

Su **Friday, April 15 2005 - Follow-up**
Da 4/17/2005
To rose.krasnow@mncppc-mc.org
CC michelle.rosenfeld@mncppc-mc.org, Shileykim@aol.com, smithcar@mail.nih.gov,
catherine.matthews@montgomerycountymd.gov,
Councilmember.Knapp@MontgomeryCountyMD.gov
BC nnagda@ENERGENconsulting.com, timdearros@comcast.net, [Lfantle](#)

Hello, Rose.

I just wanted to thank you for responding to our request last Friday regarding the documents on file for Clarksburg Town Center. We appreciated your willingness to move all files to the care of your legal department, based on the issues and concerns we raised.

As stated by you, and confirmed with Michelle Rosenfeld, your office was unable on Friday to confirm to us whether or not the documents retrieved from Development Review represented all documents on file pertaining to Clarksburg Town Center or, specifically, to the amendments A-E for Site Plan #8-98001. We were advised that you had retrieved all available documents from Ms. Witthans office, but that you could not guarantee that there were not other existing documents in other locations. As we stated on Friday, this is of some concern to us.

In view of the recent height threshold hearing, and especially in view of our concern regarding the potential for documents to be misplaced or even "thrown away" by staff, we expressed to you our desire for copies of all available documents. We were able to begin our review and tagging process on Friday (indicating which of the documents we would like copied), but were unable to complete our work. Kim Shiley and I will continue that process on Monday, April 17.

We understand that you will check with Wynn Witthans on Monday morning to determine if other documents exist relative to Clarksburg Town Center, and that you will retrieve any such additional files and/or documents and store them with the others currently held in your legal department. As discussed and confirmed with Michelle, we will receive from the legal department on Monday a specific listing of any subsequent files or documents found, as well as information on the location from which any such files or documents are retrieved.

Thanks so much for your continued assistance. We look forward to seeing you on Monday.

Sincerely,
Amy Presley

Su **CTC Height Violations - Presentation**
Da 4/19/2005
To catherine.matthews@montgomerycountymd.gov
CC nancy.hislop@montgomerycountymd.gov, Councilmember.Knapp@MontgomeryCountyMD.gov,
Shileykim@aol.com, smithcar@mail.nih.gov, timdearros@comcast.net, [Lfantle,
nnagda@ENERGENconsulting.com](mailto:Lfantle,nnagda@ENERGENconsulting.com)
File **C:\Documents and Settings\Presley\My Documents\CTCAC\CTCHeightViolationHearing.r**
(9519104 bytes) DL Time (TCP/IP): < 2 minutes

Hello, Catherine.

Thank you for attending the hearing last week. As you know, in view of the evidence we presented, as compared with the lack of documentation presented by staff, the false and misleading statements made by staff, and staff's apparent overall unpreparedness, we are more than disturbed by the Board's ruling. (In regard to staff's lack of documentation, we would have expected that the Board would minimally have moved for a continuation until such time as real documentation or evidence could be presented.)

We have learned from M-NCPPC legal department that the Board is not *required* to issue an "Opinion" on their ruling of last Thursday and has elected not to do so. Therefore, we will not have a print record of their determinations. In order to have some sort of print record for our community, we will obtain a copy of the tape and will have that transcribed, by an "approved transcriptionist" at our own expense.

Since last Thursday, we have gathered additional evidence regarding statements made by staff which, once again, contradict actual documentation. With this supplemental information, we will of course be filing an appeal to the Board's ruling.

I am sorry that we were unable to provide you with a copy of our presentation last Thursday. Carol mentioned that you had requested a copy, so I have attached it with this email. I also left a voice mail message for you regarding scheduling of the follow-up meeting you requested to discuss specific issues relative to staff and documentation. (I have copied Mike Knapp on this email as he also expressed a desire to meet/follow-up these issues.)

From our perspective, it would be a tremendous help to meet with you prior to Friday of this week. (We are required to file our appeal by then.) Please give me a call to let me know a date that would be convenient for you.

Thank you,
Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Su **Confirmation**
Da 4/21/2005
To michael.ma@mncppc-mc.org
CC rose.krasnow@mncppc-mc.org, Shileykim@aol.com, smithcar@mail.nih.gov,
timdearros@comcast.net, Councilmember.Knapp@MontgomeryCountyMD.gov
BC dfischer@abcbirds.org, Jessica_Stuart@americanchemistry.com, greg@beyonddesign.com

Hello, Michael.

Thanks for taking the time to meet with me and Kim Shiley this morning...especially in view of your hectic schedule at this time.

We wanted to confirm with you our conversation and our requests for the following:

- Letter from your legal department stating what additional CTC documents, if any, have been retrieved and from what locations since last Friday. (If no others have been retrieved since last Friday, we would like a letter stating that according to their information from Development Review and Staff, there are no other documents existing other than those currently housed within the legal department conference room.)
- Letter stating whether there exists on file within M-NCPPC ANY amendment by Staff to the height requirements for CTC (height requirements as contained within the approved Project Plan, Preliminary Plan and subsequent Site Plan).
- Letter detailing the status of the setback hearing that was initially scheduled for 4/14/05 and then was removed from the agenda. We want to know specifically any and all actions taken by Staff (or any that may have been taken by the Department of Permitting Services - if M-NCPPC is aware of such) since the time you initially notified us of the hearing. We want to know whether actions have been taken to waive the setback requirement to enable occupancy of the 2/2's which had initially been denied occupancy permits. We would also like to know the status on other buildings in violation of the setback requirement (as you discussed with us several weeks ago when you advised us that the developer and builders had come forward to acknowledge multiple other violations to setbacks in addition to the 2/2's which were denied occupancy).
- We would also like a written update regarding actions currently being taken within your department relative to discrepancies in documentation and other issues we discussed pertaining to Staff. Understanding that you are still in the process of discussing these matters with Rose Krasnow, we realize that it may take a couple of days before you are able to respond on this. If you could provide an interim email update, that would be greatly appreciated.

As we mentioned to you, based on our follow-up research of Staff's testimony given during the April 14 height violation Threshold Hearing, as well as several new pieces of evidence, we we will be submitting a request for reconsideration (under Section 11 of the Rules of Procedure for the Montgomery County Planning Board). Your assistance in providing the aboved referenced letters and information before close of business tomorrow, or written notification as to why you are unable to do so, will be greatly appreciated.

Sincerely,
Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Su **Request for Reconsideration**
Da 4/22/2005
To mcp-chairman@mncppc-mc.org
CC rose.krasnow@mncppc-mc.org, michael.ma@mncppc-mc.org,
Councilmember.Knapp@MontgomeryCountyMD.gov, Shileykim@aol.com, smithcar@mail.nih.gov,
jessicasteinhilber@yahoo.com, dfischer@abcbirds.org, dbfischer@starpower.net
BC timdearros@comcast.net, [Lfantle](mailto:Lfantle@ENERGENconsulting.com), NNagda@ENERGENconsulting.com, greg@beyonddesign.com
File **C:\Documents and Settings\Presley\My Documents\CTCAC\IP&P\HeightHearing\ReconsiderationRequest-CTCAC-4-22-04.doc** (32 bytes) DL Time (TGP/IP): < 1 minute

Dear Chairman Berlage:

Attached please find an urgent Request for Reconsideration pursuant to Section 11 of *The Rules of Procedure for the Montgomery County Planning Board*. I am also sending a copy of this request via FAX to you to ensure that you receive a signed copy today.

We are in earnest relative to supplemental buildings within this development which are under construction and/or scheduled for construction and will also violate the Board-approved height limitations as set forth in the Project Plan, Preliminary Plan and Site Plan Signature Set #8-98001.

Your prompt response will be greatly appreciated.

Sincerely,
Amy Presley

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

April 22, 2005

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

Re: **Request for Reconsideration** of the Planning Board's April 14, 2005
Height Violation Threshold Hearing – Item #4: Site Plan Review No. 8-98001,
8- 98001B, and 8-02014, Clarksburg Town Center

Dear Chairman Berlage:

Pursuant to Section 11 of *The Rules of Procedure for the Montgomery County Planning Board*, the Clarksburg Town Center Advisory Committee (CTCAC) requests the Montgomery County Planning Board to reconsider its finding of April 14, 2005 that subject structures did not violate height restrictions set forth in Site Plan Review No. 8-98001, 8-98001B, and 8-02014. The Board incorrectly concluded that CTCAC's allegation of noncompliance did not have merit. CTCAC has recently discovered evidence that definitively documents incomplete, inaccurate, and/or misleading information contained in Ms. Wynn Witthans's April 8, 2005 staff report and April 14, 2005 presentation to the Planning Board. This information would have been vital to the Board's decision. In light of the seriousness of this new evidence, CTCAC requests that the Planning Board expeditiously grant our request for reconsideration.

Specifically, the Site Plan Enforcement Agreement (May 13, 1999) for Site Plan No. 8-98001, as signed by both Linowes & Blocher and the Developer, validates that the entirety of Clarksburg Town Center (CTC) Phase I was subject to Site Plan No. 8-98001 Signature Set and any amendments thereto. The Site Plan Signature Set No. 8-98001 is required to comply with Project Plan No. 9-94004, which includes height restrictions of 35' for single family residences and town houses and 45' for multi-family units. These height restrictions were proposed, and approved by the Planning Board in the Project Plan and become incorporated into the Site Plan through Condition #14 of the Project Plan.

Subsequent to Planning Board approval of the Project Plan, which includes height restrictions, Planning Board staff altered the Data Table containing the specific height restrictions to show only the general 4 story height restriction. This altered table was the basis, in part, of the Planning Board's April 14th decision. Importantly, this change was not considered or approved by the Planning Board. Therefore, the Board-approved specific height restrictions are still binding.

The fact that the Site Plan Signature Set No. 8-98001 remains valid for the subject properties discussed at the April 14 hearing, and the height restrictions have not been amended, completely contradicts testimony presented by Ms. Witthans from Development Review. Furthermore, this fact is misconstrued on page 8 of the April 8th Staff Report.

In light of this new information, CTCAC requests the Planning Board to expeditiously reconsider its decision of April 14, 2005. With no valid amendments to relieve the Developer from the requirements set forth under Site Plan No. 8-98001, the Developer has breached the Site Plan

Enforcement Agreement and violated the "Certified Site Plan" referenced within that Agreement. Thus, there is ample evidence to support CTCAC's allegation of noncompliance.

Sincerely,

Amy Presley
(on behalf of CTCAC)

cc: Fischer & Steinhilber

Su **CTC Height Violations/Board Ruling/Inaccuracies**
Da 4/26/2005
To Marlene.Michaelson@MontgomeryCountyMD.gov
CC Councilmember.Knapp@MontgomeryCountyMD.gov, Shileykim@aol.com
File **C:\Program Files\America Online 8.0\misc\temp\DerickBerlage12-7-00.ZIP (9293370 bytes)**
Time (TCP/IP): < 2 minutes

Hello, Marlene.

Thank you for taking the time to discuss with me the recent M-NCPPC Board hearing on height violations within the Clarksburg Town Center development. As we discussed, the CTCAC (Clarksburg Town Center Advisory Committee) has been working on this issue since August, 2004 (when we first officially brought it to the attention of M-NCPPC staff, CTC developer, and Council).

I have attached for you some of the documentation you requested, including our letters to Chairman Berlage and follow-up to Staff's initial response, as well as our presentation from the April 14 hearing on the issue. I have also attached a copy of our reconsideration request letter, which was sent to the Chairman on Friday, April 22nd.

The citizens of Clarksburg and residents of the Town Center are very concerned by the failure of the Board to uphold or enforce the requirements set forth in the Board-approved Project Plan and Preliminary Plan. As you know, the Project Plan is the recognized "underlying development authority" for development within the RMX-2 zone under "optional method" of development. The Project Plan specifically addresses height, as does the Preliminary Plan (45' for multi-family buildings). The Site Plan signature set, as submitted by the developer, contains a height data table which also reflects 45' maximum multi-family buildings and 35' for townhouses and single family houses.

The heights of the condominium buildings in question (according to the developer) are 50' 3" and 53' 7" (we still do not have an authorized surveyor's height for the buildings). Additionally, most of the townhouses in the development have been built at 40' and above.

The Development Review Staff person (Wynn Witthans) presented to the Board (during the April 14 hearing and several times prior regarding the height issue) misleading information and incomplete and/or reconstructed documentation. The CTCAC has tangible evidence of these actions. We presented such information as we had regarding this to the Board prior to the April 14 hearing. Since the hearing, we have retrieved from DPS and other sources supplemental information and evidence that we did not have prior to the hearing. We intend to present this to the Board in a reconsideration hearing and/or via civil proceedings.

The developer/builders failed to comply with Project Plan/Preliminary Plan requirements and knowingly violated site plans. The Board, in its ruling of April 14, failed to uphold the Project Plan and Preliminary Plan requirements. Equally disturbing, the Board failed in its responsibility to acknowledge violations and issue a ruling of non-compliance to the developer/builders for such violations. The citizens are disturbed by the Board's ruling and by the apparent lack of adequate checks and balances within M-NCPPC.

I hope this information is helpful to you. Please feel free to call me if you have further questions or need clarification on information attached. Thank you for your interest and assistance.

Sincerely,
Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Supplement to Request for Reconsideration

4/27/2005

mcp-chairman@mncppc-mc.org

dbfischer@starpower.net, jessicasteinhilber@yahoo.com

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Dear Chairman Berlage,

Attached is a supplement letter to the CTCAC's April 22, 2005 Request for Reconsideration. I am sending a copy of the letter to you via email to alert you to our supplemental information. The hard copy of the signed letter and attachments was delivered to Michael Ma today for hand delivery to you.

Please contact me if you require further information prior to the Board's review of this request.

Sincerely,
Amy Presley, CTCAC
301-916-7969 (office)
301-526-7435 (mobile)

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

April 27, 2005

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

Montgomery

Re: Supplemental Information pertaining to Request for Reconsideration
of the Planning Board's April 14, 2005 Height Violation Threshold Hearing –
Item #4: Site Plan Review No. 8-98001, 8- 98001B, and 8-02014,
Clarksburg Town Center

Dear Chairman Berlage:

As you are aware, Pursuant to Section 11 of *The Rules of Procedure for the Montgomery County Planning Board*, the Clarksburg Town Center Advisory Committee (CTCAC) submitted to the Board, on April 22, 2005, a Request for Reconsideration. Since that time, we have received additional documentation and evidence supporting our claims and worthy of review by the Board.

We have attached with this letter a copy of the Site Plan for Permit #301788 (Bozzuto "Bldg. #3" discussed during the April 14, 2005 hearing) as retrieved from DPS. We have also attached a copy of the "MC Department of Permitting Services Building Review Detail – Page 1" denoting the date of review and approval by M-NCPPC.

Regarding these documents, please note the following:

- 1) The Site Plan clearly shows the height Data Table (the same Data Table from the Site Plan Signature Set #8-98001) with limits of "35' maximum" for single family homes and townhomes and "45' maximum" for multi-family buildings.
- 2) The Builder (Clark Wagner for Bozzuto), the Surveyor (Ronald Collier) and the Landscape Architect (Les Powell for CPJ & Associates, Inc.) all signed this document with height limitations apparent.
- 3) The Site Plan establishes that a "clean" copy of the Site Plan (i.e. no line drawn through the height restrictions in the Data Table) was in existence and received by DPS as late as April of 2003, and indicates that the Permit was drawn against a "clean" copy of the Site Plan.
- 4) The information contained in the Site Plan and Building Review Detail contradicts information presented by Staff and evaluated by the Board in its conclusion of "ambiguity" or "silence" relative to specific height restrictions for the Site Plan in question. This "ambiguity" was the basis, in part, for the Board's ruling (please refer to tapes of the April 14, 2005 hearing).

(continued)
CTCAC
April 27, 2004
Supplement to Request for Reconsideration
Page Two

We have reviewed these documents (and their implications) with M-NCPPC Legal Counsel, Tariq El-Baba, as well as Chief of Development Review, Rose Krasnow, and Director of Development Review, Michael Ma. We have also provided to Tariq El-Baba, via Michael Ma, copies of the same.

In light of this compelling supplemental support of our claims, the CTCAC respectfully requests immediate action by the Planning Board to reconsider its decision of April 14, 2005. Once again, we would like to remind the Board that we have been presenting valid information on the height violation issue to M-NCPPC since August of last year. We have, on multiple occasions, requested issuance of a Stop Work Order as provided for under Montgomery County Zoning Ordinance Sec.59-D-3.6. Yet, buildings in violation of the clearly defined Project Plan height restrictions and Signature Site Plan #8-98001 Data Table have continued to be built without intervention. Delay in rectifying this situation has been damaging to Clarksburg Town Center and to the citizens of Clarksburg. We look to the Board to uphold the approved Project Plan and to move quickly to rectify the situation.

Sincerely,

Amy Presley
(on behalf of CTCAC)

cc: Fischer & Steinhilber
Marlene Michaelson, County Council

CTCAC-Supplemental Information

4/27/2005

Marlene.Michaelson@MontgomeryCountyMD.gov

Mike.Knapp@MontgomeryCountyMD.gov

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Hello, Marlene.

Attached is a copy of the latest letter to the Board regarding supplemental information discovered since the time of submission of our "Request for Consideration" letter (4-22-05). The attachments noted within the letter are hard copies of both the Site Plan and related "Building Review Detail" sheet from DPS, so I am unable to attach them with this transmission.

I would like to review these documents, along with all others pertaining to this situation, with you at your earliest convenience. Based on the seriousness of our situation and the questions regarding integrity of procedures and accountability, the CTCAC would like to present information before the PHED. Thank you for your assistance on this.

Sincerely,
Amy Presley

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DAVID W. BROWN

June 28, 2005

VIA COURIER

Derick Berlage, Chairman
and Members of the Board
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

RECEIVED
0996
JUN 28 2005

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

Re: **Clarksburg Town Center - Site Plan Review**
Nos. 8-98001 and 8-02014
Building Height Violation Reconsideration Hearing

Dear Chairman Berlage and Members of the Board:

This letter supplements my June 21st letter to the Board in order to respond to the June 22, 2005 letter from Bozzuto Homes, Inc. ("Bozzuto"). In my June 21st letter, p.5, I suggested to the Board that it would have to "suspend disbelief" in order to accept the notion that highly skilled and able counsel for Newland Communities would submit for final approval site plans with considerably more restrictive standards than approved by the Board. A day later, Bozzuto, represented by the same able law firm as Newland, effectively asks the Board to do just that. Bozzuto offers the Board a letter from Charles P. Johnson & Associates, Inc., their planning and engineering firm. This letter is the first attempt, after many months of silence on this obvious question, to explain away the explicit building heights on the Phase I Site Plan and its sub-phases, heights that precisely tracked those on the final, approved Preliminary Plan. According to CPJ, the data table was on the Site Plans, not because it accurately reflected the height limit, which had been "superseded [by] the four-story limitation," but rather because "**the data table had been identified as the one to place on the site plan by staff.**" Exhibit D to Bozzuto Letter (emphasis added). In other words, despite long-standing practice that signature set development standards are controlling, developers placed invalid, "superseded" requirements on the signature set because the staff told them to.

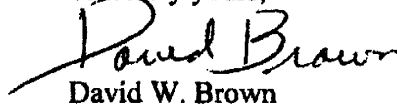
In considering this response, words fail in depicting its contempt for the Board's ability or willingness to separate fact from fiction. It is simply incomprehensible that experienced developer counsel would allow the developers to put at risk the construction of hundreds of homes by knowingly placing on the signature set superseded, more restrictive site plan development standards. The far more cogent and credible explanation, one consistent with the "long-standing course of administrative actions," Bozzuto Letter 3, is that Bozzuto believed before construction that, at the appropriate time after construction, Project Plan and Site Plan Amendments would quietly be approved, effectively ratifying the illegal construction, especially since no one on the

Board staff was exercising its responsibility to check building heights. And so the Board was recently asked by Newland to approve Project Plan Amendments that do exactly that, under the guise of "provid[ing] a clear set of development standards applicable to the project." Application for Project Plan Amendment No. 9-94004A.

Why did Bozzuto think this "course of dealing," Bozzuto Letter 3, would work? Because it had in the past? Because it had staff assurance that the staff's view of a proper height standard --four stories--could be imposed behind closed doors notwithstanding what the Board approved? And what motivated the staff to flout the Site Plan standards, even the point of one staff member covering up his/her actions after the fact with lies and altered Site Plans? None of the answers to these questions is self-evident from the records available to the Committee, but as important as they may be to future events, they do not figure in the burden of proof the Chairman believes applies to the Committee in this case. However they are answered, the bottom line is the same: hundreds of homes built in violation of signature set site plan standards.

Two other points in the Bozzuto letter warrant brief comment. First, Bozzuto effectively adopts as its own the various arguments in the June 10th Newland Letter, Bozzuto Letter 1. The critique of that letter, set forth in my June 21st letter, is therefore equally applicable to Bozzuto. Second, Bozzuto accuses the Committee of "improperly fail[ing] to disclose" to the Board that "the Phase IB- Part 3 Site Plan was submitted as a part of a complete building permit application package filed with DPS." Bozzuto Letter 2. This is followed by a depiction of what the building permit application was for: a four-story, 53' high building. Id. Bozzuto claims that the Committee's "selective submission fails to disclose" this fact. Id. The relevant question here is simple: regardless of what information was on the plans disclosed to DPS, did DPS review Bozzuto's application for building height compliance? The answer is emphatically "No." The RMX-2 Zone has no set building height standards; height is to be set by the Board. As DPS Director Hubbard has confirmed, DPS must therefore rely on the Board staff to determine height compliance before releasing permits. Counsel for Bozzuto is surely aware of this. It is Bozzuto, not the Committee, that is trying to mislead the Board.

Sincerely yours,



David W. Brown

cc: Charles Loehr, Director
Michele Rosenfeld, Esq.
Rose Krasnow, Chief, Development Review
John A. Carter, Chief, Community-Based Planning
Barbara A. Sears, Esquire
Todd D. Brown, Esquire
Timothy Dugan, Esquire
Robert G. Brewer, Jr., Esquire

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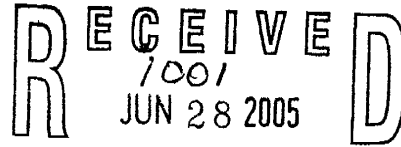
E-MAIL KNOPF@KNOPF-BROWN.COM

WRITER'S DIRECT DIAL

(301) 545-6104

NORMAN G. KNOPF

June 28, 2005



Via Courier

Derick Berlage, Chairman
and Members of the Board
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION
**FOR IMMEDIATE
DISTRIBUTION AND
DISCUSSION BY THE
BOARD**

Re: **Clarksburg Town Center - Reconsideration Hearing
Site Plan Review Nos. 8-98001 and 8-02014**

Dear Chairman Berlage and Members of the Board:

This letter is sent on behalf of the Clarksburg Town Center Advisory Committee ("Committee") to request substantive and procedural changes for the hearing on reconsideration before the Board on July 7, 2005. These changes are essential in order for the Board to have before it all the necessary facts to make a determination as to any violation of the approved Planning Board plans, the appropriate penalties, and remedies for such violations. The failure to adopt these changes will not only deprive the Board of necessary information, but will be reviewed by our clients and other County residents as unfair procedures designed to prevent full disclosure of possible wrongdoing.

I. Substantive Changes

We understand the subject matter to be addressed at the hearing is limited to possible height and setback violations. These apparent violations were called to your attention by the Committee and resulted in the Board's adoption of a motion for reconsideration resulting in the July 7th hearing. Since the grant of reconsideration, the Committee has obtained further evidence indicating possible substantial violations and the improper conduct in other areas. All possible violations and improper conduct should be made the subject of the hearing.

We request that the subject matter of this hearing be expanded to include at least each of the areas set forth in our attached summary of areas of apparent impropriety.

1. **Building Height Violations**
2. **Setback Violations**

3. **Removal of Essential Plan Features - including major changes in effect eliminating "O" street and the pedestrian mews connecting the Church and historic district to the new Town Center**
4. **Amenity Phasing – including the apparent failure to provide amenities in accordance with the phasing plan contained in the Site Plan Enforcement Agreement and failure to enforce phasing stipulations pursuant to the Site Plan Enforcement Agreement**
5. **The Improper MPDU Segregation of Units – rather than integrating them in accordance with Site Plan and County policy.**
6. **Improper Staff Conduct Including Alteration of Plans**

Until all areas of possible improper conduct are fully explored and findings made by the Board as to the specific violations, it is not possible for the Board to make a reasonable decision as to what sanctions should be imposed and what remedies implemented. We are greatly concerned that the hearing, as presently proposed seems to "pigeon hole" each area, with a decision as to penalties and remedies to be made without consideration of the entire situation. Thus, the hearing should not be limited to just building height and setback violations.

II. Procedural Changes

We understand that the proposed hearing will be held according to the Board's usual rules – 3 minutes of testimony per person and pooling of time to about 15 minutes. Such time limits are unacceptable and guarantee that the Committee will be unable to present the voluminous evidence which is so essential for a full exploration of possible wrongdoing. To provide the Board with the necessary information and the development of a full record, it is also essential that the Committee have the ability to ask questions of certain staff members and others. Further, it is also essential that the Committee have an opportunity to respond to or rebut the testimony of the developers and their attorneys. (We note that the developers have also asked for additional time.)

Accordingly, we request the following:

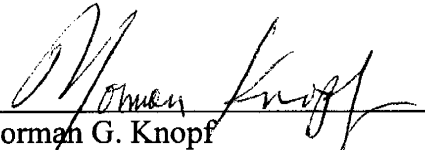
1. The Committee be permitted to make its presentation immediately after the staff presentation and prior to developer testimony.
2. The Committee be assigned at least 2 hours of time in order to:
 - a. Make an opening presentation
 - b. Question staff members and other witnesses

- c. Respond/rebut testimony of others
3. Staff members Wynn Withans and Wayne Cornelius be available for questioning.
 4. The Board request Les Powell, an engineer for Newland, to be present so that he may be questioned.
 5. The Board make no decision on sanctions for violations or remedial action until the Board has before it all the necessary information to determine if there is any improper action in any of the above-referenced subject matter areas or in other areas that become relevant through this hearing. This may result in the Board having to continue the hearing until such information is obtained. We note that the Board has set July 21st for another hearing for matters relating to Clarksburg's Site Plan.

We thank the Board for consideration of our proposal and look forward to the Board adopting this as our first step toward rehabilitating the integrity of the planning process by providing a full and fair hearing.

Sincerely yours,

KNOPF & BROWN

By: 
Norman G. Knopf
Attorneys for Clarksburg Town Center
Advisory Committee

/enclosure

cc: County Council
Charles Loehr, Director, MNCPPC
Michele Rosenfeld, Esq., MNCPPC
Rose Krasnow, Chief, Development Review, MNCPPC
John A. Carter, Chief, Community-Based Planning, MNCPPC
Barbara A. Sears, Esquire
Todd D. Brown, Esquire
Timothy Dugan, Esquire
Robert G. Brewer, Jr., Esquire
Clarksburg Town Center Advisory Committee

Clarksburg Town Center Development – Issues and Discrepancies

Issue / Discrepancy	References / Documents	Comments / Questions
<p>Rampant Height and Setback Violations – Hundreds of houses (townhouse and multi-family units) have been built at heights far in excess of Planning Board-prescribed heights, and in breach of Planning Board-prescribed minimum setback requirements.</p>	<p>Note: The Site Plan Enforcement Agreement was prepared and submitted by Todd Brown, Linowes & Blocher, and signed by Joseph R. Davis and Michele Rosenfeld on behalf of M-NCPPC on May 12, 1999. Subdivision Plat Records (as currently on file with the County) for all homes within Phase I & II were plated against Site Plan Enforcement Agreement #8-98001. These records contain signatures of the M-NCPPC Chairman and the Developer on each. The Site Plan Enforcement Agreement, the Plat Records and Project and Preliminary Plans (which also contain the same height and setback standards) are public record, legally binding documents known to M-NCPPC Staff, Chairman, and Legal Counsel, as well as Developer and Developer Counsel, Todd Brown.</p> <p>Site Plan Enforcement Agreement (Attachment A): “Exhibit “C” – Certified Site Plan” The Certified Site Plan attached to the Site Plan Enforcement Agreement contains the approved data table with height restrictions of 35’ for single family, detached, townhomes and courtyard townhomes, and 45’ for multi-family units; and front yard minimum setbacks of 10’ for single family, detached, townhomes, courtyard townhomes and multi-family units. The Site Plan Enforcement Agreement confirms that what was approved and adopted by the Board at the time of the Site Plan hearing included specific height and setback restrictions.</p> <p>January 25, 2005 Letter from Wynn Withans to Mr. William Roberts of Miller and Smith (Attachment B): This letter specifically amends the setback requirement for the Miller and Smith unit discussed. The letter states: <i>“Attached is the minor plan amendment to revise the front yard setback of Lot 15FF from 10 feet to 8 feet. This amendment is necessary to amend a 2-foot by 12.5 foot foundation layout field mistake.”</i> <i>“... The Planning Board previously waived the unit to street setbacks for the original approval (from 30 feet to 10 feet)...”</i></p>	<p>As to height restrictions, there are no height amendments on file with M-NCPPC that would legally alter what is present within the Site Plan data table. M-NCPPC Staff stated during the April 14, 2005 Hearing, “I made no amendments to height.” Neither the Developer nor the Developer’s counsel presented any valid height amendment information during the hearing. Neither the Developer nor the Developer’s counsel has presented to date any valid records that would dismiss the legally binding height restrictions present within the Site Plan Enforcement Agreement.</p> <p>As to setback restrictions, the presence of the specific setback amendment as issued by Staff, with language citing original Board adoption of specific setback restrictions indicates 1) that the Planning Board did indeed adopt a 10’ front yard setback (reduced from the original 30’) which Staff was still acknowledging as late as January, 2005, and 2) that an amendment would be necessary to change setbacks for any unit to allow reduction from the originally approved setback restrictions (as depicted on the Certified Site Plan data table).</p> <p>The Site Plan and Site Plan Enforcement Agreement, by way of incorporating the Certified Site Plan data table, legally obligate the Developer to adhere to the restrictions present within the data table. Why is there <i>any</i> question as to the governing restrictions for height or setback? These documents have always been available to Staff, and to the Developer and its counsel, and should have been used as the reference to provide answers to the questions posed by the CTCAC from August, 2004 through present. Minimally, they should have been referenced by Staff and Developer counsel at the April 14, 2004 hearing. Instead, for a period of over 10 months from the first inquiry by CTCAC to present, the CTCAC has been evaded, distracted and given the runaround while Staff and Developer representatives embark upon a plan to amend the legally binding requirements they recognize to be present in the approved Project Plan, Preliminary Plan, Site Plan, and Site Plan Enforcement Agreement. Despite attempts to present the records as “messy” or “ambiguous” the project requirements are clear to this day within those legally binding documents. It is essential for the integrity of the planning process that the Board ascertain all of the facts and impose appropriate penalties. Wrongful conduct must not be sanctioned through Board approval of amendments that simply paper-over blatant violations with disregard for the planning process.</p>

Clarksburg Town Center Development – Issues and Discrepancies

Issue / Discrepancy	References / Documents	Comments / Questions
<p>Removal of Essential Planned Features – Planned and approved features, such as “O” street (behind the Church) and the diagonal Pedestrian Mews (connecting the Church and historic district to the new Town Center) have been arbitrarily eliminated.</p>	<p>Site Plan Review #8-98001 – Staff Report from Wynn E. Withans to the Montgomery County Planning Board, January 16, 1998 (Attachment C): <i>Page 10 – “Close to the edge of the Clarksburg Historic District, is a diagonal pedestrian mews. The mews contains sitting areas and two large lawn panels and connecting walks, linking the church with the Town Square. The sitting area closest to the Town Square includes a trellis and a memorial to John Clark with the use of found headstones from the family grave site. The mews develops a visual and walkable axis between the church and the Town Square, highlighting these significant features of the existing and proposed development”</i> <i>Page 11 – “The extension of “O” street, perpendicular to Main Street, connects to the adjoining parcels to the south.”</i></p> <p>Site Plan #8-98001 – Montgomery County Planning Board Opinion, March 3, 1998 (Attachment D): <i>Page 5, Condition #20 – “Dedication and construction of “O” Street extended to occur prior to the recordation of the last lot in the entire project or when the dedication of “O” Street by the adjacent property owners is made in conjunction with future development proposals.”</i></p> <p>Site Plan Enforcement Agreement (Attachment A): <u>“Exhibit “B” – Development Program”</u> <i>B-6 (v) “Developer shall dedicate and construct “O” Street extended prior to the recordation of the last lot in the entire project or when the dedication of “O” Street by the adjacent property owners is made in conjunction with future development proposals.”</i> <u>“Exhibit “C” – Certified Site Plan”</u> The Certified Site Plan attached to the Site Plan Enforcement Agreement shows both “O” Street and the Pedestrian Mews. <u>“Exhibit “D” – Certified Landscape and Lighting Plan”</u> Sheet L-2 of 25, signed by S. Klebanoff on March 8, 1999 and approved and signed by Joseph R. Davis on May 13, 1999, depicts detail of both “O” Street and the Pedestrian Mews. The detail contained in the landscaping plan includes specific plantings along “O” Street and the Mews area, as well as indication of hardscape detail for the Mews.</p>	<p>Comments / Questions</p> <p>One of the key goals of the Clarksburg Town Center Master Plan was the integration of historic Clarksburg with the new Clarksburg Town Center. Integral to this goal was the establishment of a visual and walkable vista connecting the Town Square area to the Church and historic district. Additionally, placement of the John Clark memorial within the Mews was a means of honoring the Clark family – essentially establishing a piece of historical Clarksburg within the extended Clarksburg (the new Town Center). “O” Street was intended to create a buffer between the new homes and the Church, while adding a connecting walk to link the Church with the Town Square.</p> <p>What has been done to the Community instead? The Developer has eliminated “O” Street, has constructed an asphalt road where the Pedestrian Mews was intended to be, and will be moving the John Clark memorial location to an area away from the Town Square. The Church spire is now barely visible from the Town Square area, the Mews is nothing more than a road flanked by townhouses, and the John Clark memorial will likely not be host to the pedestrian gathering that the Mews would have afforded it.</p> <p>Removal of these fundamental features constitutes a grievous loss to the Town Center and Clarksburg Community at large. The Certified Site Plan #8-98001 depicts “O” Street and the Pedestrian Mews. The Site Plan Enforcement Agreement (by way of inclusion of the Exhibits and by specific language as to the dedication of “O” street) legally binds the Developer to provide these features, yet the Developer removed them. How did this happen? Staff was questioned by CTCAC as early as September, 2004 on this issue and was not given a reasonable explanation. There was no public amendment hearing on the removal of these crucial features. There was no record found within Staff files to explain the Developer’s injudicious removal of these essential elements from the Town Center.</p> <p>The CTCAC would like an explanation as to the removal of these features. The Clarksburg Civic Association, members of the Church, and the members of the Clarksburg Community (those who spent nine plus years helping to shape the Master Plan) deserve an explanation. The entire CTC and greater Clarksburg Community expect the Planning Board to conduct a full hearing on July 7, 2005, with complete exploration of these issues, to enable discovery and to determine how it can ameliorate the situation.</p>

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<p>Amenity Phasing Violation – The Developer has failed to provide the amenities in accordance with the Phasing Plan contained in the Site Plan Enforcement Agreement. M-NCPPC has failed to enforce the Phasing Stipulations pursuant to the Site Plan Enforcement Agreement.</p>	<p>Site Plan Enforcement Agreement (Attachment A): <u>“Exhibit “E” – Phasing Plan”</u> 1. General: (b) <i>“All community-wide facilities within Site Plan 8-98001, must be completed and conveyed to the Association no later than the earlier of the receipt of a building permit for the 540th Lot/Unit or by fifteen (15) years from the date of the Site Plan Approval (“Community-Wide Facilities Completion Date”). All remaining common areas must be conveyed to the Association on or before the Community-Wide Facilities Completion Date.”</i> 2. Stipulations: (b) <i>“Developer must construct all recreational facilities and convey such facilities and common areas within the timeframes contemplated in the Phasing Schedule and in these binding elements. Developer must arrange for inspections by Staff to ensure that all facilities are timely, correctly and completely constructed.”</i> (e) <i>“Unless the Planning Board has agreed to modify the Phasing Schedule, the Developer’s failure to timely complete and turn over facilities and common areas shall operate to preclude Developer from receiving any additional building permits for that particular phase and all remaining phases until such time as the default is cured.”</i></p>	<p>Contrary to Todd Brown’s letter of June 24, 2005 to Rose Krasnow, in which he references “9%” of occupancy as relative to the completion of recreational facilities, it is the issuance of the 540th building permit (as noted within the Site Plan Enforcement Agreement #8-98001) that is the trigger date for conveyance of all amenities in Phase I to the HOA. Arguably, based on plat records tying all plats within the subdivision to Site Plan Enforcement Agreement #8-98001, it could be deemed the trigger date for conveyance of Phase II amenities as well. This Site Plan Enforcement Agreement does not reference “occupancy” or completion of phases as the trigger, it references “issuance” of permits. Although Mr. Brown fails to mention in his letter to Ms. Krasnow this Site Plan Enforcement Agreement Phasing Plan and Stipulations, that does not change the fact that his client, Newland, is legally bound by the terms of that Agreement.</p> <p>We are past the issuance of the 540th building permit for CTC and yet the pool has not opened, and many of the other community-wide facilities have not been completed. The Board has failed to act on its enforcement responsibility under the “Stipulations” of the Site Plan Enforcement Agreement. The CTCAC expects the Board to address this issue fully at the hearing, and to act immediately to stop the issuance of all permits until the “default is cured.”</p>
<p>Inconsistencies in MPDU Calculations – The Phasing Calculations received by CTCAC from M-NCPPC on June 10, 2005 do not reconcile with current units within CTC. It appears, based on plans submitted, that there will be a concentration of MPDU units within the Town Square area, virtually segregating MPDUs rather than integrating them equally throughout the Town Center.</p>	<p>MPDU Location Plan (Attachment E): The MPDU Location Plan signed March 27, 2003 by Terry Graves for the Developer and stamped by Richard Hawthorne on October 14, 2004, depicts an MPDU calculation based on 1300 total units. Additionally, the Plan shows “22+” MPDUs slated for the “Commercial/Residential” area, as well as “21+” and “21+” in Phase IA4 directly across from the “22+”</p>	<p>Based on calculations present within the MPDU Location Plan, and the assumption of approval of the planned 36-unit multifamily dwelling within the Town Square area (adjacent to Library), the resulting MPDU segregation/concentration would be in breach of Council and Board policy to have MPDUs dispersed among the market rate units.</p> <p>Additionally, the CTCAC notes that the Developer pre-supposes (as early as March, 2003) that an amendment to allow residential units within the commercial area will be granted. The CTCAC is initially alarmed by the potential for segregation of MPDUs, but has not researched the MPDU situation in depth due to lack of information available. We expect that the Board would “audit” the current phasing plan and units on site to provide an accurate report. We also expect that the Board would not approve supplemental residential units in the retail area.</p>

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<p>Fraudulent and Dubious Documentation and Practices – Multiple evidences have been unearthed by CTCAC that point to Staff malfeasance, with potential complicity, and beg further investigation.</p>	<p>1. Altered Phase IB3 Site Plan and Actual Phase IB3 Site Plan (Attachments F1 & F2) – Staff admitted (as reported by Charlie Loehr to the CTCAC) to having crossed out the heights on the data table “in the fall of 2004”. This took place <i>after</i> buildings were built and occupied, after the height issue was brought to Staff’s attention by the CTCAC in August, 2004, and prior to the April 14, 2005 hearing. “Clean” Phase IB3 Site Plan (attached) was recovered at DPS (within April, 2003 landscaping plans submission).</p> <p>2. Phase II Site Plan:</p> <p>2a. Site Plan Review Phase II - #8-02014 – Staff Report from Wynn E. Withans to the Montgomery County Planning Board, dated May 2, 2002 (Attachment G): Pages 10-G & 10-H – Includes a copy (reduced size) of Site Plans for 8-02014 which show the data table with height and setback restrictions as approved and adopted in the Phase I Certified Site Plan (containing the same height limits of 35’ and 45’ and front yard minimum setback of 10’).</p> <p>2b. DRC Transportation Planning Comments, dated November 19, 2001 (Attachment H) – The DRC notes file for 8-02014 also contains a reduced size Phase II Site Plan (signed April 26, 2001 by Tracy Graves, and April 27, 2001 by Ronald Collier, Professional Land Surveyor and Les Powell, CPJ) showing the same height and setback limits as the Phase I Certified Site Plan.</p> <p>2c. Site Plan Phase II (Attachments I, J, K & L) – The Site Plan was approved by the Board on May 9, 2002. It would be expected that the Signature Site Plan Set would have an approval date prior to or near May, 2002. However, the only Site Plan Phase II “signature set” (Attachment J) found on file with M-NCPPC is signed by the Developer on March 27, 2003, with an approval by Richard Hawthorne (stamp) on October 14, 2004. With this “signature set” the file contained a Site Plan Enforcement Agreement (Attachment J) and a Phase II Landscaping Plan (Attachment K) approval stamped by Richard Hawthorne on October 14, 2004. Minor Revisions to Site Plan Phase II, labeled “Pool and Plaza” (Attachment L, Pages L1-6) have conflicting signatures by Wynn Withans, some dated November 12, 2002 and some dated November 12, 2003 within the same set.</p>	<p>1. CTCAC would like to know the motivation for Staff’s alteration of the Site Plan, and subsequent presentation of fraudulent documentation and false testimony to the Board at the April 14, 2005 hearing, to cover over the Developer’s violations. The CTC community and Montgomery County citizens at large expect a full exploration, examination and reporting of this matter at the July 7, 2005 hearing.</p> <p>2. The Board hearing on the Phase II Site Plan was held May 9, 2002 and the Board Opinion issued on June 17, 2002. Why is the <i>alleged</i> Site Plan Signature set on record with M-NCPPC, on which the Staff would have based its Staff Report and the Board issued its opinion, dated October 14, 2004 – two years and four months after the Board approval? This is incongruent and demands explanation. The information (copy of Site Plans within the Staff Report and DRC Review) retrieved by CTCAC contradicts the validity of an October 14, 2004 approval date. Also, CTCAC has confirmed that units contained within the Phase II Site Plan were, in actuality, permitted, built and occupied prior to the October 14, 2004 date. How could Counsel not have known this when submitting a “Site Plan Enforcement Agreement” against a signature set for buildings already occupied? Of note, this Site Plan is absent height restrictions and is therefore, under Zoning Ordinance 59-D-3-23, not a valid Site Plan. Additionally, there exists (Attachment L1-6) an amendment signed by Kimberly N. Ambrose on November 12, 2003. The set of documents, pages 1-6, are also signed by Wynn Withans, with some dated November 12, 2002 and some dated November 12, 2003. (Was Staff in a hurry when signing these?) Either date (i.e. November 2002 or 2003), whichever of the two one contends is the actual date, does not align with the Phase II Site Plan “Signature Set” approval date of October 14, 2004. How can the Board Staff approve an “amendment” pre-dating the approval of the “signature set” Site Plan? Having not been able to find what the CTCAC believes must exist in terms of a Signature Site Plan reasonably concurrent in date with the actual Board approval for Phase II, and suspecting cover-up activity much like that admitted by Staff pertaining to the Phase IB3 Site Plan, the CTCAC expects the Board to conduct a thorough examination of Staff during the hearing to allow for discovery, reconciliation of information and reporting on the matter.</p>

Clarksburg Town Center Development – Issues and Discrepancies

Issue / Discrepancy	References / Documents	Comments / Questions
<p>Fraudulent and Dubious Documentation and Practices (continued)</p>	<p>3. Emails between Todd Brown and Wynn Withans on March 25, 2005 and April 12, 2005 (Attachment M) – From Todd to Wynn: <i>March 25 - "...per our discussion, we intend to file the following with the Project Plan Amendment application." April 12 (Regarding: Project Plan Amendment Filing Fees) – "Wynn, unit count in retail area is 120 units..."</i> From Wynn to Todd: <i>March 25 - "The list looks good – we will have to go to DRC so the number of sets must conform to that type of distribution for all but the application statement in book form..."</i></p>	<p>3. The Committee was outraged to learn that while the Developer, the Developer's Counsel, and Board Staff sat through the April 14, 2005 hearing, they were all well aware that behind the scenes they had already begun processing an amendment request to the very "development standards" they claimed allowed them to build with "4 stories" as the only limitation. At best, the citizens find this deceptive. The Board should be equally outraged, if it was not already aware of this intent by the Developer. The CTCAC demands full exploration and disclosure by the Board on this issue, with consideration of intent by Developer when determining appropriate remedial actions.</p>
	<p>4. Site Plan Phase IB Part 2 - Minor Revision (Attachments N1 and N2) – CTCAC retrieved a copy of Phase IB Part 2 Site Plan (Attachment M1) from Staff files some time prior to August 26, 2004. CTCAC subsequently received a copy of the "same" Phase IB Part 2 Site Plan (Attachment M2) from Staff files the week following the April 14, 2005 Height Threshold Hearing (reference CTCAC history document for significance of chronology). These two documents, although duplicates, both signed by Tracy Graves (Developer), Ronald Collier (Surveyor), and Les Powell (CRP) on June 28, 2001 and approved/signed by Wynn Withans on August 3, 2001, have differing height information and differing Amendment numbers (handwritten variations – i.e. manually overwritten.)</p>	<p>4. The CTCAC has in its file a "clean" Site Plan, labeled "Minor Revision 8-98001B", of which the Staff was apparently unaware when changes were made to the Staff's copy. On the copy found in the Staff files, Staff has manually altered the "Minor Revision" to read 8-98001 "A" by overwriting the "B" in pen, and the height data table by overwriting the heights with the words "4 stories." Existence of the "clean" Plan proves changes were made (as with the Phase IB3 Site Plan) after the fact and not as valid amendments. Both Staff and Developer representatives began collusively using a "4 stories" terminology in discussions and meetings (reference CTCAC History Document) with the CTCAC in October, 2004. It is alarming to note that discrepancies and questionable actions align with a "Fall 2004" timeframe. The CTCAC demands questioning of Staff, examination of documents, and Board finding on these issues at the July 7, 2005 hearing. Anything less will appear as a cover-up attempt.</p>
	<p>5. Signatory Issues – Multiple Questionable Signatures Tracy Graves signature on multiple documents including Phase II "Site Plan Signature Set" (Attachment I) appear to be copies of the same signature block with dates only changed, while her signature on Phase II Landscaping Plan (Attachment K) appears to be completely original.</p>	<p>5. What is the legality of a signature copy versus an actual signature by the Developer representative? When did Tracy Graves cease being the signatory for the Developer (in view of Newland Acquisition)? Is Tracy still with Newland? If so, what is her authority? All questions to which CTCAC would like answers at the July 7, 2005 hearing.</p>
	<p>6. Overall interaction with CTCAC by Board Staff – It is evident that dealings with the CTCAC by Board Staff have been evasive and deliberately misleading (reference CTCAC History Document).</p>	<p>6. Evasions by the Board Staff, and the Board's apparent unwillingness to comprehensively address all issues pertaining to CTC Development, lead CTCAC and the community to believe that the Developer's interests are of much more concern to the Board than those of the tax-paying citizens. CTCAC would like to see these practices and the specific processes within M-NCPPC changed to reflect concern for and representation of the community at large.</p>