and other site plans and with existing and proposed adjacent development.</i></p> <p>59-D-2.6 Amendment: Minor Plan Amendment A minor amendment is an amendment or revision to a plan or any findings, conclusions, or</p>	<p>RMX2 requirements.) Once again, it is apparent that this is why a data sheet denoting the guidelines for development of CTC, including specific height parameters, was included within the Project Plan and subsequently adopted by the Planning Board.</p> <p>Under the Optional Method of development within RMX2 zoning, the Project Plan is an authoritative document. This is explicit under 59-C-10.3.11, as is the requirement for a site plan in accordance with 59-D-3 – requiring that “height” and use of all structures must be noted. As “4 stories” is merely a standard for RMX2 in <i>general</i>, and the approved Project Plan included a data sheet with <i>specific</i> height parameters, under the Optional Method of Development (according to 59-C-10.3.11, 59-D-A-2, and 59-D-3-23) the heights for any structures within a site plan must be in accordance with height definitions/limitations outlined and approved within the Project Plan Findings.</p> <p>(It is clear that the change in height within Wynn Witthan’s documentation does not constitute a Minor Amendment, according to 59-D-2.6. Even if</p>
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		<p>conditions associated with the plan <i>that does not entail matters that are fundamental determinations assigned to the Planning Board.</i> A minor amendment is an amendment that <i>does not alter</i> the intent, objectives, or requirements expressed or imposed by the Planning Board in its review of the Plan. A minor amendment may be approved, in writing, by the Planning Board staff. Such amendments are deemed to be administrative in nature and concern only matters that are not in conflict with the Board's prior action.</p> <p>59-D-3.6 Failure to Comply 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... 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... 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.</p>	<p>Wynn were to position this as a "Minor Amendment" there is no documentation – i.e. approval "in writing by the Planning Board staff" to support that as a deliberate action by the Planning Board staff.)</p> <p>If the site plan, as confirmed by M-NCPPC staff members (Michael Ma, Wynn Witthans, Rose Krasnow), merely showed "4 stories" as the height notation for the buildings in question, even as approved by the Planning Board, it still does not authorize those "4 stories" to exceed the height limitations as defined within the Project Plan findings and approved by the Planning Board. Under the "Optional Method of Development" the Developer is still obligated to ensure that the "4 stories" comply with the conditions and findings of the Project Plan. The Planning Board is also obligated to enforce those conditions and findings.</p>
<p>Site Plan Review (Wynn Witthans' - Staff Report submission & Planning Board Opinion)</p>	<p>Planning Board Opinion - January 22, 1998</p>	<p>Site Plan Review: Staff Recommendation; Proposal</p> <p>Findings for Site Plan review (Page 35): "#1 Site Plan is consistent with the Project Plan approved for this site utilizing the RMX2 optional method of development. (See discussion above.) #2 The Site Plan meets all of the</p>	<p>This is the excerpt from the Staff Report prepared by Wynn Witthans and presented to the Board for approval of the Phase 1 Site Plan.</p> <p>*Within Wynn's Staff Opinion, submitted as part of the site plan review documentation for the Board, is a data table that varies from the data table included in</p>

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		<p>requirements of the zone in which it is located. (See project data table* above.)”</p> <p>Planning Board Opinion: “Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds: #1. The site plan is consistent with the approved development plan or a Project Plan for the Optional Method of Development, if required. #2 The site plan meets all the requirements of the zone in which it was located.”</p>	<p>the approved Project Plan (as part of the “Findings” deemed by the Board to be “essential” components of the Project Plan). The data table that Wynn submitted with her Staff Opinion appears to have been re-written to show a generic “4 stories” denotation for building heights, omitting the specifications of “45’ for residential” and “50’ for commercial.” The first and only appearance of this altered data table among M-NCPPC documentation is within Wynn’s Staff Opinion/Site Plan Review. In submitting a new data table, Wynn has independently overridden Community Based Planning’s recommendations, as well as the “Findings” approved by the Planning Board in the final Project Plan. Her submission to the Planning Board could be viewed as misleading and negligent, at best. At worst, it could be viewed as a deliberate alteration or omission of specifications, inappropriately serving the developer’s desires.</p> <p>Again, as stated within our Zoning Ordinance notes, even in the presence of a generic “4 stories” denotation on the altered data table and/or the submitted Site Plan, the Developer is still accountable to ensure that the “4 stories” are in compliance with the height restrictions of the approved data table/findings as part of the approved Project Plan. Also, according to zoning ordinance for Optional Method, and the Planning Board’s own Findings, M-NCPPC is still accountable to enforce the limitations/ guidelines contained within the approved Project Plan Findings. There is no language within the Site Plan Review Staff Report or the Board Opinion that negates the Data Table (“Finding”) of the Project Plan -- i.e. that the “4 stories” shown on the Site Plan must be in compliance with the heights as defined – 45’ for residential buildings and 50’ for commercial</p>
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<p>Site Plan Enforcement Agreement</p>	<p>Montgomery County Planning Board, Linnowes & Blocher, LLP (legal counsel for the Developer) & Piedmont Land Associates (Developer) March 18, 1999</p>	<p>(Page 1) "Whereas, Text Amendment No. 80025, approved July 21, 1981, effective October 15, 1981, amended Section 59-D-3.3 of the Montgomery County Code to require as part of the site plan review process that <i>applicants enter into a formal agreement with the Planning Board requiring the applicant to execute all features of the approved site plan in accordance with the Development Program required by Section 59-D-3.23</i> of the Montgomery County Code...." "Whereas, the parties hereto desire to set forth herein their respective requirements and obligations pursuant to Section 59-D-3.3 of the Montgomery County Code, 1994... Now, therefore, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of Section 59-D-3.3 of the Montgomery County Code, 1994.... the parties hereto agree as follows: 1. In accordance with approval by the Planning Board of Site Plan No. 8-98001, <i>Developer agrees that, when it commences construction on any phase as set forth in the Development Program attached hereto as Exhibit "B", or any amendments thereto, it will execute and maintain all the features of the site plan for that phase as required by Section 59-D-3.23 in fulfillment of the approval granting Site Plan No.8-98001, and any subsequent amendments approved by the Planning Board....</i></p>	<p>buildings. The Developer and its legal counsel were aware of the conditions for development of RMX2 under the "Optional Method" of development. The Project Plan (including all conditions and findings) is the recognized and underlying authority. 59-D-3 requires height specification, as well as assurance that buildings are consistent with the approved Project Plan.</p>
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