

MEETING AGENDA

ate: January 10, 2005
Location: MN-CPPC – Office of the Chairman
Time: 4:00pm
Attendees: M-NCPPC Chairman of the Board – Derick Berlage
CTCAC Co-Chairs – Kim Shiley, Carol Smith, Amy Presley

Agenda:

- I. Introductions
- II. Overview
 - Formation of the Clarksburg Town Center Advisory Committee (CTCAC)
 - Clarksburg Town Center Development to date
 - Interactions with M-NCPPC to date
 - Interactions with Developer to date
- III. Height Violation Discussion
 - Master Plan
 - Project Plan
 - Montgomery County Codes
 - Preliminary Plan
 - Site Plan
 - Site Plan Enforcement Agreement
- IV. Supplemental Concerns
 - Dangers of "Bait and Switch"
 - Current Town Square / retail center development issues
 - M-NCPPC processes, procedures and accountability
- V. CTCAC Expectations
 - Issuance of violation notice to Developer
 - Accountability and follow-up with M-NCPPC
 - Guardianship of the Master Plan / Project Plan enforcement by M-NCPPC
- VI. Next Steps – Open Discussion

Clarksburg Town Center Development – Documentation Relative to Height Restrictions

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

<p>Preliminary Plan</p>	<p>Planning Board Approved – March 26, 1996</p>	<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. <i>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.</i>"</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>
<p>Montgomery County Zoning Ordinance #59</p>		<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 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</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 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</p>

	<p>amenities is essential to support the mixture of uses at the increased densities of development allowed in this zone.</p> <p>59-C-10.3 Optional Method of Development Regulations – This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County...</p> <p>59-C-10.3.11 Development Procedure – A. The procedure for approval for an <i>optional method of development in these zones requires a Project Plan in accordance with division 59-D-2 and a site plan in accordance with division 59-D-3.</i></p> <p>59-D-A-2 – Optional Method requires a Project Plan and Site Plan ... precondition for the use of the optional method of development</p> <p>59-D-3-23 – Proposed Development – ... (Referencing what must be included within the site plan) ... (a) The location, height, ground coverage and use of all structures.</p> <p>59-D-3.4 – Action by Planning Board (1) ...the Site Plan is <i>consistent with an approved development plan or a Project Plan for the Optional Method of development</i>, if required... (4) ... each structure and use is <i>compatible with other uses and other site plans and with existing and proposed adjacent development.</i></p> <p>59-D-2.6 Amendment: Minor Plan Amendment A minor amendment is an amendment or revision to a plan or any findings, conclusions, or 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</p>	<p>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 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>Plan. A minor amendment may be approved, in writing, by the Planning Board staff. Such amendments are deemed to be administrative in nature and concern only matters that are not in conflict with the Board's prior action.</p> <p>59-D-3.6 Failure to Comply</p> <p>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>If the site plan, as confirmed by M-NCPPC staff members (Michael Ma, Wynn Witthans, Rose Krasnow), merely showed "4 stories" as the height notation for the buildings in question, even as approved by the Planning Board, it still does not authorize those "4 stories" to exceed the height limitations as defined within the Project Plan findings and approved by the Planning Board. Under the "Optional Method of Development" the Developer is still obligated to ensure that the "4 stories" comply with the conditions and findings of the Project Plan. The Planning Board is also obligated to enforce those conditions and findings.</p>
<p>Site Plan Review (Wynn Witthans' - Staff Report submission & Planning Board Opinion)</p>	<p>Planning Board Opinion - January 22, 1998</p>	<p>Site Plan Review: Staff Recommendation; Proposal</p> <p>**Findings for Site Plan review (Page 35):</p> <p>#1 Site Plan is consistent with the Project Plan approved for this site utilizing the RMX2 optional method of development. (See discussion above.)</p> <p>#2 The Site Plan meets all of the requirements of the zone in which it is located. (See project data table* above.)"</p> <p>Planning Board Opinion:</p> <p>"Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds:</p> <p>#1. The site plan is consistent with the approved development plan or a Project Plan for the Optional</p>	<p>**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 report, submitted as part of the site plan review documentation for the Board, is a data table that varies from the data table included in 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</p>

		<p>Method of Development, if required. #2 The site plan meets all the requirements of the zone in which it was located."</p>	<p>table among M-NCPPC documentation is within Wynn's Staff Opinion/Site Plan Review. In submitting a new data table, Wynn has independently overridden Community Based Planning's recommendations, as well as the "Findings" approved by the Planning Board in the final Project Plan. Her submission to the Planning Board could be viewed as misleading and negligent, at best. At worst, it could be viewed as a deliberate alteration or omission of specifications, inappropriately serving the developer's desires.</p> <p>Again, as stated within our Zoning Ordinance notes, even in the presence of a generic "4 stories" denotation on the altered data table and/or the submitted Site Plan, the Developer is still accountable to ensure that the "4 stories" are in compliance with the height restrictions of the approved data table/findings as part of the approved Project Plan. Also, according to zoning ordinance for Optional Method, and the Planning Board's own Findings, M-NCPPC is still accountable to enforce the limitations/ guidelines contained within the approved Project Plan Findings. There is no language within the Site Plan Review Staff Report or the Board Opinion that negates the Data Table ("Finding") of the Project Plan -- i.e. that the "4 stories" shown on the Site Plan must be in compliance with the heights as defined -- 45' for residential buildings and 50' for commercial buildings.</p>
<p>Site Plan Enforcement Agreement</p>	<p>Montgomery County Planning Board, Linnowes & Blocher, LLP (legal counsel for the Developer) & Piedmont Land Associates (Developer) March 18, 1999</p>	<p>(Page 1) "Whereas, Text Amendment No. 80025, approved July 21, 1981, effective October 15, 1981, amended Section 59-D-3.3 of the Montgomery County Code to require as part of the site plan review process that <i>applicants enter into a formal agreement with the Planning Board requiring the applicant to execute all features of the approved site plan in accordance with the Development Program required by Section 59-D-3.23</i> of the</p>	<p>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>

		<p>Montgomery County Code....” “Whereas, the parties hereto desire to set forth herein their respective requirements and obligations pursuant to Section 59-D-3.3 of the Montgomery County Code, 1994... Now, therefore, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of Section 59-D-3.3 of the Montgomery County Code, 1994.... the parties hereto agree as follows: 1. In accordance with approval by the Planning Board of Site Plan No. 8-98001, <i>Developer agrees that, when it commences construction on any phase as set forth in the Development Program attached hereto as Exhibit “B”, or any amendments thereto, it will execute and maintain all the features of the site plan for that phase as required by Section 59-D-3.23 in fulfillment of the approval granting Site Plan No.8-98001, and any subsequent amendments approved by the Planning Board....</i></p>	
--	--	---	--

Meeting Follow-up

1/11/2005

mcp-chairman@mncppc-mc.org

john.carter@mncppc-mc.org, sue.edwards@mncppc-mc.org, Shileykim@aol.com,
smithcar@mail.nih.gov

Hello, Derick.

I just wanted to take a moment to thank you, and John and Sue, for taking the time to meet with us yesterday. We appreciate your time and consideration of the issues we discussed surrounding height violations and other CTC development concerns.

Please advise us if there is anything we can do to assist in rapid resolution of the height violation issue. We would be happy to participate in any way necessary to address the concerns prior to further development of buildings based on potentially erroneous site plan approvals.

Again, thank you for your time. We look forward to hearing from you.

Sincerely,

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

Follow-up / Derick Berlage Meeting

1/19/2005

Councilmember.Knapp@MontgomeryCountyMD.gov

C:\Program Files\America Online 8.0\misc\temp\1-10-05BerlageM00.ZIP (15649

Time (TCP/IP): < 1 minute

Hi, Mike.

Great catching up with you today. I will give serious thought to the Advisory Committee appointment you mentioned and will get back to you on Monday.

As promised, I have attached a copy of the document we prepared for our meeting with Derick Berlage. The document outlines pertinent details from the Master Plan, Project Plan, Zoning Ordinances, Site Plan and Site Plan enforcement pertaining to height issues for CTC. I am also attaching a copy of the meeting agenda. For your information, John Carter and Sue Edwards also attended the meeting (they were invited by Derick). We are certain that John agrees with our position and not sure why his opinion is not contained in the "Staff Opinion" submitted by Rose relative to the height issues. It seems that Rose's team (Development Review) provided the only input to the Staff Opinion on the height violations.

We believe that we must hold M-NCPPC accountable. The Master Plan/Project Plan process is invalidated if at the last stage (in Development Review), developers are enabled to breach agreements and standards previously approved by the Board. We greatly appreciate your continued assistance in upholding the Master Plan concept for CTC and in ensuring accountability/enforcement within M-NCPPC.

Thanks for your help to date.

Sincerely,
Amy

Re: Clarksburg Town Center/ Manor Home Buildings

1/20/2005

smithc@efdb.nci.nih.gov

Shileykim@aol.com

Hi, Carol.

Could you make a 6pm meeting on Monday or Tuesday? Or give me some other time suggestions.....

Kim, same goes for you. If the both of you can give me some time slots for Monday/Tuesday next week, I can respond to Bozzuto.

Thanks,
Amy

Re: Clarksburg Town Center/ Manor Home Buildings

1/20/2005

jmowrey@bozzuto.com

Hi, Jackie.

Didn't want you to think that we had forgotten about you. I am trying to confirm some times for Monday or Tuesday next week. I will get back to you by end of day if possible.

In the interim, could you let me know if you would be available to meet at 6pm in the evening? It is difficult to coordinate a meeting during the day with the other Co-Chairs of CTCAC, since they are both based in Bethesda. Your suggestions on time and location would be appreciated.

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

Re: Clarksburg Town Center/ Manor Home Buildings

1/20/2005

Shileykim, smithc@efdb.nci.nih.gov

Just got word from Jackie. She is willing to meet at 6pm, but next week is not good. She is hoping for the week after that and requested that we suggest a place in Clarksburg.

Suggestions? Times that work for you guys?

Let me know and I'll confirm with her.

Thanks!

CTC Development - Height Violations

1/26/2005

mcp-chairman@mncppc-mc.org

rose.krasnow@mncppc-mc.org, michael.ma@mncppc-mc.org, wynn.witthans@mncppc-mc.org, john.carter@mncppc-mc.org, Councilmember.Knapp@MontgomeryCountyMD.gov, Shileykim@aol.com, smithcar@mail.nih.gov, nnagda@ENERGENconsulting.com, JJackman@wtplaw.com, jersub13@yahoo.com, timdearros@comcast.net, rdefrehn@nccmp.org, murfs@comcast.net, lfantle@aol.com, cariandieff1@comcast.net, sendtriciamessages@msn.com

C:\Program Files\America Online 8.0\misc\temp\CTCHeightIssueResponse-1-2
(28774 bytes) DL Time (TCP/IP): < 1 minute

Dear Mr. Berlage:

Please find attached a letter from the CTCAC to you requesting a Board hearing relative to height violations within the Clarksburg Town Center. We have also attached the letter we received from Rose Krasnow, along with our response comments embedded. Further we have attached a supporting document table and notations.

We appreciate your attention to this and will await your response.

Sincerely,
Amy Presley, on behalf of the CTCAC

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

January 25, 2004

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

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

Dear Mr. Berlage:

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

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

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

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

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

Sincerely,

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

(On behalf of CTCAC)

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

Dear Ms. Presley,

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

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

"... Each term, condition and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are therefore not automatically severable."

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

Following a review of all the pertinent documents (Specifically which pertinent documents did the Staff review? CTCAC has attached pertinent document information and requests that the Board review and reply specifically to the sections highlighted and also to our response to this letter relative to the height violations.) and careful consideration of your concerns and your position respecting this matter, Commission Staff has concluded that: the Planning Board made the required finding that Site Plan No. 8-98001 ("Site Plan") is consistent with Project Plan No. 9-94004 ("Project Plan"); (2) that finding was properly made (We would like specific accountability and explanation as to why a revised Data Table was created and submitted to the Board along with Wynn Witthan's Site Plan Review submission, rather than using the Data Table contained in the Board-approved and adopted Project Plan Findings. We maintain that, based on submission of erroneous Data Table information, the finding could not possibly have been "properly made" by the Board.); and (3) the buildings in question comply with all conditions and development standards attached to the Site Plan. (The building in question may or may not comply with conditions and standards of the Site Plan itself, but that Site Plan is subject to the requirements of the Optional Method of Development – under which, compliance with the Project Plan is mandatory.) Having so concluded, Commission Staff finds no basis upon which to cite the developer or builder with a violation and is disinclined to do so. (It has been stated to CTCAC members, on more than one occasion and by more than one person within M-NCPPC – including Michael Ma, Wynn Withans and even Derick Berlage, that the action, or lack of appropriate action surrounding initial submission and approval of the Site Plan in

question was an “oversight” on the part of M-NCPPC...and that “M-NCPPC will do all it can to avoid such oversight in the future.” Based on these admissions, it is incumbent upon M-NCPPC to call the error out as such and do all in its power to rectify the situation – including calling back into review the other Site Plans erroneously approved. Not to take such actions constitutes negligence on the part of M-NCPPC to abide by its own standards and procedural requirements.)

As you know, the approval of the Project Plan was subject to a number of conditions; however, the height of the buildings was not included as a condition of approval. (Height limitations were contained within the “Findings” of the Board-approved Project Plan. The Conditions of the Preliminary Plan serve to support – under Condition #14 – the requirement to uphold those Findings.) Rather, the reference to a proposed height of forty-five feet was included parenthetically within the “Proposed” column of a table entitled “Data Summary: Clarksburg Town Center.” That table was included in the Project Plan opinion to demonstrate conformance of the project with the requirements and intent of the RMX-2 Zone. As you know, that table listed “four stories” under the “Required” column, which limitation is drawn from the Clarksburg Master Plan (“Master Plan”) Land Use Plan recommendations for the Town Center District.³ (It is critical here to note that a specific definition of the “four stories” as proposed for the CTC development is shown within the “Proposed” column. This definition is stated as 45’ for residential and 50’ for commercial buildings. It is evident to the CTCAC, the CTC residents the CCA and the Clarksburg Community at large, that the “Proposed” heights were included as a means of ensuring development compatible with the scale and character of the Clarksburg Historic District. This reasoning was confirmed by John Carter, Chief of Community Based Planning. The necessity for and sensitivity to development compatible with the Historic District was clearly a driver throughout development of the Master Plan.

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

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

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

Notably, the Master Plan language does not set a numerical cap on the maximum height of apartment buildings (– which is exactly why Community Based Planning felt it necessary to include a numerical cap within the Project Plan Findings submitted to and approved by the Board. The goal of assuring compatibility with the future development of the historic district, relative to scale, was a driver for specification of the height limitations within the Project Plan Findings.) , stating in relevant part only that “[a]ll apartment buildings in the future Town Center will be four stories or less” Clarksburg Master Plan p. 44 (emphasis added). Therefore, the proposed “four-story” limitation was deemed to conform to the applicable requirements of the RMX-2 Zone, irrespective of any specific numerical limitation (However, this limitation was not deemed sufficient by Community Based Planning at the time of preparing the Project Plan Findings. Had Community Based Planning felt that “four stories” as allowed within the Master Plan and RMX-2 Zone, without a specified height cap, was sufficient language to ensure “scale and compatibility” with the Historic District, they would not have specified a 45’ residential and 50’ commercial height cap within the Data Table contained within the Findings of the Project Plan.) In the Site Plan staff report, the proposed height limitation for residential buildings was similarly set at four stories, however, no specific numerical limitation was recommended (Please

³ 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

note that the Development Review staff was not at liberty to independently and arbitrarily change or omit at Site Plan review/submission any of the requirements, conditions and findings previously approved by the Board and contained within the Project Plan. If the Staff intended to do such, it would have been required to create an Amendment. Under the rules and guidelines for "Minor Amendment" a change of this nature would not have been allowed without full Board hearing. There is no existing documentation of any amendment to the Project Plan Findings. Please refer to document table and pertinent notes attached – 59-D-2.6.) It was, and continues to be, Commission Staff's view that no specific numerical limitation is necessary in order to conform with the requirements of the zoning ordinance and the master plan (It is astounding to the CTCAC that the Commission Staff would state that "no specific numerical limitation is necessary." According to M-NCPPC Board, by way of approval of the Project Plan Findings, it is necessary for development within CTC to conform to the "specific numerical limitations" contained within the Project Plan conditions and findings as approved and adopted, not just the Master Plan and Zoning Ordinances in general. It is a necessity for all development within the Clarksburg Town Center, under the Optional Method of Development, to comply with *all* requirements, conditions and findings of the Project Plan.); and, moreover, that a delineation of four proposed stories, with no specific numerical limitation, is consistent with the Project Plan approval (The Project Plan was approved with Findings containing a specific delineation of the height for those "proposed" four stories. Therefore, with a generic delineation of "four stories" on the Site Plan, it must be expected – and if not, then confirmed by Development Review – that those "four stories" would be in compliance with the specific definition of "four stories" as proposed within the Board-approved and adopted Project Plan Findings. Please refer to the Project Plan Findings – Data Table – and our document table and pertinent notes attached.). On Staff's recommendation ("Staff" submitted to the Board a revised Data Table along with its recommendation. This Data Table was inconsistent with the Data Table contained in the Project Plan Findings previously approved by the Board. It removed from the "Proposed" standards for the CTC Development the actual height caps of 45' for residential and 50' for commercial. Submission to the Board of this revised Data Table represents, at best, gross negligence on the part of the Development Review Staff preparing the report. At worst, it represents action which could appear as being unduly influenced by the Developer. In either case, it was clearly a submission of erroneous information to the Board, resulting in an erroneous approval of the Site Plans submitted. This action alone is cause for re-examination of the Site Plans and previous approval process, and grounds, in the opinion of CTCAC, for action under Zoning Ordinance 59-D-3.6.), the Board determined that the Site Plan was consistent with the Project Plan (based on erroneous information presented by the Staff), which determination necessarily includes a finding that the proposed height limitation of four stories in the Site Plan is consistent with that proposed in the Project Plan (only because Staff conveniently removed the height caps that were present in the Data Table contained in the Project Plan previously approved by the Board. The CTCAC requests a full investigation of this action and accountability from M-NCPPC regarding the matter.).

The Site Plan constitutes a detailed review of the proposed project and assigns the final site plan data limits, with which limits the buildings must conform, in order to comply with conditions of the building permit (According to M-NCPPC Staff's own statements to the CTCAC, it is customary and expected that documents from the Master Plan through to the Site Plan follow in increasing level of detail – i.e. that the Site Plan should show a level of detail even greater than that of the Project Plan. The Project Plan, according to the Board's ruling and statements within the Preliminary Plan, serves as the "development authority" for the CTC development – Please refer to our document table and notations attached. Without a specific definition of the "four stories" shown on the Site Plan in question, the Staff would either have had to assume that those "four stories" would comply with the previously defined and approved height caps as contained within the Project Plan, or would have had to seek definition from the Developer. It is the

responsibility of the Development Review Staff to ensure that Site Plans submitted comply with Project Plan conditions and findings. It is the duty of the Staff to report responsibly to the Board, as the Board relies on the Staff's review and opinions. As we have stated, we believe Staff actions relative to the submission represent a gross negligence at best.) With respect to their height, the buildings in question comply with the Zoning Ordinance/Master Plan and Site Plan development standards (but they DO NOT COMPLY with the Project Plan Findings... which are the "underlying development authority" for CTC development according to the Board); and, therefore, in Commission Staff's view (The Commission Staff's view was based on erroneous information), the height of the buildings do not violate the condition of the building permit that the buildings comply with zoning regulations.⁴ At the December 13 meeting, there appeared to be consensus among Commission Staff and attending CTCAC members that the site plan does not specify a height limitation (There was no such "consensus"...there was merely a reporting to the CTCAC by Wynn Witthans, and a confirmation by Michael Ma, that the Site Plans in question did not specify height detail, that they merely noted "four stories." CTCAC can only presume that the information shared was accurate.)—it only specifies that the buildings will be four stories—and, further, that the buildings in question are four-story buildings. As such, it is not disputed that the buildings in question (including the other multi-story buildings proposed but not yet built, as well as the "two-story over two-story" (2/2) buildings) are in conformance (A mere confirmation that the Site Plans state "four stories" and that the buildings built and to be built are "four stories" does not constitute conformance with the Project Plan Findings...to which all development within CTC must conform.)with the Planning Board's approval of the Site Plan.

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

As you know, site plan proposals for the amendment of Phase I (8-98001E) residential and Phase III (8-04034) retail are still pending. The proposals consist of an amendment for a new site plan for the commercial area; and, additionally, an amendment to both Phase I and II residential site

⁴ It is, of course, outside of the scope of the Commission's authority to make a determination as to compliance with a building permit. Such a determination is properly made by the Montgomery County Department of Permitting Services

plans, in order to modify the "Manor Homes" from 9 units to 12 units. We encourage you to make your views known to Commission Staff and the Planning Board as we proceed with the review and consideration of these amendments.

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

Sincerely,

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

W:\TAB\DevelopmentReview\CTCHeightlssue.ltr.WW.TABedits.12-30-04.final.doc

Clarksburg Town Center Development – Documentation Relative to Height Restrictions

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

			"necessary elements" of development for Clarksburg Town Center.
Preliminary Plan	Planning Board Approved – March 26, 1996	<p>Background: "... the underlying development authority, Project Plan #9-94004, was approved by the planning board on May 11, 1995, after two prior planning board meetings (held on April 6 and 20, 1995). The record for the preliminary plan #1-95042 specifically includes the records from those prior hearings...</p> <p>Therefore, the planning board approves the plan. The approval is subject to the following conditions:</p> <p>...</p> <p>#14. "Preliminary plan #1-95042 is expressly tied to and interdependent upon the continued validity of Project Plan #9-94004. Each term, condition and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are therefore not automatically severable."</p>	<p>The Planning Board itself determined all conditions, findings, or "requirements", as outlined in the Project Plan to be "essential components" of the approved plans and "NOT automatically severable." Therefore, the data sheet containing height definitions of 45' for residential and 50' for commercial can neither be ignored at Site Plan approval, nor arbitrarily over-ridden by any member of the M-NCPPC staff or by the developer. (See definition of "Minor Amendment" under Zoning Ordinance #59... Removing the height definitions would NOT be considered a Minor Amendment – i.e. not allowable without amendment hearing.)</p>
Montgomery County Zoning Ordinance #59		<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>

	<p><i>Plans.</i> Approval of this optional method of development is dependent upon the provision of certain public facilities and amenities by the developer. The requirement for public facilities and amenities is essential to support the mixture of uses at the increased densities of development allowed in this zone.</p> <p>59-C-10.3 Optional Method of Development Regulations – This optional method of development accommodates mixed use development comprised of planned retail centers and residential uses at appropriate locations in the County...</p> <p>59-C-10.3.11 Development Procedure – A. The procedure for approval for an <i>optional method of development in these zones requires a Project Plan in accordance with division 59-D-2 and a site plan in accordance with division 59-D-3.</i></p> <p>59-D-A-2 – Optional Method requires a Project Plan and Site Plan ... precondition for the use of the optional method of development</p> <p>59-D-3-23 – Proposed Development – ... (Referencing what must be included within the site plan) ... (a) The location, height, ground coverage and use of all structures.</p> <p>59-D-3.4 – Action by Planning Board (1) ...the Site Plan is <i>consistent with an approved development plan or a Project Plan for the Optional Method of development</i>, if required... (4) ...each structure and use is <i>compatible with other uses and other site plans and with existing and proposed adjacent development.</i></p> <p>59-D-2.6 Amendment: Minor Plan Amendment A minor amendment is an amendment or revision to a plan or any findings, conclusions, or</p>	<p>RMX2 requirements.) Once again, it is apparent that this is why a data sheet denoting the guidelines for development of CTC, including specific height parameters, was included within the Project Plan and subsequently adopted by the Planning Board.</p> <p>Under the Optional Method of development within RMX2 zoning, the Project Plan is an authoritative document. This is explicit under 59-C-10.3.11, as is the requirement for a site plan in accordance with 59-D-3 – requiring that “height” and use of all structures must be noted. As “4 stories” is merely a standard for RMX2 in <i>general</i>, and the approved Project Plan included a data sheet with <i>specific</i> height parameters, under the Optional Method of Development (according to 59-C-10.3.11, 59-D-A-2, and 59-D-3-23) the heights for any structures within a site plan must be in accordance with height definitions/limitations outlined and approved within the Project Plan Findings.</p> <p>(It is clear that the change in height within Wynn Witthan's documentation does not constitute a Minor Amendment, according to 59-D-2.6. Even if</p>
--	---	---

		<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. 59-D-3.6 Failure to Comply. If the Planning Board finds for any plan approved under this section on its own motion or after a complaint is filed with the Planning Board or the department that any of the terms, conditions or restrictions upon which the site plan was approved are not being complied with, the Planning Board after due notice to all parties concerned, and a hearing, may revoke its approval of the site plan or approve a plan of compliance which would permit the applicant to take corrective action to comply with the site plan... The Planning Board may revoke its approval of the site plan or take other action necessary to ensure compliance, including imposing civil fines, penalties, stop work orders and corrective orders under Chapter 50... Upon decision by the Planning Board to revoke approval of a site plan, any applicable building permits and use and occupancy permits issued pursuant to a prior Planning Board approval are hereby declared invalid.</p>	<p>Wynn were to position this as a "Minor Amendment" there is no documentation – i.e. approval "in writing by the Planning Board staff" to support that as a deliberate action by the Planning Board staff.)</p> <p>If the site plan, as confirmed by M-NCPPC staff members (Michael Ma, Wynn Witthans, Rose Krasnow), merely showed "4 stories" as the height notation for the buildings in question, even as approved by the Planning Board, it still does not authorize those "4 stories" to exceed the height limitations as defined within the Project Plan findings and approved by the Planning Board. Under the "Optional Method of Development" the Developer is still obligated to ensure that the "4 stories" comply with the conditions and findings of the Project Plan. The Planning Board is also obligated to enforce those conditions and findings.</p>
<p>Site Plan Review (Wynn Witthans' - Staff Report submission & Planning Board Opinion)</p>	<p>Planning Board Opinion - January 22, 1998</p>	<p>Site Plan Review: Staff Recommendation; Proposal</p> <p>**Findings for Site Plan review (Page 35): "#1 Site Plan is consistent with the Project Plan approved for this site utilizing the RMX2 optional method of development. (See discussion above.) #2 The Site Plan meets all of the</p>	<p>**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 report, submitted as part of the site plan review documentation for the Board, is a data table that varies from the data table included in the approved Project Plan (as</p>

		<p>requirements of the zone in which it is located. (See project data table* above.)”</p> <p>Planning Board Opinion: “Based on the testimony and evidence presented and on the staff report, which is made a part hereof, the Montgomery County Planning Board finds: #1. The site plan is consistent with the approved development plan or a Project Plan for the Optional Method of Development, if required. #2 The site plan meets all the requirements of the zone in which it was located.”</p>	<p>part of the “Findings” deemed by the Board to be “essential” components of the Project Plan). The data table that Wynn submitted with her Staff Opinion appears to have been re-written to show a generic “4 stories” denotation for building heights, omitting the specifications of “45’ for residential” and “50’ for commercial.” The first and only appearance of this altered data table among M-NCPPC documentation is within Wynn’s Staff Opinion/Site Plan Review. In submitting a new data table, Wynn has independently overridden Community Based Planning’s recommendations, as well as the “Findings” approved by the Planning Board in the final Project Plan. Her submission to the Planning Board could be viewed as misleading and negligent, at best. At worst, it could be viewed as a deliberate alteration or omission of specifications, inappropriately serving the developer’s desires.</p> <p>Again, as stated within our Zoning Ordinance notes, even in the presence of a generic “4 stories” denotation on the altered data table and/or the submitted Site Plan, the Developer is still accountable to ensure that the “4 stories” are in compliance with the height restrictions of the approved data table/findings as part of the approved Project Plan. Also, according to zoning ordinance for Optional Method, and the Planning Board’s own Findings, M-NCPPC is still accountable to enforce the limitations/ guidelines contained within the approved Project Plan Findings. There is no language within the Site Plan Review Staff Report or the Board Opinion that negates the Data Table (“Finding”) of the Project Plan -- i.e. that the “4 stories” shown on the Site Plan must be in compliance with the heights as defined – 45’ for residential buildings and 50’ for commercial buildings.</p>
--	--	--	--

<p>Site Plan Enforcement Agreement</p>	<p>Montgomery County Planning Board, Linnowes & Blocher, LLP (legal counsel for the Developer) & Piedmont Land Associates (Developer) March 18, 1999</p>	<p>(Page 1) "Whereas, Text Amendment No. 80025, approved July 21, 1981, effective October 15, 1981, amended Section 59-D-3.3 of the Montgomery County Code to require as part of the site plan review process that <i>applicants enter into a formal agreement with the Planning Board requiring the applicant to execute all features of the approved site plan in accordance with the Development Program required by Section 59-D-3.23</i> of the Montgomery County Code...." "Whereas, the parties hereto desire to set forth herein their respective requirements and obligations pursuant to Section 59-D-3.3 of the Montgomery County Code, 1994... Now, therefore, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of Section 59-D-3.3 of the Montgomery County Code, 1994.... the parties hereto agree as follows: 1. In accordance with approval by the Planning Board of Site Plan No. 8-98001, <i>Developer agrees that, when it commences construction on any phase as set forth in the Development Program attached hereto as Exhibit "B", or any amendments thereto, it will execute and maintain all the features of the site plan for that phase as required by Section 59-D-3.23 in fulfillment of the approval granting Site Plan No. 8-98001, and any subsequent amendments approved by the Planning Board....</i></p>	<p>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>
--	--	---	---

Su **Re: CTC Development - Height Violations**
Da 2/1/2005
To wynn.withhans@mncppc-mc.org
CC mcp-chairman@mncppc-mc.org, rose.krasnow@mncppc-mc.org, michael.ma@mncppc-mc.org
john.carter@mncppc-mc.org, sue.edwards@mncppc-mc.org, nellie.maskal@mncppc-mc.org,
Councilmember.Knapp@MontgomeryCountyMD.gov, Shileykim@aol.com, smithcar@mail.nih.gov

Hello, Wynn.

The email to which you responded was sent to Derick Berlage at his request. As noted in the email and letter to Derick, however, we are asking for a Board hearing on the height issue, not information relative to the Amendment hearing. We have requested a specific hearing on the height violation issues and would not expect that the matter could be covered appropriately during the Manor Home/Amendment hearing. Derick was aware of our desire for a hearing and advised us to send the response to Rose's letter, along with our request for the hearing, directly to him.

I have made no other inquiries as to the Manor Home/Amendment hearing, as you had already informed us of that meeting date. We would likely not schedule time for ourselves to speak at that hearing if we are going to have a separate, specific hearing with the Board relative to height violations. If your email implies that time for a hearing on that matter could be made available on Friday, Feb. 11th, that would be more appropriate and would work for our group. Please confirm the date, and a time that can be made available for the hearing.

Thank you for your assistance.

Amy Presley
on behalf of the CTCAC

In a message dated 2/1/2005 12:40:55 PM Eastern Standard Time, Wynn.Withhans@mncppc-mc.org writes:

Subj: RE: CTC Development - Height Violations
Date: 2/1/2005 12:40:55 PM Eastern Standard Time
From: Wynn.Withhans@mncppc-mc.org
To: Synergiesinc@aol.com
Sent from the Internet

The Planning Board will be scheduled for the Manor Homes on February 10th. Phases One and Two will be heard as one item. A tentative time will be available on Friday early afternoon.

I am aware that you already know this as you, and your group have been in contact with others in our agency with various questions. If you would prefer to receive answers to your questions more directly, I invite you to contact me directly. Then my colleagues won't have to ask me and then get back to you!

Wynn Withhans
Development Review

-----Original Message-----

From: Synergiesinc@aol.com [<mailto:Synergiesinc@aol.com>]
Sent: Wednesday, January 26, 2005 1:54 PM
To: MCP-Chairman
Cc: Krasnow, Rose; Ma, Michael; Withhans, Wynn; Carter, John;
Councilmember.Knapp@MontgomeryCountyMD.gov; Shileykim@aol.com; smithcar@mail.nih.gov;
nnagda@ENERGENconsulting.com; JJackman@wtplaw.com; jersub13@yahoo.com; timdearros@comcast.net;

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE

February 10, 2005

Maryland National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Subject: Site Plan Review No.8-98001G Phase I and 8-02014B, Clarksburg Town Center

Good morning, and thank you for the opportunity to address the Board. My name is Kim Shiley, and with me are Carol Smith and Amy Presley. We are Co-Chairs of the Clarksburg Town Center Advisory Committee, known as the CTCAC. We represent the residents of Clarksburg Town Center. The residents elected the CTCAC to represent them in interacting with MNCPPC and the developer in order to ensure adherence to the vision and intent of the Master Plan.

It is important for the Board to know that the CTCAC and residents are in full agreement with the Land Use Objectives of the Plan, especially with regard to creating a pedestrian-friendly town center area to serve as the central focus for the entire study area. We support the development of Clarksburg Town Center; However, we believe that awarding a developer a project of this magnitude also conveys a serious responsibility to develop in accordance with the vision of the Master Plan, and with a sensitivity to the community at large.

The developer must not only develop in accordance with the Master and Project Plans, but also in a way that will result in a functional Town Center – one that will adequately serve the residents and community well into the future.

All of the residents bought in to Clarksburg based on the vision presented to them by the developer and the builders – that of a True Town center. Therefore, the CTCAC's focus is in reviewing all aspects of development from that perspective.

Although we have encountered several areas to date in which there has been a departure from the intent and vision of the Master Plan, with respect to today's hearing on the Manor Homes, we are in support of the developer's intent. We do have certain points for consideration, which Amy will share on behalf of the CTCAC and CTC residents.

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE

Again, thank you to the Board for the opportunity to present our views. As Kim mentioned, the CTCAC supports the developer's intent relative to the Manor Homes. We believe that the development of the Manor Homes, specifically the addition of supplemental units, is in compliance with the Master Plan objective to "encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles, and physical capabilities at appropriate densities and locations." (p9) We welcome the development of the Manor Homes, with the stipulation that they be built in accordance with the scale and character of the surrounding community. In this regard, we have a few points for consideration:

- First, we would like assurance that the building heights will not exceed 45' (in accordance with the Project Plan #9-94004 and Preliminary Plan #1-95042 specifications). We have not seen on the Site Plan a specific denotation of height in feet and inches. We have only seen a denotation of "Four Stories"... which is not adequate.
- Second, we feel strongly that sufficient parking spaces must be defined surrounding Building 9. If the Board approves the proposed addition of 6 spaces within the "private alley," we believe that the building residents will be sufficiently served.
- And, finally, we are concerned as to the building materials that will be used in the construction of the Manor Homes. Since the Manor Homes are significant buildings, some of which actually serve as "entry way" focal points, it is imperative that the buildings be constructed using the finest quality of materials for the façade. We suggest incorporating brick, stone and/or other elements in proportions that are visually pleasing and compatible with the character of the other buildings in the community. Bozzuto representatives presented to the CTCAC initial architectural renderings which portrayed facades less "stately" than what would be expected of "Manor" Homes. The ratio of brick to siding was not acceptable in our opinion. We were assured by the Bozzuto representatives that care would be given to proposing appropriate alternatives. The CTCAC and CTC residents hope that the Board would encourage such action on the part of Bozzuto.

(Carol)

We want to wrap up our comments by re-stating our support of the vision for Clarksburg Town Center. Clarksburg Town Center is the heart and soul of the town. We appreciate the Board's ongoing support to ensure that all development serves to fulfill the Master Plan vision and results in a Town Center which will truly serve the community now and into the future.

Thank you for your time.

Su **Re: Clarksburg Town Center**
Da 2/24/2005
To TChess@RegencyCenters.com, KShiley@psc.gov, Shileykim@aol.com, smithcar@mail.nih.gov
CC kambrose@newlandcommunities.com, Kris@warnermarcom.com,
MChandler@RegencyCenters.com, TChess@RegencyCenters.com,
RSutphin@RegencyCenters.com

Hello, Taylor.

It was a pleasure meeting with you, Mac and Kristine as well. We too appreciated your time and the opportunity to express the concerns and expectations of the community based on the master plan vision. We thank Kim and Rick for arranging the meeting.

We were pleased to hear of Regency's intent to create a "restaurants as entertainment" focus along the lines of the Bethesda row approach. We were equally pleased to have you confirm an intent to attract and secure tenants that would be considered "upscale" versus typical strip-mall tenants like "Jerrys Subs and Pizza." Of course, to this end we would be delighted to provide to you the list of suggestions already generated based on resident input, as well as specifics on any retailers we have actually approached regarding interest in tenancy in Clarksburg Town Center. We will do our best to consolidate this information and submit it to you before the end of next week.

We would also appreciate the opportunity to maintain ongoing communication with you and to participate in any way appropriate in the review and selection of particular tenants. Again, thank you for your time and consideration in meeting with us.

Sincerely,
Amy Presley, on behalf of CTCAC

Condominium Architectural Elevations

2/19/2005 1:37:07 AM Eastern Standard Time

KShiley@psc.gov

wynn.witthans@mncppc-mc.org, rose.krasnow@mncppc-mc.org,
michael.ma@mncppc-mc.org, Synergiesinc@aol.com, smithcar@mail.nih.gov
chairman@mncppc-mc.org

lpowell@cpia.com, cwagner@bozzuto.com

Sent from the Internet (Details)

Hi Wynn,

Thank you for your phone call yesterday regarding my email inquiry (attached). After speaking with you, I immediately called you again, leaving a message on your phone, and stated that I felt it is necessary for me (on behalf of the CTCAC) to obtain the requested elevations from within the departments of M-NCPPC. To re-cap the conversation we did have, you stated that:

-architectural elevations are not required to be submitted by the builders to you for site plan approval.

-that you may have the Bozzuto building elevations, but would have to check on them and their whereabouts, and

-that you definitely did not have the Craftstar 2 over 2 architectural elevations.

Your suggestion to me was to obtain the elevations from the builder, Bozzuto myself. This leaves me confused and frustrated, as M-NCPPC is a tax-payer funded governmental entity that is supposed to serve the County's residents and communities. It does not seem appropriate for me to be directed to contact the individual private entities, the builders, for such information.

Can you suggest a more appropriate way for me to receive the information we need relative to the elevation drawings? If you do have these on file, requesting them from the builders as part of the site plan review process or on our behalf, I would be appreciative of your assistance in making such copies available to the CTCAC.

Kim Shiley
on behalf of CTCAC

-----Original Message-----

From: Shiley, Kimberly A

Sent: Tuesday, February 15, 2005 8:56 AM

To: 'wynn.witthans@mncppc-mc.org'

Cc: 'michael.ma@mncppc-mc.org'; 'rose.krasnow@mncppc-mc.org'; 'Synergiesinc@aol.com'; 'smithcar@mail.nih.gov'

Subject: Elevations

Hi Wynn

Les Powell tells us that all elevations are submitted to Park and Planning during Site Plan submission.

The CTCAC is requesting copies of all elevations relative to the Bozzuto Condominiums (Buildings 1, 2, 3, 4 (all Phase 1B-3), 5, and 6 (both Phase 2A)) and the Craftstar 2 over 2 Condominiums (Parcels B and N in Phase 2B and Parcels B, Blk M and Blk L, both Phase 2C).

If we need to contact another party, please advise. We are requesting to receive these elevations prior to the 24th of February.

Thank you for your assistance.

Kim Shiley
for CTCAC

p.s. also, if you are aware of the date for the threshold hearing, please advise. thank you again.

RE: Condominium Architectural Elevations

2/23/2005 2:47:12 PM Eastern Standard Time

Wynn.Witthans@mncppc-mc.org

KShiley@psc.gov, Rose.Krasnow@mncppc-mc.org, Michael.Ma@mncp

Synergiesinc@aol.com, smithcar@mail.nih.gov, mcp-chairman@mmcpr

lpowell@cpja.com, cwagner@bozzuto.com

Sent from the Internet ([Details](#))

Kim - we do have architecture for 2/2, condos and manor homes. You can make copies of the sheets you would like to here at our info desk. I only referred you to get arch. from other sources because of your original email where you stated: "If we need to contact another party, please advise." Our front desk is open from 8:30am -4:30pm Monday -Friday. The drawings are in my cubicle and marked with yellow post-it notes (for the front desk staff to identify).

Threshold Hearing/CTC

2/22/2005 12:21:44 PM Eastern Standard Time

KShiley@psc.gov

rose.krasnow@mncppc-mc.org, john.carter@mncppc-mc.org,
susan.edwards@mncppc-mc.org, mcp-chairman@mncppc-mc.org,
councilmember.Knapp@MontgomeryCountyMD.gov

Synergiesinc@aol.com, smithcar@mail.nih.gov, Shileykim@aol.com

Sent from the Internet ([Details](#))

Hello Rose,

When we last spoke, you advised me that there would definitely be a hearing regarding the height issues most probably on March 3, with a slight possibility for February 24. I understand that the March agenda has been determined, yet our Threshold Hearing has still not been scheduled.

I am writing you today because it is imperative that we receive a response from M-NCPPC regarding the proposed hearing date. While we wait, foundations are being laid for more of the buildings in question. This is very disturbing and leads us to question whether we must escalate this through other channels in order to receive a board hearing in a timely manner, or potentially have stop work orders issued.

I am respectfully asking that a date be determined this week; in fact, prior to Thursday afternoon (in time for our CTC residents' update meeting). Your immediate response is appreciated.

Kim Shiley,
for CTCAC

RE: Threshold Hearing/CTC

2/24/2005 9:08:23 AM Eastern Standard Time

Rose.Krasnow@mncppc-mc.org

susan.edwards@mncppc-mc.org, MCChairman@mncppc-mc.org,
councilmember.Knapp@MontgomeryCountyMD.gov

Synergiesinc@aol.com, smithcar@mail.nih.gov, Shileykim@aol.com

Sent from the Internet (Details)

Kim,

I appreciate your interest in setting a date for the Threshold Hearing regarding height issues in Clarksburg Town Center. The date has now been officially set for Thursday, March 17, 2005. Official notices will be sent out on Friday, March 4th. Please let me know if you have any other questions regarding this matter.

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
www.mc-mncppc.org

Su **Re: Last Nights CTCAC Meeting**
Da 3/15/2005
To nnagde@ENERGENconsulting.com, smithc@efdb.nci.nih.gov, timdearros@comcast.net,
KShiley@PSC.GOV, Lfantle@aol.com

Hello, Niren and all.

Status on the hearing has changed since our meeting yesterday and it is no longer necessary to send the letter. We heard from Michael Ma and he has done two things:

- 1) He has removed the Newland Retail Center hearing from the April 7th hearing docket (relative to that, he has also assured that NO date will be set until after they have received comment from CTCAC on the site plans, etc.)
- 2) He has offered us dates of April 7th, 14th or any date beyond

In conversation with Michael, new information was also given to us. He has advised that Newland also has other violations which were discovered last week. These violations pertain to "setbacks" and have apparently occurred frequently throughout the development. In particular, the 2/2's that exceed the 45' height (those already constructed but not yet occupied) have been cited. This means that no occupancy permit was issued or will be issued until after Board hearings on the matter. The Board would like to have a hearing on this issue (preferably on the same day that we discuss height violation). We will need to have another CTCAC meeting to discuss the relevance of these violations and how, collectively, the potential fees assessed to the developer might be used. The Board is open to hearing from us in this regard.

Based on schedules (sorry to say I can't make the 7th of April) we are advising Michael to reschedule the height violation hearing, along with the new setback violation hearing, for April 14th. I hope you all can make the 14th? Kim may be calling you, or may have already called you on this issue, so I apologize if I am duplicating the information.

Thanks all,
Amy

Su **Re: proof read please**
Da 3/15/2005
To KShiley@psc.gov

In a message dated 3/15/2005 4:47:26 PM Eastern Standard Time, KShiley@psc.gov writes:

Greetings Rose,

We have confirmed with Michael Ma that the rescheduled Threshold Hearing will be placed on the long range agenda for April 14, 2005. We appreciate that the pending site plan submissions for CTC Retail area and adjacent have been removed from the April 7, 2005 docket.

Regarding the Threshold Hearing format, we understand the uniqueness of this type of hearing and need to be advised as to the specific process. Based on the subject matter of this hearing, and the fact that the CTCAC is the requesting body, we have discussed with Michael Ma our desire to be considered as the primary and initial presenters (as a developer or builder would in a typical Site Plan Review hearing).

We do have a formal power point presentation and would like to be scheduled as the initial presenters, with the opportunity for rebuttal comments (again, in the format of a Site Plan Review hearing, only with CTCAC serving as the main presenting body).

Michael suggested that we submit this request to you and also that we ask you regarding the process and format for this meeting. We are interested to know how much time will we be given to present, how much time other residents will be given to speak, etc.

Could you please let us know (by email or by phone) the answers to these questions, and also confirm with us our position as presenters? We greatly appreciate your assistance with our requests.

Sincerely,
Kim Shiley, on behalf of CTCAC

Su **Re: Last Nights CTCAC Meeting**
Da 3/15/2005
To smithc@efdb.nci.nih.gov, nnagde@ENERGENconsulting.com, timdearros@comcast.net,
KShiley@PSC.GOV, Lfantle@aol.com

According to Michael, the fines and/or penalties are assessed after the violation is confirmed and then weighed from a "proportional" viewpoint -- i.e. how great a violation? how many properties involved? etc. In some case, buildings DO have to be moved, but Michael did not elaborate as to what the determining factors are in those cases. We have already suggested to him that the fines assessed to Newland, if any, be directed back into the community (perhaps specifically for Library construction and/or other amenities). He/MNCPPC is willing to hear from us on this, but won't be determining fines until after the hearing.

We can discuss more at our next CTCAC meeting, as I believe our input to the Board, prior to those decisions being made, will be beneficial to the community.

Sorry for the longwinded reply!
Amy

Su **Re: Last Nights CTCAC Meeting**
Da 3/15/2005
To nnagde@ENERGENconsulting.com, nnagde@ENERGENconsulting.com, smithc@efdb.nci.nih.gov,
timdearros@comcast.net, KShiley@PSC.GOV, Lfantle@aol.com

Perhaps Niren is right? Maybe we do need to file a letter regarding the "oversight" by MNCPPC on an issue so important as this? However, after Michael's personal apologies and his removal of other items from the docket...we might not want to rock our boat?? Michael stated that he is on our side. that he "is impressed with our group and believes 100% that our motives are right and that we have gone about this more professionally than any other group MNCPPC has dealt with" and that "he supports completely what we are doing and the way we are doing it." When you consider his comments in view of his actions to correct Wynn's blunder....plus his ability to submit CTC favorable information in his staff reports, etc., and his willingness to assist us with the Retail Center issues, maybe we should hold off on a negative letter??

I know I sound as if I have argued both points, but I'm just not sure of the right action Other thoughts?
Amy

Su **Re: Last Nights CTCAC Meeting**
Da 3/15/2005
To smithc@efdb.nci.nih.gov, nnagde@ENERGENconsulting.com, timdearros@comcast.net,
KShiley@PSC.GOV, Lfantle@aol.com

Again, though, I guess it's not about whether or not they take us "seriously"... I think maybe it has more to do with filing a formal complaint just so that Wynn's actions are noted on the record.

Here I go arguing both sides again!

Su **Re: Last Nights CTCAC Meeting**
Da 3/16/2005
To KShiley@psc.gov, smithc@efdb.nci.nih.gov, nnagde@ENERGENconsulting.com,
timdearros@comcast.net, Lfantle@aol.com

Not a bad idea just to mention that "we were extremely disturbed that staff had somehow forgotten to add the hearing to the work schedule....but that we were very appreciative of Michael Ma's responsiveness and coordination of a new meeting on our behalf..." ?

Su **CTCAC information**
Da 3/19/2005
To StanWeightman@mris.com
File C:\Documents and Settings\Presley\My Documents\CTCAC\CTCAC History.doc (47616 bytes)
DL Time (TCP/IP): < 1 minute

Hello, Stan and Judith Ann.

Thank you so much, Judith Ann, for your return call the other day. I appreciated the call and want to let you both know that I understand completely why you would be upset about CTCAC (Clarksburg Town Center Advisory Committee) activities, based on the information (or lack thereof) that you had received to date.

I would like to apologize for the fact that we your names and email/phone numbers were not on our contact list. We were careful to hand-deliver meeting notices to every single resident in the community prior to each meeting held, in addition to having the meeting time/location information posted in the Gazette; however, we were only able to add to the list those residents who attended the meetings and provided their information. We did not have, prior to last week, information on owners who were not residents. Now that I have your information, I will definitely add your names to the list.

As I mentioned the other day, I want to provide you with information regarding the activities of the CTCAC to date, and the intent of the group, and to answer any questions you might have. I have attached a history of the CTCAC with summary information of our activity to date. Please let me know if you have questions or concerns, or if you would like further information. (It was very difficult to capture everything in written form in the history document!)

We will be holding a meeting during the week of 3/28 for the Bozutto residents, to address the serious allegations circulating, and hopefully to alleviate any concerns about the agenda of the CTCAC. We are in the process of finalizing a meeting location now and will send information to you once confirmed (we are targeting 3/29).

Thank you for your time and understanding,
Amy Presley
301-916-7969 (office)
301-526-7435 (mobile)

Su **CTCAC Information**
Da 3/19/2005
To betforrest@earthlink.net
File C:\Documents and Settings\Presley\My Documents\CTCAC\CTCAC History.doc (47616 b)
DL Time (TCP/IP): < 1 minute

Hello, Ms. Forrest.

I have not yet met you personally, but I was given your email address from Carol Smith (CTCAC). My name is Amy Presley, and I am one of the "Co-Chairs" of the CTCAC group. I left a message for you, but wanted to send an email so that you would have some historical information about CTCAC formation and activities to date.

I am so sorry that you have felt excluded from our process to date. We believe that together all residents from the Clarksburg Town Center community and we would not want to exclude anyone! We are in full agreement with the Master Plan intent to create a neighborhood that encourages a wide choice of housing types for people of all ages, lifestyles, and physical capabilities. We are pleased that we have a good mix of condominiums, townhouses, and single family homes...and, we look forward to the addition of more condominiums. (In fact, we recently testified in support of Bozutto at a hearing to increase the number of units in their planned Manor Homes.)

I thought it might be helpful to send to you a history and activity summary of CTCAC. I have attached a document that captures as much as I could in writing. However, I would enjoy meeting with you for coffee or something to introduce myself personally and to answer any questions you might have about CTCAC and/or activities currently underway.

Thanks so much for your time and understanding. Please call me at your convenience if you would like to schedule a time to get together.

Sincerely,
Amy Presley

ps The CTCAC is planning a formal meeting for all Bozutto residents so that we can answer questions and, hopefully, alleviate concerns. The meeting time/location has not yet been finalized, but we are targeting March 29. We will let you know as soon as it is confirmed.

CTCAC History & Activities

The CTCAC (Clarksburg Town Center Advisory Committee) was formed in response to the Town Center residents' discovery of deviations by the developer (Newland Communities) to the Master Plan concept and Project Plan Guidelines. These deviations became apparent during a Newland Presentation in July of 2004, during which residents realized that the Retail Center as being proposed by Newland was severely flawed in design relative to the goals of the Master Plan, guidelines of the Project Plan and the concept marketed by the Developers and Builders. The specific issues relative to the retail center included:

- Center not pedestrian-friendly
- Severe reduction in retail and office square footage (250,000 square feet proposed in Master/Project Plan; Roughly 113,000 square feet proposed by Newland)
- Retail center configured in a "strip mall" configuration
- Not meeting Project Plan requirements for pedestrian-orientation and "unique" aspects of center to serve as focal point for Clarksburg and surrounding area (need for special attention to the design and tenants that the center will attract)

Following the July, 2004 meeting with Newland, notices were hand-delivered by Kim Shiley and Carol Smith to all residents in CTC, requesting their presence at an August 4, 2004 meeting to discuss the Retail Center issues. (The notices were posted on mailboxes and placed in entryways within the condominiums.) The meeting was held at the Hyattstown Fire Station with over 100 residents in attendance. The residents attending this initial meeting called for volunteers to form an advisory committee (CTCAC) to take action with MNCPPC and the developer to address the issues with the Retail Center and to work to ensure adherence to the vision and intent of the Master Plan. Several residents volunteered and those present "elected" the following volunteers:

- | | | |
|---------------|-------------------|------------------|
| • Kim Shiley | • Randy DeFrehn | • Jeff Lunenfeld |
| • Carol Smith | • Joel Richardson | • Tricia Larade |
| • Amy Presley | • Jen Jackman | • Lynn Fantle |
| • Tim Dearros | • Mark Murphy | • Dennis Learner |
| • Niren and | • Jerry and | • Ken Bullough |
| • Jaya Nagda | • Regie Barbour | • Susan Frimond |

It was confirmed that the purpose and intent of the CTCAC was to ensure adherence to the Master Plan and Project Plan (i.e. to represent the community in achieving what was promised – and what residents bought into – relative to the Project Plan).

Following the August 4, 2004 meeting, the CTCAC became very active in researching not only the intent of the Master Plan and approved Project Plan, but also the detailed parameters within Board-approved Project Plan Conditions and Findings, as well as the processes within MNCPPC for site plan submission and approval. As part of the process, we researched and read every document available on file with MNCPPC relative to Clarksburg Town Center. In doing so, we made ourselves aware of all requirements under the "Optional Method" of development for RMX2 zoning and the related requirements for complete compliance with the Conditions and Findings of the approved Project Plan #9-94004.

Several additional meetings were held by CTCAC with residents, with M-NCPPC and with Newland between August 2004 and March 2005. At each resident meeting, 100+ residents were in attendance (again, notifications were delivered by hand to each residence to encourage meeting attendance). We also posted meeting (February 24 and March 7) date/time/location information within the Gazette in the hopes of reaching more residents. Names/addresses/ phone/email information was requested at each meeting, but we were only able to add to a contact list the names that were provided at the meetings. Although our intent was to keep people informed through email updates in between meetings, the CTCAC did not have the resources or database structure to enable this. Based on the issues being uncovered, it was also determined that updates through the public CTC web site (managed by Newland Communities) were not appropriate. Therefore, we have had to rely on hand-delivery of meeting notices and updates provided at meetings rather than via email. (We have now entered names into a database and anticipate that we will soon be able to send out email updates.)

The CTCAC has been working with Newland Communities, through multiple meetings, to address the issues with the Retail Center. As a result of meetings and requests, Newland hired a new architectural team to correct the design flaws of the Retail Center plan previously presented to CTC residents. The most recent revisions to the Retail Center design were presented by Newland to the CTCAC on December 8th and February 3rd. Although the design was changed relative to "form" there were still issues regarding "functionality" (regarding the lack of adequate retail/office square footage and allocation of grocery store square footage relative to other office/retail space). CTCAC advised Newland of the outstanding issues and also commended Newland on the design changes made (the new design was pedestrian-friendly in nature and met some of the other Project Plan requirements that were lacking in the previous design).

The CTCAC corresponded back and forth on Retail Center issues with Newland and then scheduled a resident update for February 24, 2005. The February 24 meeting was postponed, due to snow, until March 7. At the March 7 meeting, residents were brought up to date on activities of CTCAC and current status of the Retail Center design. It is important to note that development of the Retail Center has not been delayed by the activities of CTCAC with Newland Communities. The Center was scheduled for groundbreaking at end of 2005/beginning of 2006 and, according to Newland Communities, is still on track pending Site Plan approval in the spring timeframe. Newland has advised that they will conduct a resident update meeting to present current plans for the Retail Center.

It was during the March 7 CTCAC/Resident update meeting that CTCAC was made aware of the concerns of condominium residents relative to information that was given to them in a meeting held by Clark Wagner of Bozzuto Homes. Apparently, information regarding CTCAC activity on height violation issues had been conveyed by Mr. Wagner in a way portraying CTCAC as deliberately exclusive of condominium residents, and also as desiring to have the condominium in violation torn down. Neither accusation is true.

In actuality, the history and request for appropriate height violation resolution is as follows:

- CTCAC discovered, based on the height definitions contained in the Board approved Project plan findings, that two of the Bozzuto condominiums (one already built and one approved through Site Plan review, but not yet built) as well as the proposed Craftstar 2 over 2's, exceeded these guidelines. The Project Plan outlined 45'¹/₄-story for residential buildings and 50'¹/₄-story for commercial buildings within CTC (These specific height limitations were set by M-NCPPC based on the need to ensure buildings in scale and compatibility with the historic district). The existing condominium, and the one scheduled for construction, exceeded the guidelines by as much as 8-12 feet.

- Having discovered the violation, the CTCAC notified M-NCPPC and the developer of the concern over the issue. Several meetings were held, one directly with Derick Berlage and CTCAC Co-Chairs (Kim Shiley, Carol Smith and Amy Presley). At this meeting it was discussed with Mr. Berlage that the CTCAC would have encouraged tearing down and re-building of the building (in accordance with Project Plan height specifications) if the building were not occupied. That was stated in order to communicate the severity of the violation. However, it was explicitly stated that the CTCAC did not want to penalize residents in any way, but instead was keenly interested in informing the builder/developer of the seriousness of the violation and ensuring that future violations were prevented.
- The action requested by CTCAC was a hearing by the Board to review the issue, rule on the violation, and determine, if appropriate, any compensatory action by the Developer/Builder on behalf of the community. This hearing has been set for April 14, 2005 (time to be confirmed).

It is important to note that the CTCAC is not working against Bozzuto, or against the ongoing development of CTC. In fact, the CTCAC testified in support of Bozzuto at the February 10, 2005 hearing for approval of their Manor Home site plans. This hearing was held to gain a site plan amendment to allow Bozzuto to increase their Manor Homes from the 9 units each proposed to 12 units each. The CTCAC, finding that the request was in agreement with the Objectives of the Project Plan (i.e. specifically to “encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles, and physical capabilities at appropriate densities and locations” - p9 of the CTC Master Plan) gave oral and written testimony in support of Bozzuto’s request. The amended site plans received approval at that hearing. Following is an excerpt from our testimony at that hearing (actual document available as public record from MNCPPC):

“The CTCAC supports the developer’s intent relative to the Manor Homes. We believe that the development of the Manor Homes, specifically the addition of supplemental units, is in compliance with the Master Plan objective to ‘encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles, and physical capabilities at appropriate densities and locations.’ We welcome the development of the Manor Homes, with the stipulation that they be built in accordance with the scale and character of the surrounding community.”

The CTCAC has been careful to advise and take action only in accordance with Project Plan objectives and requirements. We understand that in order to fulfill the objectives of the Project Plan, it is imperative for the developer and builders to adhere to the Project Plan Guidelines/Conditions and Findings. Our mission is solely to uphold the Clarksburg Town Center Master Plan and Project Plan, in an effort to protect the community interests and our collective investments.

Please know that the members of the CTCAC have spent endless personal hours reading, researching, meeting with M-NCPPC, developer and builders, and advising residents of findings. We have done our best to keep people informed and to represent, in good faith, the residents and owners who would otherwise not have known about serious issues that could impact their community and investment long term. We have done this at our own expense because the community means a great deal to us. We welcome all residents’ and owners’ input! We all bought into the vision of Clarksburg Town Center and we want to make sure that the vision becomes a reality. Developers and builders will eventually leave the area, but the community will remain. We want to make sure that that community becomes a viable and productive Town Center as was intended by the Master Plan.

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE

Kim Shiley, CTCAC Co-Chair
Carol Smith, CTCAC Co-Chair
Amy Presley, CTCAC Spokesperson

March 25, 2005

Ms. Catherine Matthews
Director
Upcounty Regional Services Center

Dear Cathy:

First, we want to thank you and Nancy Hislop for meeting with us recently to discuss concerns regarding the development of the Clarksburg Town Center town square/retail area. As we discussed, adherence to the Master Plan concept and Project Plan guidelines, especially with respect to the intended functionality of the Town Center, is of vital importance to us as a community.

The most recent design for the CTC retail area (as presented by Newland to the CTCAC in December, 2004) will not support the Master Plan intent to "create a lively and diverse" Town Center which will "be a strong central focus for the entire study area" (pp.42 and 44 of the Master Plan). The design presented by Newland does not fulfill, in the opinion of the CTC residents, either the intent of the Master Plan or the specific guidelines contained within the Project Plan. Issues of serious concern include the following:

- Reduction of Total Retail/Office Space

- o The reduction of retail and office space in the new design to roughly 145,000 sq. ft. is unacceptable. It will not adequately provide for the mix of uses envisioned in the Master Plan/Project Plan as necessary to "create a lively and diverse place" or to "create a Town Center which will be a strong central focus for the entire study area."

Note: The Master Plan/Project Plan encouraged a total of 250,000 square feet of retail and office space (150,000 sq. ft. retail; 100,000 sq. ft. office). These guidelines were established with the intent of supporting a self-sustaining, pedestrian-oriented Town Center to serve the community and study area long term.

- o The allocation of the reduced retail and office space is not supportive of the Master Plan/Project Plan and is unacceptable to the community. Currently proposed:
 - 63,000 sq. ft. allocated to the grocery store
 - 20,000 sq. ft. allocated to the Library (This is being counted by Newland as "retail" space, and deducted from total retail/office for the town center.)
 - 3,500 sq. ft. free-standing pad allocated for a drive-through bank
 - 7,500 sq. ft., pad site, allocated for a restaurant
 - 12,000 sq. ft. (two pad sites @6,000 sq. ft. each) allocated for retail (These pad sites back to Overlook Park and are single story structures.)
 - 6,500 sq. ft. adjacent to the grocery store/allocated for retail
 - 18,500 sq. ft. allocated for retail (single story in area perpendicular to pad sites; wraps from within shopping 'square' parking lot back towards library)
 - 8,500 sq. ft. allocated as "retail" (single story, area from across library up towards top of Overlook Park/below the proposed 3-stories of condo units)
 - 6,000 sq. ft. allocated as "office/retail" (below proposed 3-stories of condo units)
 - Overall ratio is unacceptable - 63,000 sq. ft. allocated for grocery store, with only 59,000 sq. ft. total allocated to retail/office.

Note: To date, Newland will not specify how much of the space will actually be allocated for office use. Although they have stated that Regency will work to use the space to create a "Bethesda Row" type of atmosphere, with dining as entertainment, the community does not believe that an adequate

amount of space is available overall for retail/office. We believe that the full 250,000 sq. ft. of space recommended in the Project Plan would be necessary to create and sustain a viable town center.

Grocery Store

- The grocery store has a footprint of 63,000 sq. ft. We find that the planned grocery store is too large for the scale of the community and should be reduced to allow for other retail and/or entertainment space (as encouraged by the Master Plan to create a unique and lively focus).

Notes:

1. The footprint of the grocery store (Giant) at Kentlands is 60,854 sq. ft. The footprint of the grocery store (Giant) at Milestone is 55,439 sq. ft. Why would the Clarksburg Town Center grocery store (proposed Giant) be larger than those? We do not need a grocer of that size to support this area. If so, then we also need retail proportionate to that of the Kentlands or Milestone.

2. If the grocery store is intended as the sole anchor to achieve a destination center draw, competition with the Cabin Branch and Clarksburg Village retail areas and grocer (to be built soon after Clarksburg Town Center) should be considered. Thought and commitment must be given to creating a unique draw to the Town Center retail area, such as providing a grocery store other than Giant (perhaps along the lines of a Whole Foods or other unique store), and considering ways to add entertainment space.

Planned Residential

- The addition of residential units within the retail area of the Town Square is not in accordance with the Master Plan/Project Plan and reduces the amount of office/retail space available. We suggest eliminating the residential units and/or reducing the residential units to provide for office space (2nd floor) above retail (1st floor) along Clarksburg Square Drive and General Store Drive.
- Overall, we believe that additional retail/office space should be provided along Clarksburg Square Drive (this could be accomplished by adding retail/office to the first floor of the additional two planned condo units along Clarksburg Square Drive).

As a community, we cannot support the most recent design presented to us by Newland. The concerns about Town Center functionality must be addressed. We appreciate the involvement to date by Nancy Hislop and you towards ensuring a successful Town Center. We believe that a meeting hosted by you, with M-NCPPC, Newland and CTCAC in attendance, would be very beneficial. It is our hope that you will work with us to bring the Town Center retail area back into alignment with the Master Plan concept and Project Plan recommendations.

Thank you for your time and assistance.

Sincerely,

Amy Presley (on behalf of the CTCAC)