**MEMORANDUM**

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

**STAFF RECOMMENDATION:**

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

**Issue: Alleged Building Height Violation – Citizen Complaint**

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

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

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

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

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

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

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

## Process

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

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

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

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

### 1. Threshold Determination of Noncompliance

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

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

### 2. Compliance Hearing

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

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

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

### 3. Subsequent Board Action

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

## **Project Background**

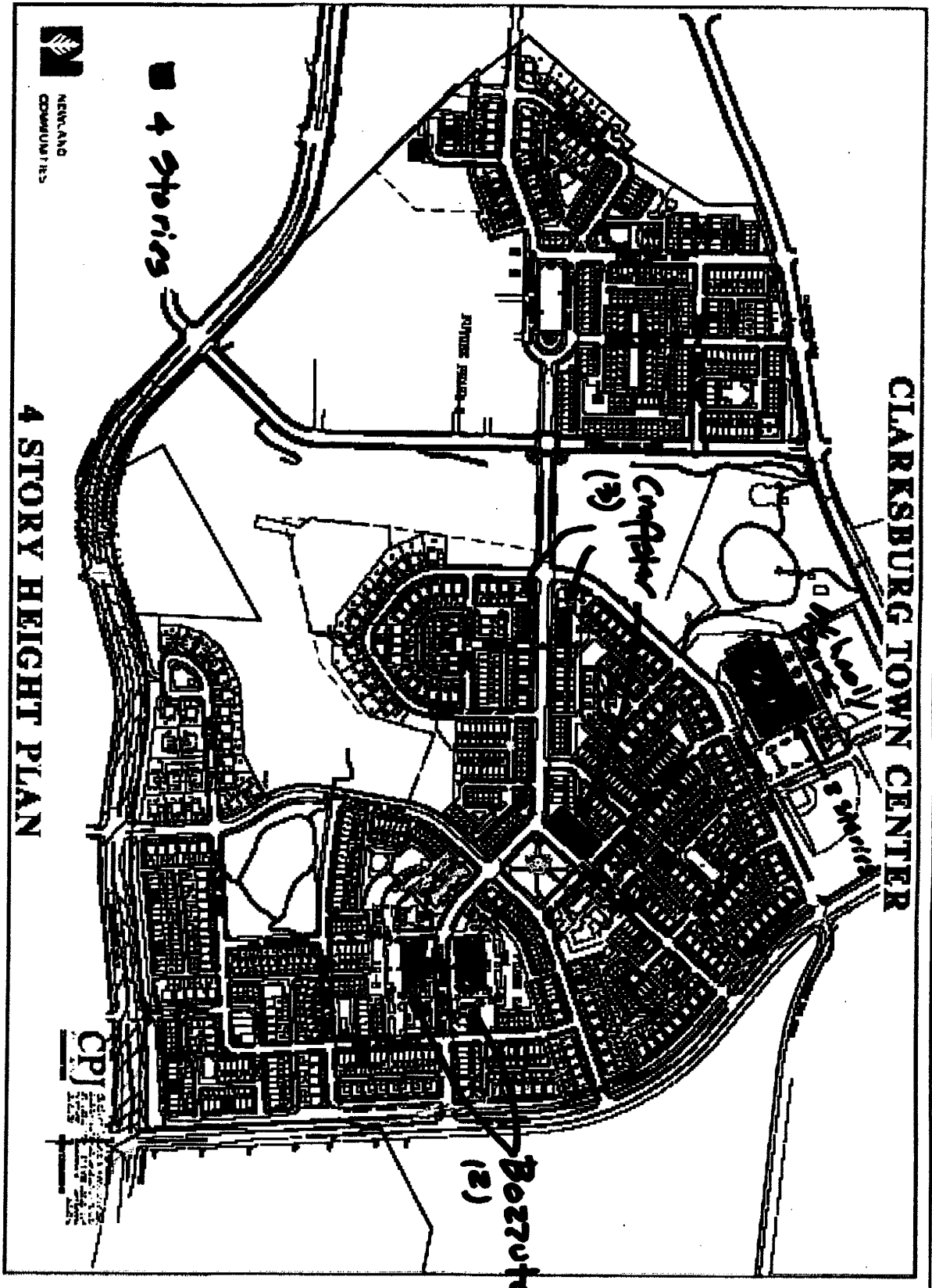
The Clarksburg Master Plan and Hyattstown Special Study Area (“Master Plan”) was approved in June 1994 with a vision for a new town in Montgomery County. The Master Plan calls for the creation of a Town Center in Clarksburg, which would include the historic district as a focal point. Surrounding the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

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

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

## **Site Plan Background**

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



4 STORY HEIGHT PLAN

**Location of Buildings:**

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

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

Subject Buildings are shown in **BOLD** typeface. Each site plan approval for Phase I and II included identical development tables that listed the residential building height at 4 stories. (See Attachment I.)

## Staff Analysis:

### RMX-2 Zone Conformance:

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

### Project Plan:

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

### Site Plan:

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

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

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



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

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

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

**Summary:**

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

Attachments: As listed in report.



April 7, 2005

**MEMORANDUM**

**TO:** Wynn Witthans, Planner Coordinator  
Development Review Division

**VIA:** John A. Carter, Chief  
Community-Based Planning Division

Sue Edwards, I-270 Corridor Team Leader *sue*  
Community-Based Planning Division

**FROM:** Nellie Shields Maskal, Community Planner *NH*  
Community-Based Planning Division

**SUBJECT:** **Site Plans No. 8-98001: Clarksburg Town Center - RMX-1 Zone; 120 acres; southeast quadrant of the intersection of Piedmont Road and Clarksburg Road; Residential Building Height Issue.**

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The purpose of this memorandum is to provide comments from the Community-Based Planning Division concerning site plans for the Clarksburg Town Center.

**INTRODUCTION****Vision of the Clarksburg Master Plan for the Town Center**

Clarksburg Town Center is located approximately one-half mile from I-270 near the intersection of MD 355 and MD 121 in the 1994 Clarksburg Master Plan Area. The Clarksburg Master Plan proposes a transit-oriented, multi-use Town Center that is compatible with the scale and character of the Clarksburg Historic District along MD 355. The Clarksburg Master Plan also proposes to provide a concentration of uses including a library, post office, park, elementary school, retail center and a mix of housing types. This combination of land uses is intended to help define the Town Center as the focal point of community activities (page 26).

Since the Clarksburg Master Plan was approved, both a Project Plan and Preliminary Plan for the entire Town Center was approved. These approvals have been followed by

(A)

- The Planning Board Opinion for Site Plan #8-98001 referenced a building height of four stories without a numeric measurement of the maximum building height. This determination is consistent with the Master Plan guidance that apartment buildings in the Town Center be four stories or less.
- Buffers to the Historic District with two and three-story building height restrictions do not extend to the location of Buildings #3 and 6 and other buildings that are noted to be over 45 feet high.

## **CONCLUSION**

Multi-family building heights including apartment and two-over-two dwellings of four stories in the Town Center are consistent with the Clarksburg Master Plan and implement the vision of the Plan.

We also understand that the applicant intends to augment the landscaping and screening in the approved Site Plan to address some of the concerns of the residents in the Clarksburg Town Center. Although this additional screening is not part of the initial requirements, these efforts should be encouraged to alleviate concerns of Clarksburg residents.

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**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:** 'Synergisinc@aol.com'  
**Subject:** Building Heights in Clarksburg Town Center

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



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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 10<sup>th</sup> will be greatly appreciated.

Sincerely,

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



**Rose G. Krasnow**  
**Development Review Chief**  
**Maryland National Capital**  
**Park & Planning Commission**  
**8787 Georgia Avenue**  
**Silver Spring, MD 20910**  
**(p) 301 495-4591**  
**(f) 301 325-3462**  
**rose.krasnow@mncppc-mc.org**

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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><b><i>"Assuring compatibility of future development with the historic district has been a guiding principle of the planning process."</i></b> (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. <b>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.</b>"</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><b>59-C-10.3 Optional Method of Development Regulations –</b> 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><b>59-C-10.3.11 Development Procedure –</b> 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><b>59-D-A-2 – Optional Method</b> requires a <i>Project Plan</i> and <i>Site Plan ... precondition for the use of the optional method of development</i></p> <p><b>59-D-3-23 – Proposed Development – ...</b> (Referencing what must be included within the site plan) ... (a) The location, <i>height</i>, ground coverage and use of all structures.</p> <p><b>59-D-3.4 – Action by Planning Board</b> (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><b>59-D-2.6 Amendment: Minor Plan Amendment</b> 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 <i>requirements expressed or imposed by the Planning Board</i> 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><b>59-D-3.6 Failure to Comply</b> 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 &amp; 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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requirements of the zone in which it is located. (See project data table above.)"

**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."

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.

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

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<p>Site Plan Enforcement Agreement</p>	<p>Montgomery County Planning Board, Linnowes &amp; Blocher, LLP (legal counsel for the Developer) &amp; 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 of the Montgomery County Code....</i>" "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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March 8, 2005

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

Re: Response to Letter dated January 25, 2005 from Clarksburg Town Center Advisory  
Committee ("CTCAC") Regarding Building Height in Clarksburg Town Center

Dear Chairman Berlage and Members of the Planning Board:

Our firm represents Bozzuto Homes, Inc. ("Bozzuto"), owner and developer of certain portions of the Clarksburg Town Center. The purpose of this letter is to respond to the January 25, 2005 letter complaint of the CTCAC alleging height violations of existing and proposed buildings in the Clarksburg Town Center.

**Complaint**

The specific contention of the CTCAC is that height violations exist in the Clarksburg Town Center because certain unspecified buildings, although 4 stories, exceed 45 feet in height, which is the maximum height in feet that the CTCAC contends was established by the approved Project Plan. As a result, the CTCAC is requesting, pursuant to Section 59-D-3.6 of the Zoning Ordinance, that the Planning Board "... issue a stop work order regarding 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." See January 25, 2005 CTCAC letter. The complaint does not specify the existing building(s) alleged to be in violation or those not yet built but allegedly having the "potential" to exceed the purported height limitation of 45 feet. However, based on information Bozzuto has obtained from discussions with Staff and others, Bozzuto understands that the allegations as they pertain to Bozzuto are limited to the following two multi-family buildings: (i) Building #3, a 30-unit condominium building which has been constructed and sold to others, and (ii) Building #6, a

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And Members of the Mont. Co. Planning Board  
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30-unit multi-family building, which has received site plan approval, but is not yet under construction.

### Factual and Legal Background

The Clarksburg Town Center is zoned RMX-2 (Residential Mixed-Use Development, Specialty Center) and is an optional method project. The optional method of the RMX-2 Zone does not specify a maximum building height for the development. Under the optional method, general commercial uses and higher density residential uses are allowed if they comply with the optional method of development regulations of the RMX-2 Zone (Sec. 59-C-10-3.1) and the density, numerical limitations, and other guidelines contained in the applicable Master Plan (Sec. 59-C-10.2.2). In addition, a project plan and site plan(s) must be approved by the Planning Board under the optional method.

Project Plan No. 9-94004 for the Clarksburg Town Center (the "Project Plan") was approved by the Planning Board by Opinion mailed on May 11, 1995 (the "Project Plan Opinion"). In the Project Plan Opinion, the Planning Board specifically finds that the Project Plan conforms with the requirements and intent of the RMX-2 Zone and the approved and adopted Clarksburg Master Plan & Hyattstown Special Study Area (1994) ("Master Plan"). As noted above, the RMX-2 Zone does not specify a maximum height as a development standard. In this regard, Section 59-D-2.12(d) regarding project plans requires only that a project plan include a land use plan showing, *inter alia*, the "... general bulk and height of the principal buildings ...". Section 59-D-2.42 provides that, to approve a project plan, the Planning Board must find, *inter alia*, that it complies with the intents and requirements of the zone, including the applicable Master Plan. The CTCAC argues that although it is uncontested that Buildings #3 and #6 are 4 stories, both the Master Plan and the Project Plan required a maximum height limitation for residential buildings in the Clarksburg Town Center of 45 feet. This argument is without merit. Initially, the Master Plan, as more fully discussed below, does not specifically state or in any way imply that a 4-story structure in excess of 45 feet is incompatible with the Master Plan recommendations for the Historic District, as advanced by the CTCAC. Second, the Project Plan establishes the required height of the residential building to be 4 stories consistent with the Master Plan, but does not restrict the general height as to be 45 feet or less.

On this latter point, the CTCAC argues that because the Project Plan Opinion contains a data table indicating that the *required* height of residential buildings is "4 stories" and that the

The Honorable Derick Berlage, Chairman,  
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*proposed* height is "4 stories (45 ft.)," the Project Plan is somehow reflecting a strict compatibility requirement of the Master Plan that the buildings must not only be 4 stories, but also not exceed 45 feet in height rather than a general anticipated height in feet for a 4-story building as required by Section 59-D-2.12(d). As noted, Buildings #3 and #6 are 4 stories. The final measurement of the height of Building #3 in feet is approximately 53 feet 7-3/4 inches and that of Building #6 approximately 50 feet. This height in feet in no way violates the 4-story requirement of the Project Plan, nor the applicable provisions of the Master Plan as more fully discussed below.

### Master Plan

A careful review of the Master Plan indicates that there is no basis for the contention of the CTCAC that any residential building in the Clarksburg Town Center in excess of 45 feet somehow violates the Master Plan. In this regard, the Master Plan does not set a specific height limitation for buildings in the Town Center in terms of feet. Specifically, the Master Plan states at p. 46 as follows:

"All apartment buildings in the future Town Center will be four stories or less except within walking distance of the transit stop, where a building height of six to eight stories may be allowed if Master Plan recommendations concerning compatibility with the historic district can be achieved."

Additionally, Figure 21 of the Master Plan, entitled "Clarksburg Historic District Buffers," graphically illustrates the specified Master Plan guideline found at p. 48 of the Master Plan to create certain buffer areas adjacent to the Historic District. The Master Plan recommends that the areas on the east side of the Historic District, specifically within 400 feet east of existing MD 355 and/or on land which is within the Historic District, development be limited to single-family detached structures that are no higher than 2 stories. The Master Plan further recommends that certain areas between existing MD 355 and relocated MD 355 to the west (an area of approximately 550 feet) also be limited to detached housing with a maximum of 2 stories. Finally, the Master Plan calls for the area between relocated MD 355 and the transitway (approximately 500 feet) have residential housing with a maximum of 3 stories.

According to the Master Plan, these specific buffer recommendations were intended to "... help assure a sympathetic relationship between the 'old' and 'new' areas of Clarksburg," thereby

