

**LINOWES**  
**AND | BLOCHER LLP**  
ATTORNEYS AT LAW

February 10, 2005

**Todd D. Brown**  
301.961.5218  
tbrown@linowes-law.com

***By Facsimile  
and Hand Delivery***

Ms. Wynn Witthans  
Development Review  
Maryland-National Capital Park  
and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Clarksburg Town Center

Dear Ms. Witthans:

On behalf of the Applicant, NNPII-Clarksburg L.L.C. (formerly Terrabrook Clarksburg LLC), this letter discusses the proposed Clarksburg Town Center Project Plan Amendment and Village Center Site Plan and the relationship of the proposed commercial uses to the recommendations of the Clarksburg Master Plan and the approved Project Plan for the Clarksburg Town Center development.

Clarksburg Master Plan and Clarksburg Retail Study

The Project Plan Amendment and Village Center Site Plan are in accordance with the recommendations of the Clarksburg Master Plan and Clarksburg Retail Study. The Master Plan identifies the Town Center District, which extends from Comus Road south to Stringtown Road and from I-270 east to Piedmont Road, as a focal point for the planning area. The Town Center District includes the Clarksburg Historic District and is comprised of 635 acres. The Master Plan recommends residential, retail, and office uses within the Town Center and also indicates the importance of civic and public uses being concentrated there. The Master Plan further identifies important design features for development, including patterns of small blocks, the use of an interconnected system of streets, the preservation and enhancement of the historic district, street-orientation of buildings and the provision of open spaces.

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As shown on the proposed Project Plan Amendment and Site Plan submissions, the Village Center will be developed with 146,500 total square feet, including 112,000 square feet of retail uses, 14,500 square feet of retail/office uses, an approximately 20,000 square foot public library, and approximately 96 residential units located within a mixed-use building on Clarksburg Square Road. As you know, the Village Center design has undergone significant community and agency review and revision since the Site Plan application was filed in 2004. The revisions help integrate retail, office, civic and residential uses within the Village Center, all in accord with the Master Plan design feature recommendations. The revised design provides significant useable open space for the community, particularly in the Town Square, fully integrates the site for a new public library, creates a unique and attractive environment with an interconnected system of streets and walkways, and is characterized by street-facing buildings and attractive streetscapes that will encourage walking and community interaction.

In terms of commercial uses specifically, we acknowledge the Master Plan states up to 300,000 square feet are proposed.<sup>1</sup> However, the Master Plan also recognizes that this figure exceeds (nearly doubles) the findings of the 1991 Clarksburg Retail Study (“Retail Study”) that *up to* 152,500 square feet of neighborhood retail uses *could be supported* in the Town Center. Master Plan at 6; Retail Study at 3 (Attachment 1). The Master Plan states “A *maximum* square footage of the retail center is proposed (*up to* approximately 150,000 square feet ... the balance of proposed retail and office uses (70,000 to 105,000 square feet) is proposed to be located throughout the Town Center District and consists of infill retail within the historic district.” Master Plan at 46-47 (emphasis supplied).

To fully understand the Master Plan commercial recommendation, it is important to consider the underlying market research prepared by the Planning Commission. The 1991 Clarksburg Retail Study indicated a village center located on Stringtown Road (*i.e.*, within the Clarksburg Town Center development) could support *up to* 152,500 square feet of neighborhood retail uses. Attachment 1 at 3. This conclusion was based on a primary and secondary market of 7,086 households. Attachment 1 at 5. However, notations in the 1991 Retail Study obtained from MNCPPC indicate an April 7, 1993 revision to the Study and a 15% reduction in the anticipated Town Center market area to 6,000 households. Attachment 1 at 5. This reduction in market demand was reflected in Table 6 of the June 1994 Technical Appendix to the

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<sup>1</sup> The Master Plan identifies a site within the Town Center District west of Rt. 355 as the major employment site for the Town Center District containing up to 470,000 square feet of employment uses.

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Master Plan (Attachment 2). **Table 6 correspondingly reduced the amount of retail that could be supported by the Town Center to 130,000 square feet.**<sup>2</sup>

Although its conclusions as to commercial development were later revised downward as noted above, even the original 1991 Retail Study stated “**we recommend a center size of less than 152,000 square feet for the Town Center.**” Attachment 1 at 3. The Retail Study further stated “just because there may be a need for 150,000 square feet of neighborhood convenience and shopping goods in the Town Center are[a] does not inherently mean it is feasible to locate all of this space in one center. *Id.* The Retail Study also stated that if less than 152,500 square feet was proposed (in the Master Plan), the difference (*i.e.*, between the proposed amount of retail and 152,500 s.f.) could be located elsewhere in the area. In other words, the Retail Study considered the Town Center market area (*i.e.*, 7,086 households) capable of supporting up to 152,500 square feet located throughout Town Center, including the Village Center, Historic District and near the future transit station. *Id.* ***The Retail Study recommended development of the Village Center itself with 120,000 square feet of uses, excluding government community uses (such as the anticipated public library).***

Attachment 1 at 4. The Retail Study also strongly cautioned against proposing too much professional office in the Clarksburg Village Centers, stating that professional office space usually comprises not more than 10% of the total center square footage. Attachment 1 at 10.<sup>3</sup>

Importantly, the Master Plan does not require development of the Village Center with 150,000 square feet of commercial uses or mandate a level of initial development not supported by the Planning Commission’s market research. Rather, we believe the County Council modified the Planning Board’s recommendation for a maximum 120,000 square foot Village Center to allow for future growth and expansion. Clearly, the Council’s inclusion of the words “up to 150,000 square feet” were intended to indicate a maximum potential density. As such, the Master Plan recommendation does not preclude initial development in accord with the Retail Study’s recommendation for a center comprised of 120,000 square feet. The Master Plan recommendation of ***up to*** 150,000 square feet also tacitly endorses the Retail Study’s

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<sup>2</sup> Significantly, the Master Plan text was not revised to reflect the reduced commercial square footage identified in the Technical Appendix and 1993 revision to the Retail Study, but continued to state the Retail Study found that up to 153,000 square feet of neighborhood retail could be supported in Town Center. Master Plan at 46.

<sup>3</sup> In the Planning Board (Final) Draft Master Plan, the Planning Board recommended the Town Center Village Center include ***up to*** approximately ***120,000 square feet*** of retail uses. Technical Appendix at 209.

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recommendation to allow for retail expansion in the future. In this regard, the Retail Study identified the number one additional factor to consider in planning retail centers as providing site acreage “large enough to allow for retail expansion in the future, should market conditions heighten.” Attachment 1 at 9. In this regard, it is also critical to consider the Master Plan Vision of 6,000 households is not anticipated to be reached for 7-9 years if currently strong residential market conditions continue. As noted above, the Retail Study (and Planning Board Draft Master Plan) recommended a Village Center of only 120,000 square feet to serve over 7,000 households.

We also note the Master Plan Staging recommendations expressly deferred retail/commercial development in the Newcut Road and Cabin Branch Neighborhoods until **90,000** square feet of retail uses had been established in the Town Center. Master Plan at 190, 196. The Master Plan indicates establishment of this **90,000** square foot critical mass of retail is important to foster the development of the Town Center District as a community focal point early in the development of Clarksburg. Initial development of the Village Center with 146,500 square feet of retail, professional office space and the new library as proposed, is consistent with this Master Plan premise. Moreover, when the Master Plan recommendation to defer retail development in the Cabin Branch and Newcut Road Neighborhoods until 90,000 square feet of retail uses have been established in the Town Center is read in conjunction with the Master Plan’s recommendation for **up to** 150,000 square feet of retail, it is evident the County Council anticipated initial development of the Village Center could occur with something less than 150,000 square feet of retail uses.

#### Clarksburg Town Center Project Plan (“Project Plan”)

The Planning Board’s 1995 Opinion approving the Project Plan authorized a maximum 150,000 square feet of retail uses and 100,000 square feet of office uses. The Village Center Site Plan proposes 112,000 square feet of retail and 34,500 square feet of retail/office uses (including the public library). The reduction in nonresidential development is attributable to two primary factors. First, when the Planning Board approved the Project Plan, the Village Center commercial area comprised 14.6 acres. As a consequence of stricter stormwater management regulation and other environmental considerations beyond the control of the Applicant, the developable land area for the Village Center today is only 12 acres. We also emphasize the Village Center site area is able to remain this large only because the Applicant, in working with interested community members and Staff, agreed to comprehensively review the approved Project Plan design. This comprehensive approach led to the proposed relocation of the library site, preservation of the Town Square as open space, and the incorporation into the Village Center of property designated for multi-family use on the

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approved Project Plan. Clearly, the reduction in land area directly impacts the amount of development that can be accommodated in the Village Center. Nevertheless, the proposed .28 FAR is still **more** dense than the .25 FAR assumed by the Retail Study for the Village Center. Attachment 1 at 10.

The second factor influencing the amount of retail and office development is the limited parking available for the Village Center and other uses within the project. When the Planning Board approved the Project Plan in 1995, the Board approved a waiver allowing the developer to utilize on-street parking to reduce the requirement for off-street parking. This accomplished two major planning objectives: (i) reducing impervious areas within the environmentally sensitive Clarksburg watershed; and (ii) providing on-street parking throughout the development to encourage pedestrian activity and to provide traffic calming on streets through the use of parallel parking. We also note with significance (and more than a little skepticism) that the approved Project Plan parking tabulations indicated only 30 parking spaces were required for 100,000 square feet of office development.

Consistent with the Project Plan approval and the approval of subsequent site plans within the project, the Village Center Site Plan utilizes on-street parking to help meet the parking needs of the development. Instead of the customary 5 on-site parking spaces per 1,000 square feet of retail uses, the Village Center on-site parking ratio for retail uses is about 4.11 spaces per 1,000 square feet or about 17% fewer spaces than typically required by Code (exclusive of the retail/office uses to be located in the mixed-use building). Additional anticipated parking demand is met through the use of on-street spaces in accordance with the previously approved parking waiver. Moreover, when the Applicant began discussions with the Department of Library Services about providing a site for a new public library within the project, we were advised that a minimum 120 parking spaces would be needed for the library. As the parties continued their discussions, including analysis of the parking constraints associated with the Village Center, the County reduced the desired number of parking spaces to 75 spaces, a ratio of less than 4 spaces per 1,000 square feet. Therefore, the development by the County of a library on the designated site is likely to further stress the limited parking supply.

Additionally, the Clarksburg Town Center development comprises about 267 acres of the 635-acre Town Center District. The Village Center itself comprises just over 12 acres, or about two percent of the Town Center District land area. When the Retail Study's initial conclusion that a market area containing 7,086 households could support up to 152,500 square feet of neighborhood retail is placed in context, the conclusion about the amount of retail that could be supported clearly refers not to development of the Village Center alone, but to the entire Town Center primary and secondary market area. As noted above, the Retail Study

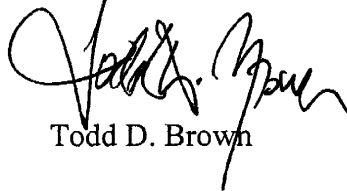
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indicated that if less than 152,500 square feet was proposed, the remaining retail could be located elsewhere in the area, including within the Historic District and near the future transit station. Attachment 1 at 3.

Lastly, based on a 2005 survey of uses within the Town Center District, there are approximately 22,000 square feet of existing nonresidential uses in the Town Center District located outside the limits of the Clarksburg Town Center development.<sup>4</sup> There are also approximately 8.5 acres of commercial zoning in the Historic District itself. When the existing and potential future retail within the Town Center District are considered with the retail/office uses proposed in the Village Center and the 31,370 square feet of retail and office uses on Stringtown Road in the Clarksburg Highlands project, the result **exceeds** the **maximum** amount of retail found by the Retail Study to be supportable by the Town Center market area at full buildout (*i.e.*, 6,000 households/130,000 sf) as reflected in Table 6 of the Master Plan Technical Appendix (Attachment 2).

Sincerely,

LINOWES AND BLOCHER LLP



Todd D. Brown

TDB:cp

cc: Ms. Kim Ambrose  
Ms. Rose Krasnow ✓  
Mr. Michael Ma  
Ms. Sue Edwards  
Ms. Nellie Maskal  
Mr. John Carter

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<sup>4</sup> This figure includes two home-based businesses, but does not include several outdoor uses or the approximately 99-acre private event facility at High Point Farm. The figure also does not include approximately 18,438 square feet of neighborhood retail and 12,932 square feet of office uses under construction as a part of the Clarksburg Highlands development on the south side of Stringtown Road.

**LINOWES**  
**AND | BLOCHER LLP**  
ATTORNEYS AT LAW

March 4, 2005

**Todd D. Brown**  
301.961.5218  
tdb@linowes-law.com

**By Overnight Delivery**

Hon. Derick Berlage, Chair  
and Members of the Montgomery  
County Planning Board  
Maryland-National Capital Park  
and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Clarksburg Town Center -- Building Height Compliance

Dear Chairman Berlage and Members of the Planning Board:

This office represents NNPII-Clarksburg L.L.C. (formerly Terrabrook Clarksburg LLC) ("Newland"). Newland is the master developer of the Clarksburg Town Center. This letter responds to the January 25, 2004 complaint filed by the Clarksburg Town Center Advisory Committee ("CTCAC") concerning alleged building height violations within the development. Please include this letter in the public hearing record.

**Clarksburg Master Plan**

The thrust of CTCAC's argument seems to be that building height within a 4-story structure in excess of 45 feet is, *per se*, incompatible with the historic district and contrary to the recommendations of the Approved and Adopted Clarksburg Master Plan & Hyattstown Special Study Area (1994) ("Master Plan") and subsequent Planning Board approvals for the Town Center development. The CTCAC relies on language selectively extracted from the Master Plan as support for its contention. As discussed below, the language cited by CTCAC is taken out of context and consists of generally stated principles the Master Plan itself clarifies with specific recommendations. In its letter, the CTCAC fails to advise the Board of the specific provisions of the Master Plan relevant to the building height issue. In so doing, the CTCAC tends to mislead the Board and unjustly criticizes the significant efforts by Staff in administering this large and complex development.

First, the Master Plan contains absolutely no specific height limitation for buildings in the Town Center in terms of feet. To the contrary, the Master Plan recommends that "all apartment buildings in the future Town Center will be four stories or less except within walking distance of

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the transit stop, where a building height of six to eight stories may be allowed if Master Plan recommendations concerning compatibility with the historic district can be achieved.” p. 46.

Thus, the Master Plan does not support the CTCAC argument for imposition of a specific building height limitation in terms of feet. Moreover, the above-quoted passage demonstrates buildings in the Town Center District containing as many as **eight stories** are not, *per se*, incompatible with the historic district. Rather, the Master Plan confirms that a building containing up to eight stories may in fact be authorized if the Master Plan’s recommendations regarding compatibility can be achieved.

The CTCAC also quotes part of a general statement found in Master Plan Policy 6 that states assuring compatibility with the historic district was a guiding principle of the planning process. p. 26. However, the CTCAC fails to advise the Board that the detailed discussion under Policy 6 recommends a specific buffer concept around the historic district to protect its character. *Id.* The Master Plan describes the buffer concept in detail, along with other recommendations, to assure development around the historic district complements the district’s scale and character. p. 48-49. Again, the Master Plan recommendations in this regard do not contain any height limitation in terms of feet. Moreover, in pertinent part, the Master Plan recommends the following to assure the desired relationship between the “old” and “new” elements of Clarksburg:

*“On the east side of the historic district, all development 400 feet east of existing MD 355 and/or on land which is within the historic district should be single-family detached structures which are no higher than two stories...New development near the church on Spire Street should be smaller in scale and sufficiently set back from the church.”* p. 49. (Emphasis supplied.)

The Master Plan also contains a diagram (Figure 21) that graphically represents the above guidelines (Attachment 1). The CTCAC fails to disclose to the Board either the specific Master Plan recommendations regarding compatibility with the historic district or Figure 21.

Figure 21 and the Master Plan language quoted above demonstrate the buffer area and height limitations recommended to assure a compatible relationship with the historic district are limited to the areas immediately adjacent to the historic district. The buildings in question are located more than 400 feet east of MD 355 and therefore are not subject to the height limitations within the described buffer area. In fact, the Bozzuto Condominium buildings are located over 2,500



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feet from the designated buffer area and are not visible from the historic district. As a consequence, the previously discussed recommendation for apartments containing 4 stories is the controlling guidance in the Master Plan.

### **RMX Zone, Project Plan and Site Plan**

The Town Center is classified RMX-2. The CTCAC cites certain provisions of the Zoning Ordinance for the proposition that optional method development in the Zone is intended to encourage development in accordance with the recommendations, including the numerical limitations, of the Master Plan. However, as discussed above, more than a selective reading of the Master Plan demonstrates its language does not support the specific height limitation the CTCAC seeks to impose. This is particularly evident since the CTCAC argues such height limit was imposed to assure compatibility with the historic district in accordance with the Master Plan. However, the Master Plan assured a compatible relationship between “old” and “new” Clarksburg by expressly including the specific (and inapplicable) buffer recommendations discussed above.

We further note the project plan is in the nature of a concept plan. For example, Section 59-G-2.12(d) of the Zoning Ordinance requires the project plan to show only “the *general* bulk and height of the principal buildings” and “a *preliminary* classification of dwelling units by type....”(emphasis supplied) Section 59-D-3.4 of the Zoning Ordinance confirms the general nature of the project plan by requiring a site plan “to be consistent” (*i.e.*, harmonious or compatible) with an approved project plan. Section 59-D-3.4 does not require the site plan to be an exact replica of the project plan. *See Logan v. Town of Somerset*, 271 Md. 42, 57-58, 314 A.2d 436, 444 (1974) (construction and maintenance of swimming pool found to be consistent with the use of land for public park purposes); *Carriage Hill-Cabin John, Inc. v. Maryland Health Resources Planning Commission*, 125 Md. App. 183, 222, 724 A.2d 745, 765 (1999) (in evaluating a comprehensive care facility application’s “Less Costly or More Effective Alternatives” criterion, numerical cost comparisons are not relevant when costs fall within a reasonable range, and projects may be found consistent even if one applicant’s costs exceed that of another’s in a comparative review) (quoting COMAR 10.24.01.07H(2)(c); *MacDonald v. Board of County Commissioners*, 238 Md. 549, 555, 210 A.2d 325, 328 (1965) (“the building of a golf course, the dredging of Swan Creek, the reservation of a school site . . . and the authorization of public utility services . . . are as consistent with increased rural residential development as they are with the building of high-rise apartments”). Thus, decisional precedent also confirms “consistency” does not mean exactitude. Nevertheless, and the foregoing

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notwithstanding, we also note the data table included with the Board's opinion approving the Project Plan specifically identified the *required* building height as "4 stories." Therefore, construction of the four story apartments in question satisfied this criterion.

We further note the RMX-2 Zone does not specify a maximum building height for development. Rather, because development in the Zone requires approval of a site plan, building height limits are established by the site plan approval. The Planning Board approved Site Plan 8-98001 for Phase I of the Town Center by its Opinion mailed on March 3, 1998. In its Opinion, the Planning Board specifically found the Site Plan as conditioned was consistent with the approved Project Plan. Significantly, the Board did not impose a condition specifying a maximum building height for development. To the contrary, Condition No. 38 of the Opinion states:

***"The applicant may propose compatible changes to the units proposed, as market conditions may change, provided the fundamental findings of the Planning Board remain intact and in order to meet the Project Plan and Site Plan findings. Consideration shall be given to building type and location, open space, recreation and pedestrian and vehicular circulation, adequacy of parking etc. for staff review and approval." (Emphasis supplied.)***

Therefore, contrary to the CTCAC's contention that the Project Plan established numerical standards that were inviolate, the Board's opinion approving the Phase I Site Plan demonstrates unequivocally that the Board delegated authority to staff to "review and approve" modifications in units and building types and locations provided the fundamental findings of the Board remained intact and in order to meet the Project Plan and Site Plan findings. As discussed above, the Master Plan authorizes 4-story buildings in the Town Center outside the historic district buffer area and without limitation as to building height in terms of feet. Furthermore, the data table appended to the Project Plan Opinion identified 4 stories as the required height limit. We also note the January 16, 1998 Staff Report and Recommendation for Site Plan 8-98001 stated "The multifamily units are four story apartment style buildings . . ." p. 12. The Staff Report also contained a project data table which similarly identified both the "Permitted/Required" building height and the "Proposed" building height as 4 stories. p. 32.

Regarding the Phase II Site Plan (8-02014), the Board's Opinion mailed June 17, 2002 specifically found the Site Plan, as conditioned, was consistent with the Project Plan. Similar to the Project Plan Opinion and Phase I Site Plan Opinion, the Board did not impose a numerical condition regarding maximum building height. However, the Board incorporated the May 2,

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and Members of the Montgomery  
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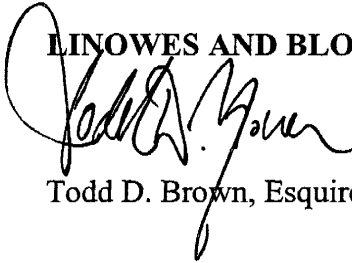
2002 Staff Report as a part of its Opinion. The Staff Report contains a project data table that identifies the "Permitted/Required" building height as 4 stories and the "Proposed" building height as 4 stories. No height limitation in terms of feet is referenced.

For the foregoing reasons, we respectfully request the Board find that no cause exists for issuing a notice of violation or a finding of noncompliance with the terms, conditions or restrictions of the Town Center site plans.

Thank you for consideration of these remarks. We look forward to discussing this matter before the Board at the upcoming hearing.

Very truly yours,

**LINOWES AND BLOCHER LLP**

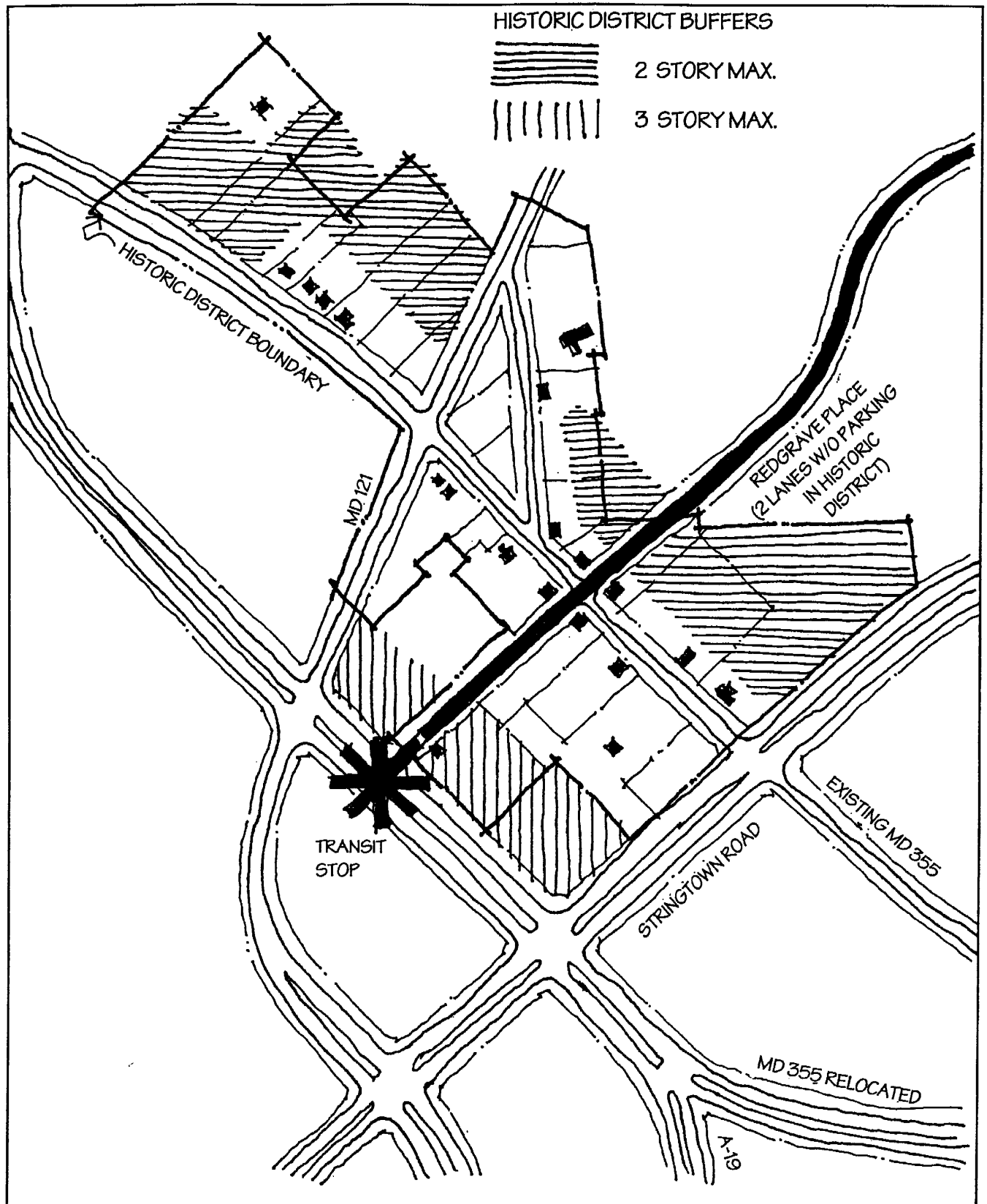
  
Todd D. Brown, Esquire

TDB:cp  
Attachment

cc: Hon. Michael Knapp  
Ms. Kim Ambrose  
Ms. Rose Krasnow  
Mr. Michael Ma  
Ms. Wynn Witthans  
Mr. John Carter  
Ms. Sue Edwards  
Ms. Nellie Maskal

# Clarksburg Historic District Buffers

Figure 21



**LINOWES**  
**AND | BLOCHER LLP**  
ATTORNEYS AT LAW

March 24, 2005

**Todd D. Brown**  
301.961.5218  
tbrown@linowes-law.com

**By Hand Delivery**

Ms. Rose Krasnow  
Development Review Division  
Maryland-National Capital Park  
and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Extension of Preliminary Plan No. 1-95042 Validity Period (Clarksburg Town Center)

Dear Ms. Krasnow:

On behalf of the Applicant, NNPII-Clarksburg L.L.C. (formerly, Terrabrook Clarksburg LLC) ("Newland"), the purpose of this letter is to request a 24-month extension of the Preliminary Plan validity period to allow the remaining subdivision plats for the project, including the Village Center, to be recorded.

Pursuant to Section 50-35(h)(3)(d) of the Montgomery County Subdivision Regulations, Newland requests a 24-month extension of the Clarksburg Town Center Preliminary Plan validity period. At present, subdivision plats for 940 of 1,300 approved dwelling units, most of the subdivision streets, open space parcels, the park/school site and recreation space parcels have been recorded, and property has been conveyed to Montgomery County Public Schools and M-NCPPC for the park/school site. Pursuant to Preliminary Plan Opinion Condition No. 17 and Site Plan Review No. 8-98001, the remaining elements of the Preliminary Plan must be recorded by March 26, 2005.

In accordance with Section 50-35(h)(3)(d), delays subsequent to the Preliminary Plan approval have materially prevented Newland from validating the entire plan. In addition, the occurrence of significant and unanticipated events beyond Newland's control have also substantially impaired Newland's ability to validate the plan in its entirety. In 2004, Newland filed two site plan review applications with the Planning Board for the Clarksburg Town Center development designated Site Plan Review Nos. 8-04034 and 8-98001C. The applications proposed development of the Clarksburg Town Center Village Center and the area located north of Clarksburg Square Road, west of Overlook Drive ("Section 1A-4").

After Newland filed the Village Center site plan application, existing residents of the Town Center expressed concerns about the configuration of uses proposed within the Village Center.

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Their concerns included, among other matters, vehicular and pedestrian circulation, proposed building orientation, preservation of the Town Square as an open area and the general layout of land uses. In an effort to resolve these concerns, Newland met with residents organized as the Clarksburg Town Center Advisory Committee. ("CTCAC") These meetings lasted several months and resulted in significant design modifications to the proposed site plans.

During the course of meeting with the CTCAC, Newland also participated in a series of meetings with Planning Staff, County Executive representatives from the Upcounty Regional Services Center, the Montgomery County Department of Public Libraries and the Montgomery County Department of Public Works and Transportation. The subject of these meetings was the County's desire to construct a public library within the Town Center and how best to accommodate the library's needs while at the same time fully integrating the library with the remainder of the Town Center community.

Once the interested parties recognized the substantial challenges associated with constructing a library within the previously identified Town Square, Newland undertook a comprehensive review and redesign of the Village Center to address both private and public sector needs and desires. In addition, significant concerns expressed by new community residents ultimately extended beyond the proposed Village Center Site Plan to include the original configuration of retail uses shown on the approved Project Plan. The cumulative effect of these factors substantially impaired Newland's ability to validate the remainder of the plan while being responsive to these concerns.

We further note that Newland has undertaken exceptional efforts thus far to validate the Preliminary Plan. As noted above, Plats for 940 (about 72%) of the approved number of units, most of the subdivision streets and open space/recreation parcels have been recorded. Site construction has been continuous since 2000-2001 and approximately 630 dwelling units have been occupied by new Town Center residents. In this respect, the traditional neighborhood design of the Town Center further complicated and lengthened the administrative review process for practically every aspect of the development, from utility service issues to street design and layout to stormwater management controls. All of these factors have resulted in significant additional delay.

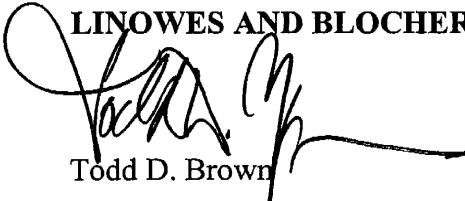
Lastly, the Town Center is envisioned as a complete community. The Village Center, residential density and recreational amenities and open spaces remaining to be recorded and developed will be critical to the success of the Town Center as a sustainable, vibrant new town. Exceptional and undue hardship would result not only to Newland, but to the Town Center residents and surrounding residents and businesses if the project is not allowed to proceed to completion. We

Ms. Rose Krasnow  
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therefore request a 24-month extension to record the remaining subdivision plats and obtain building permits.

Thank you for your consideration. If you need additional information, please do not hesitate to contact us.

Very truly yours,

**LINOWES AND BLOCHER LLP**  
  
Todd D. Brown

TDB:cp

cc: Ms. Kim Ambrose  
Mr. Michael Ma  
Ms. Wynn Witthans

**LINOWES**  
**AND | BLOCHER LLP**  
ATTORNEYS AT LAW

June 10, 2005

**Stephen Z. Kaufman**  
301.961.5156  
[skaufman@linowes-law.com](mailto:skaufman@linowes-law.com)

**Todd D. Brown**  
301.961.5218  
[tbrown@linowes-law.com](mailto:tbrown@linowes-law.com)

**By Hand Delivery**

Mr. Derick Berlage, Chair  
and Members of the Montgomery  
County Planning Board  
Maryland-National Capital Park  
and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Clarksburg Town Center Building Heights

Dear Chairman Berlage and Members of the Planning Board:

On behalf of the developer of the Clarksburg Town Center, NNPII-Clarksburg LLC and Newland Communities, LLC, the project development manager (such developer and project development manager are referred to herein collectively as "Newland Communities"), this letter requests that the Board reconfirm its prior decision that no site plan violation has occurred. Please include this letter in the public Record.

**Building Height Compliance.**

As the Board will recall, the RMX-2 Zone does not specify a maximum building height. Therefore, the proposed and constructed building heights do not violate any zoning standard. Further, although the Project Plan Opinion identified "4 stories (45 ft.)" as the **proposed** residential building height, the Project Plan Opinion clearly indicated "4 stories" as the controlling building height standard. Project Plan Opinion at 9. Moreover, as set forth in Section 59-D-2.12 of the Zoning Ordinance, a project plan requirement is to specify only the **general** bulk and height of buildings.

As part of the Site Plan Opinions for both Phase I and Phase II, the Planning Board expressly incorporated an associated Staff Report and Recommendation that identified "4 stories" as the "permitted/required" and "proposed" building height for the Site Plan. In the Site Plan Opinions, the Board did not indicate in any manner, express or implied, that a general building height expressed numerically at project plan would strictly control construction even though subsequent Site Plan approvals specified a different standard (*i.e.*, 4 stories). Similarly, the written Site Plan Opinions did not indicate that subsequent physical site plan drawings by and of themselves could



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and Members of the Montgomery  
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in any way override the Board's written opinion of permitted building heights within the project (*i.e.*, 4 stories). The suggestion that a chart inadvertently repeated in subsequent drawings could override the Board's stated 4-story standard is particularly unsettling because the Board expressly found in each Site Plan Opinion that the Site Plan was consistent with the Project Plan and that each structure (with a permitted 4-story building height) was compatible with existing and proposed adjacent development. The Record is clear. All buildings proposed for the development and constructed to date meet the 4-story standard imposed by the Board in its Site Plan Opinions.

Staff Level Review = Approval by Delegated Authority.

It is also important to recall that the Planning Board does not review the signature site plan documents. Such documents are administered entirely at the staff level. Accordingly, in the event a subsequent signature site plan contains a development standard different from that established by the Planning Board in its Site Plan Opinion, the Site Plan Opinion itself must control, unless authority to modify the standard has been properly delegated to staff. In this case, the Board expressly authorized staff in the Phase I Site Plan Opinion mailed March 3, 1998 to review and approve compatible changes to the units proposed, provided the Board's fundamental findings remained intact. Condition 38, Site Plan 8-98001 ("Condition 38"). The Site Plan Enforcement Agreement dated May 13, 1999 included this statement of delegated authority as a Stipulation to which the developer and Board's designee expressly agreed. Therefore, the Board, through its Site Plan approval and through the signed Site Plan Enforcement Agreement with the developer, authorized staff to review and approve changes (including height within the 4-story standard) to the units proposed by the Site Plan. This is true regardless of the inadvertent repetitive inclusion of the project plan height chart subsequently placed on various revisions submitted by the developer's engineering consultants.

It is also important to recognize that neither the Phase I Site Plan nor the Phase I Site Plan Enforcement Agreement required either an amendment to the Site Plan Enforcement Agreement or the attached signature set of documents in connection with the approval of changes to units pursuant to Condition 38. To the contrary, the fact that the Planning Board expressly authorized such changes to be reviewed and approved by staff demonstrates that formal amendment to the Site Plan or Site Plan Enforcement Agreement, to which the Planning Board is a signatory (through its designee), was *not* required. Moreover, the absence in Condition 38 of language requiring an amendment to the signature set of site plan documents for a change in unit type approved by staff is in direct contrast to other conditions in the Phase I Site Plan Opinion which expressly mandated revisions to the signature set of site plans. *See, e.g.*, Conditions 12 and 13, Phase I Site Plan Opinion. Clearly, if the Board had intended the Site Plan Enforcement

Mr. Derick Berlage, Chair  
and Members of the Montgomery  
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Agreement or signature set of documents to be amended for each and every unit change approved by staff pursuant to Condition 38, the Board would have stated so expressly, particularly when it had so stated on other issues elsewhere in its Opinion.

We further note at the Planning Board's May 9, 2002 hearing on the Phase II Site Plan, staff advised the Board, without objection or controversy of any kind whatsoever, that pursuant to the express authority delegated to staff by the Board in Condition 38, Staff had administratively approved a number of modifications to dwelling units and site layout. At the May 9, 2002 hearing, staff expressly reminded the Board of the authority delegated by it under Condition 38 and described what actions had been taken pursuant to that authority. Staff indicated:

“[The Phase I Opinion] had something like 43 conditions to it and one of these conditions was to allow staff to work with the applicant to change unit types and make minor modifications to the layout so that we didn't come back with every change in the site plan. And the applicant has kept us pretty busy with a lot of changes to those. The single-family detached section stayed the same but there have been significant, I think improvements in the layout and unit types and design relationships that were achieved and other of their revisions to the Phase I approved buildings . . .”

In this case, the Planning Board incorporated the Phase I and Phase II staff reports as a part of its Site Plan Opinions. In neither Opinion did the Board express a conclusion as to building height different from that clearly specified in the staff reports. Therefore, in its Opinions, the Board established conclusively the Site Plan building height as “4 stories” as stated in the staff reports. The Board cannot simply ignore its prior decision in this regard.

In its current deliberations, in fairness to the Applicant, the Board must take the entire course of administrative events into account. However, the signature site plan document at issue initially, inadvertently and clearly mistakenly indicated the building height was 35'/45'. To our knowledge, the Planning Board *never* reviewed the signature site plan document prior to its approval. Accordingly, to the extent the height limit in feet was inconsistent with the Board's fundamental finding in the Site Plan Opinion that buildings containing 4 stories are permitted, any inconsistent modification of the signature site plan imposing a height limit in feet, as opposed to stories, was invalid.

In this case, however, it is not necessary to determine whether the Board authorized staff to impose a specific height limit in feet when none had been imposed by the Board in its Site Plan Opinions. Clearly, if Condition 38 of the Site Plan Opinion authorized staff to impose a building

Mr. Derick Berlage, Chair  
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height limit not imposed by the Board, the condition similarly authorized staff to *remove* such building height limit. This is particularly evident since eliminating the 35'/45' height limit would have been more consistent with the Board's Site Plan Opinions (which imposed no such limitation) than adding the limitation.

We understand staff may have modified the building height table in the signature site plan from 35'/45' to "4 stories" sometime in the Fall of 2004. If this is correct, the modification occurred *after* the Bozzuto building had been constructed and units within the building had been sold and occupied. We also note the modified building height table shows "4 stories" for single family detached and townhouse units, not just multifamily units, which we believe merely corrected an oversight as permits had been consistently approved over an extended period of time (between two and three years) for buildings that exceeded 35'/45' but complied with the 4-story standard. Again, if the modification was done outside of the normal process, it occurred last Fall long *after* several hundred townhouses and multifamily units had been built, sold and occupied.

For over two plus years the Planning Commission and Department of Permitting Services have relied upon the Planning Board's Site Plan Opinions. It is in the instant case a matter of fact that commencing in 2002, both the Planning Commission and Department of Permitting Services consistently approved building permit applications for buildings in excess of 35'/45' but within the 4 story limit imposed by the Board in its Site Plan Opinions. The Department of Permitting Services also inspected each townhouse and multifamily product and issued use and occupancy certificates. All of this occurred long *before* the signature site plan was physically modified last Fall to read "4 stories." Clearly the "after the fact" modification of the signature site plan last Fall did not and could not have influenced either agency to approve permit applications and issue permits before the plan was so modified.

Accordingly, given the course of administrative review over an extended period of time by all reviewing parties, the only reasonable explanation for the Planning Commission and the Department of Permitting Services to issue permits and approve inspections consistently even though buildings exceeded 35'/45' is that staff had previously determined, as authorized in both Site Plan Opinions of the Board, that "4 stories" was the approved building height standard. The physical modification of the signature site plan last Fall to reflect this prior administrative determination may have demonstrated untidy recordkeeping and perhaps questionable judgment in terms of timing, but it did not vitiate the prior consistent administrative determination that 4 story buildings were permitted under the Board's Site Plan approvals. **Importantly, the Board's fundamental, and only finding, on building height in either Site Plan Opinion (through the incorporation of the staff report and recommendation) was that "4 stories" was permitted.**

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and Members of the Montgomery  
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Whether the Planning Commission's and MCDPS' consistent determination as to building height is attributed to (i) the Board establishing, through incorporation of the staff reports in its Site Plan Opinions, a legal building height limit of 4 stories; or (ii) each building permit application for construction in excess of 35'/45' comprising a request to change the unit in accordance with Condition 38 of the Site Plan Opinion, it is clear that decisions have been made in this case consistent with the Board's fundamental finding during the Site Plan review process that buildings containing 4 stories were to be permitted in the Town Center development. Further, to the extent staff approved the increased building height pursuant to Condition 38, it is only staff's judgment in exercising the authority delegated by the Board that can be questioned, not whether such authority existed. Under such circumstances it would be manifestly unjust to find a building in violation of a limitation approved by staff pursuant to the authority expressly delegated by the Board.

Setback Compliance.

Regarding the issue of setback compliance, we understand compliance questions have been raised concerning the required building setback from a street. Initially, we note with significance that the Clarksburg Town Center project was the first major neotraditional mixed-use community within Montgomery County. As reflected in the Project Plan Opinion mailed June 12, 1995, the Planning Board granted several waivers from standard requirements to provide additional flexibility to both the developer and planning staff in the implementation of this new form of development.

In the Project Plan Opinion, the Planning Board approved the use of closed-section streets, the use of on-street parking to reduce the requirement for off-street parking and reduced setbacks along the streets and boundary lines. In this latter respect, as stated in the Project Plan Opinion: "These reduced setbacks will allow buildings to be oriented to streets to encourage the use of sidewalks and generally improve the pedestrian environment. The Clarksburg Master Plan also anticipated the reduction in setbacks to foster the creation of a pedestrian oriented town." Project Plan Opinion at 7. *The Planning Board further indicated in the Project Plan Opinion that no minimum setback from the street was required if in accordance with an approved Master Plan. Id. at 9.*

Subsequently, in the Phase I Site Plan Staff Report dated January 16, 1998, the project data table indicated the following, in pertinent part:

*Check this*

*Best explanation of this*

Mr. Derick Berlage, Chair  
and Members of the Montgomery  
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Development Standard	Permitted/Required	Proposed
Min. Building Setbacks (ft.):		
From any street		
Commercial bldgs.	n/a	n/a – w/Phase II
Residential bldgs.	n/a **	10 ft. min. **

\*\* *The Planning Board reviewed this setback during the Project Plan Review and found that no setback is necessary per the approved master plan. Phase I Staff Report at 32. (Emphasis supplied.)*

As stated above, in its Opinion approving the Phase I Site Plan, the Planning Board expressly made as a part of its Opinion the Staff Report and its discussion of building setback requirements. The Planning Board's action in this regard demonstrates that from a regulatory perspective the Board had determined conclusively that **no** setback was required from the street. In light of its prior findings, we respectfully suggest that the Board cannot retroactively change or find buildings constructed pursuant to and in accordance with its prior determination to now somehow violate a setback standard the Board concluded did not exist.

Similarly, the Planning Board expressly made the Phase II Staff Report dated May 2, 2002 a part of its Phase II Site Plan Opinion. The Phase II Staff Report contained the following data table, again in pertinent part:

Development Standard	Permitted/Required	Proposed
Min. Building Setbacks (ft.):		
From any street		
Commercial bldgs.	n/a	n/a – Phase III
Residential bldg.	n/a	10 ft. min. *

\* *The Planning Board reviewed this setback during the Project Plan review and found that no setback is necessary per the approved Master Plan. Phase II Staff Report at 17-18. (Emphasis supplied.)*

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Mr. Derick Berlage, Chair  
and Members of the Montgomery  
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Again, based on the Planning Board's Phase II Site Plan Opinion, through its express incorporation of the Phase II Staff Report, the Board determined conclusively that **no** setback from the street was to be required within this project.

We have also reviewed the various site plans and site plan amendments approved in this case. Based on these plans, a number of different setback and yard standards were shown in the data tables on these plans, and it is apparent that inconsistencies appear within each data table with respect to front and side yard standards relative to street setbacks.

For example, with respect to the March 24, 1999 Phase I Site Plan and the October 23, 2001 Phase IB-1 Site Plan, the signed signature sets approved by staff included a data table which appears to require a 10' setback from any street. The same signature site plans also appear to require a 10' minimum front yard for all unit types (sfd, TH, courtyard TH, MF). However, the Site Plan data table indicates a 0' side yard setback is required for single-family detached, townhouses and courtyard townhouses (Phase I) and a 0' side yard for townhouses and courtyard townhouses (Phase IB-1). Attachment 1. Under these Phase I Site Plan documents, there seems to be an irreconcilable conflict between a 10' street setback and a 0' side yard requirement for a unit built on a corner lot where the side yard also happens to abut a street.

Staff approved an amendment to the Phase I Site Plan (Phase IA) on May 30, 2003 and the Phase II Site Plan signature set on October 14, 2004. The data table appearing on these plans continued to indicate a 10' building setback from any street, but the front yard standard for townhouses and courtyard townhouses was amended to "NA" (not applicable) from the previously approved 10' standard. In addition, the side yard standard for townhouses and courtyard townhouses remained 0'. Attachment 2.

Based on the May 30 Phase IA and the October 14, 2004 signature Phase II Site Plans, it again appears inconceivable to require, on the one hand, a 10' street setback, but also to indicate on the other hand that there is no applicable front yard requirement for townhouses and courtyard townhouses and a 0' side yard requirement for such units. Clearly, if buildings were required to be set back 10 feet from any public right-of-way (typically considered a "street"), there would necessarily be a corresponding required 10' front and side yard (for a corner lot). However, the approved data table indicates no such yard was required.

In our view, the only way the different standards set forth within the same data table can be reconciled is to interpret the term "street" as the paved travelway and not the edge of the right-of-way. To our knowledge, **all** units approved and constructed meet a 10' setback requirement from the travelway. Also, to our knowledge, **all** units have been built in accordance with the Site

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Plan drawing itself. Again, the Planning Commission staff recommended approval of each building permit and the Department of Permitting Services approved each permit and issued occupancy permits following inspection of the various properties. Under the circumstances, it would be unjust to find a violation where all units have been built in accordance with the Site Plan Opinions, the Site Plan drawing itself and all reviewing agencies have endorsed and/or approved building and use and occupancy permits. This is clearly and surely the case when the Planning Board itself has, through adoption of the Phase I and Phase II Site Plan Staff Reports, determined conclusively in its Opinions that *no* setback is required from the street.

Lack of CTCAC Standing.

The Clarksburg Town Center Advisory Committee (“CTCAC”) was formed after a meeting held July 27, 2004, at the request of Newland Communities to discuss plans for the development’s retail center. At the close of the meeting, Newland Communities suggested that a smaller group of residents work with Newland Communities and its consultants to improve the retail center design. This smaller group subsequently identified itself as the CTCAC.

To our knowledge, the CTCAC is not governed by adopted bylaws and its members have not been elected by a representative community-wide vote. To our knowledge, the positions taken by the CTCAC in this matter and in letters sent to the Board have not been presented to or debated by residents at a properly noticed, community-wide meeting and have not been endorsed by community-wide vote. Rather, it appears the individuals claiming to speak for the residents of the Clarksburg Town Center were authorized by a small percentage of residents to solely and specifically work with Newland Communities on the retail center design, and have subsequently through mere acquiescence and scattered support assumed a broader role in which they claim to speak for an entire community on the building height issue.

Residents who *oppose* the request for reconsideration cite in letters to the Board the failure of the CTCAC to seek or to express input received from all members of the community. Reference to a strong bias against multifamily unit owners is also reported in these letters. Those *opposing* the request for reconsideration further characterize the attack on building heights as a means of gaining leverage over Newland Communities and its proposal for the retail center. In this regard, a recent letter addressed to “Residents and Neighbors” and signed only “Your neighbors on the CTCAC” was sent, we believe, in response to staff’s request for this group to identify possible mitigation for building heights in excess of 35’ and 45’. However, the letter clearly focused primarily on specific aspects of the retail center development that have been controversial with the CTCAC. The letter also did not advise prospective respondents that the inquiry was to gather information for use in connection with the unrelated building height controversy. Attachment 3.

Mr. Derick Berlage, Chair  
and Members of the Montgomery  
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Newland Communities also renews its objection to individual complainants purporting to speak for an entire community when no such mandate or authority has been given. The "CTCAC" as an entity does not own property in the Town Center, is not a duly formed representative body of the community and lacks standing before the Board. Individual complainants should not be permitted to continue to advance individual objectives under the false mantle of a duly organized and representative community association.

Newland Communities and its Builders Have Relied in Good Faith on Permits Issued by Montgomery County and Recommended for Issuance by MNCPPC.

Lastly, regarding the June 1, 2005 letter to Michele Rosenfeld from counsel to the CTCAC, we strongly object to the suggestions of wrongdoing in the letter and state unequivocally that Newland Communities has done nothing improper in this matter and has acted in good faith reliance on the Site Plan Opinions issued by the Board. Newland Communities similarly believes its individual builders have also acted in good faith reliance on the building and use and occupancy permits issued by MCDPS, following positive recommendations for issuance of such permits by the Planning Board staff. In this regard, to our knowledge each and every building permit issued by MCDPS in this case was also recommended for issuance by the Planning Board staff.

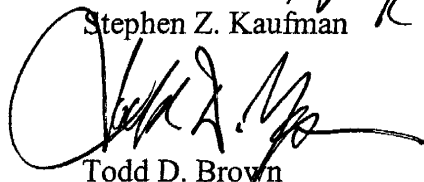
For the foregoing reasons, we request the Board find no violation of building height limits or applicable setback standards in the Clarksburg Town Center.

Very truly yours,

**LINOWES AND BLOCHER LLP**



Stephen Z. Kaufman



Todd D. Brown

Attachments



Mr. Derick Berlage, Chair  
and Members of the Montgomery  
County Planning Board  
June 10, 2005  
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cc: Ms. Kim Ambrose  
Mr. Charles Loehr  
Ms. Rose Krasnow  
Mr. Michael Ma  
Michele Rosenfeld, Esq.  
Sharon Koplan, Esq.  
Barbara Sears, Esq.  
Timothy Dugan, Esq.  
Kevin Kennedy, Esq.  
David Brown, Esq.

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

June 17, 2005

**Stephen Z. Kaufman**  
301.961.5156  
[skaufman@linowes-law.com](mailto:skaufman@linowes-law.com)  
**Todd D. Brown**  
301.961.5218  
[tbrown@linowes-law.com](mailto:tbrown@linowes-law.com)

Mr. Charles R. Loehr  
Director  
Maryland-National Capital Park and  
Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Clarksburg Town Center

Dear Mr. Loehr:

On behalf of NNPII-Clarksburg LLC and Newland Communities, LLC (collectively, "Newland Communities"), the purpose of this letter is to request additional time before the Planning Board at its July 7, 2005 meeting to address the building height and setback compliance issues at Clarksburg Town Center. Newland requests a total of one hour to present evidence and legal argument on both the building height and setback compliance issues. Considering the potential impact to several hundred owners of permitted, built, purchased and occupied homes and contract purchasers who await delivery of their homes, Newland requests this additional time to assure a complete and balanced presentation of the issues.

Thank you for your consideration.

Very truly yours,

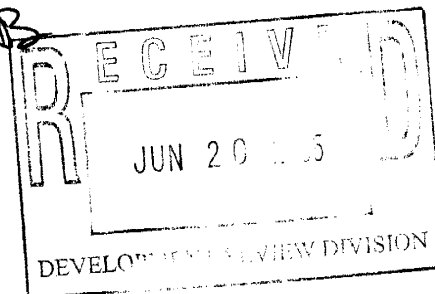
**LINOWES AND BLOCHER LLP**



Stephen Z. Kaufman



Todd D. Brown



Mr. Charles R. Loehr

June 17, 2005

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cc: Planning Board Members  
Ms. Rose Krasnow  
Mr. Michael Ma  
Michele Rosenfeld, Esq,  
Ms. Kim Ambrose  
Mr. Rick Croteau  
Robert Brewer, Esq.  
Tim Dugan, Esq.  
Kevin Kennedy, Esq.  
David Brown, Esq.

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

June 24, 2005

**Todd D. Brown**  
301.961.5218  
tbrown@linowes-law.com

Ms. Rose Krasnow  
Development Review Division  
Maryland-National Capital Park  
and Planning Commission  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Clarksburg Town Center

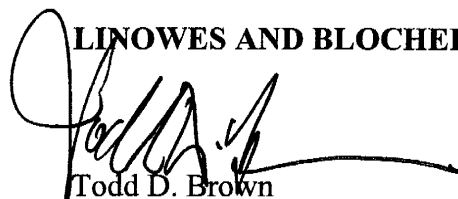
Dear Ms. Krasnow:

On behalf of NNPII-Clarksburg LLC and Newland Communities, LLC (collectively, "Newland Communities"), enclosed in response to the questions raised about the status of the completion of the recreation facilities and amenities at Clarksburg Town Center, is a table identifying the amenity areas and recreation facilities required within Phase 1 of the development and the status of each. As noted on the table, Phase I consists of 768 units, of which 401 are occupied. This results in a 52.2% occupancy rate. With respect to Phase II, 497 total units were approved by the Planning Board, only 198 of which are occupied. This results in a 39.8% occupancy rate.

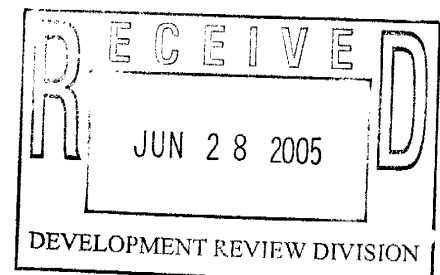
As you will note from the enclosed table, in several instances Newland Communities is providing additional recreation facilities for its residents that are not required by the approved Site Plan.

If you have any questions concerning the above, please do not hesitate to contact me.

Very truly yours,

  
**LINOWES AND BLOCHER LLP**  
Todd D. Brown

TDB:cp  
Enclosure



Ms. Rose Krasnow  
June 24, 2005  
Page 2

cc: Mr. Michael Ma  
Michele Rosenfeld, Esq.  
Mr. Rick Croteau  
Robert Brewer, Esq.  
Timothy Dugan, Esq.  
Kevin Kennedy, Esq.  
David Brown, Esq.  
Stephen Kaufman, Esq.  
Barbara Sears, Esq.

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## CLARKSBURG TOWN CENTER – PHASE I

### Occupancy Rate

768 total approved units, 401 occupied = 52.2% occupancy

### Per 1998 Staff Report:

<u>I. Specified Amenity Areas (p.21)</u>	<u>Location(s) &amp; Status</u>
A. Town Square	1A-4 (site plan pending)
B. Land dedicated for future civic building (with Phase II)	III (site plan pending)
C. Streetscape system	Being completed with adjacent house completion
D. Neighborhood squares and green area	All completed except 1A-4, HH & II
E. Greenway dedicated to public use	Pending flood plain study approval
F. Greenway roadway	Under construction (to be completed '05)
G. Specialty planting areas along Greenway Road	Pending completion of roadway
H. Park/School Site/Large Private Recreation Areas for Major Fields (with Phase II)	Land conveyed to MCPS and MNCPPC; 2 of 3 fields sodded
I. Land for expansion of areas next to Historic District	Provided
J. Green areas and buffer next to Historic District	Provided
K. Green areas and setback areas located along MidCounty Highway, Stringtown Road & Clarksburg Road improvements	Piedmont – landscaping 75% (100% 7/05); Stringtown 65% (remainder pending road construction); Clarksburg Road 75% (remainder pending road construction; est. 2006-2007 completion)

L. Pond Area (SWM Facility)

Pending SWM conversion (est. 2006 completion)

II. Recreation Calculations (p.34)

Facility

Location(s) & Status

A. Tot Lot (1 required)

**5 provided:** 1A-1, Block EE (installed); 1B-3, Block F (installed); 1A-3, GG (Spring '06); 1A-4, II (site plan pending); 1B-2, Block D (completed) (except sidewalk to be done this week)

B. Multi-Age Playlot (2 required)

**2 provided:** 1A-2, FF (contracted-waiting for installation of underground SWM; est. Fall '05 completion); IB-3, F (completed)

C. Picnic/Sitting (12 required)

**19 provided:** 1B-1, A(1) (completed); 1B-2, D(2) (completed); 1B-2, E(1) (completed); 1B-3, F(3) (completed); 1A-1, AA(1) (completed); 1A-1, EE(1) (completed); 1B-2, B(2) (pending SWM conversion–Fall '06); 1A-2, EE(1) (out to bid – summer '05); 1A-4, HH(1) (site plan pending); 1A-4, II(2) (site plan pending); Town Square (2) (site plan pending); Overlook seating areas - Clarksburg Square Road (2) (pending completion of road construction)

D. Open Play Area II (1 required)

**3 provided:** 1B-2, E(2); 1B-3, F(1) – completed

E. Bike System (1 required)

**1 provided:** Class III (pending home construction, final topping); Master Plan (Piedmont Road)(completed, pending road opening 7/05); Master Plan (Stringtown Road) (Fall '06)

F. Pedestrian System (1 required)  
Pathway - Murphy's Grove

**1 provided:** Being completed with adjacent house completion. 1B-2, B (pending conversion of SWM)

- |   |   |
|---|---|
| G. Nature Trails ( <b>1 required</b> )  | <b>1 provided:</b> Pending – to be field located w/Staff (begin Fall '05) |
| H. Nature Areas                         | Existing  |
| I. Swimming Pools ( <b>1 required</b> ) | <b>1 provided:</b> 1A-4 (pending site plan approval)                      |
| J. Wading Pools ( <b>1 required</b> )   | <b>1 provided</b> 1A-4 (pending site plan approval)                       |



**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

March 8, 2005

**Barbara A. Sears**  
301.961.5157  
bsears@linowes-law.com

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

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

Dear Chairman Berlage and Members of the Planning Board:

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

**Complaint**

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

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The Honorable Derick Berlage, Chairman,  
And Members of the Mont. Co. Planning Board  
March 8, 2005  
Page 2

30-unit multi-family building, which has received site plan approval, but is not yet under construction.

### **Factual and Legal Background**

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

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

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

The Honorable Derick Berlage, Chairman,  
And Members of the Mont. Co. Planning Board

March 8, 2005

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

### **Master Plan**

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

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

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

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

The Honorable Derick Berlage, Chairman,  
And Members of the Mont. Co. Planning Board  
March 8, 2005  
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effecting compatibility with the Historic District. These Master Plan recommendations on height limitations are very specific and deal with stories only, not specific limitations in feet. Moreover, the "buffer" recommendations regarding the Historic District deal with areas that do not encompass and are indeed far removed from Buildings #3 and #6 of the Clarksburg Town Center. These areas are in the Town Center and the Master Plan specifically permits 4 stories to as many as 8 stories if within walking distance of the transit stop. Therefore, there is no basis for the CTCAC's contention that the scale and character of the Clarksburg Historic District requires the Master Plan to be read as prohibiting residential structures in the Town Center in excess of 45 feet or that the Project Plan restricts the height to 45 feet. All that is required is that these structures be 4 stories, a requirement that has been fully complied with.

### Site Plan

The RMX-2 Zone further requires an approved site plan prior to building permit. The CTCAC contends that since the Project Plan purportedly capped the height of the multi-family residential buildings at 45 feet, the Site Plan could not permit a 4-story structure with height in feet excess of 45 feet. Once again, this conclusion is unsupported by the facts and the law. The Planning Board approved the Phase I Site Plan in an Opinion mailed on March 3, 1998 (the "Phase I Site Plan Opinion"). The Phase I Site Plan Opinion specifically found that the Phase I Site Plan was consistent with the approved Project Plan for the optional method of development and met all of the requirements of the RMX-2 Zone. Moreover, this Opinion provides Condition 38:

"The applicant may propose compatible changes to the units proposed, as market conditions may change, provided the fundamental findings of the Planning Board remain intact and in order to meet the Project Plan and Site Plan findings. Consideration shall be given to the building type and location, open space, recreation and pedestrian and vehicular circulation, adequacy of parking, etc. for staff review and approval."

The final determination of "height of building" expressed in feet is dependent upon several factors such as final architecture, setbacks, grading, etc., and will vary within a residential building of any number of stories. *See* 59-A-2.1. Moreover, due to the size and scale of the project, as illustrated by Condition 38, flexibility in matters not associated with fundamental findings of the Planning Board were anticipated after Site Plan approval. Based on a review of the Master Plan, the RMX-2 Zone and Project Plan and Site Plan findings, the notion that 45 feet

The Honorable Derick Berlage, Chairman,  
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was a fundamental finding of the Planning Board is erroneous. A 4-story structure consistent with the Master Plan recommendations and the definition of height from the Zoning Ordinance is the proper standard on which to assess compliance. It is the standard which the Staff used to respond to the CTCAC in properly rejecting its contention of height violations. Far from the unfortunate and misguided allegations by the CTCAC of "gross negligence" or undue influence by the Developer, the Staff applied the proper standards of review to the Project Plan and Site Plans and has properly rejected the CTCAC's claim of height violations.

Similarly, Building #6 was approved as part of the Phase II Site Plan for which the Planning Board issued an Opinion mailed June 17, 2002 (the "Phase II Site Plan Opinion"). Once again, the Planning Board found that the Site Plan was consistent with the Project Plan and requirements of the RMX-2 Zone. In the Phase II Site Plan Opinion, the Planning Board again identified the height of the buildings to be 4 stories and did not specify a height in terms of feet.

For the reasons stated above, there are no height violations by Bozzuto as it pertains to the buildings in question, of the Project Plan or Site Plan and, therefore, no grounds exist pursuant to Section 59-D-3.6 of the Zoning Ordinance for a finding by the Planning Board of a violation of the Site Plans.

Thank you for your attention to this matter. Should you require further information, please feel free to contact me.

Very truly yours,

**LINOWES AND BLOCHER LLP**

*Barbara Sears /kw*

Barbara A. Sears

cc: Mr. Clark Wagner  
Ms. Jackie Mowrey  
✓Ms. Rose Krasnow  
Mr. Michael Ma  
Ms. Wynn Witthans

**LINOWES**  
**AND | BLOCHER LLP**  
ATTORNEYS AT LAW

June 22, 2005

**Barbara A. Sears**  
301.961.5157  
bsears@linowes-law.com

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

Re: Clarksburg Town Center Building Heights – Bozzuto Homes, Inc.

Dear Chairman Berlage and Members of the Planning Board:

Our firm represents Bozzuto Homes, Inc. (“Bozzuto”), owner and developer of certain portions of the Clarksburg Town Center. The purpose of this letter is to request that the Board reconfirm its prior decision that no site plan violation has occurred for reasons stated in this letter and to be presented by Bozzuto at the public hearing on this matter. The specific complaint as it pertains to Bozzuto is confined to the question of height compliance of two multi-family buildings, identified as Building No. 3, a 30-unit condominium building which has been constructed and sold to others, and Building No. 6, a 30-unit multi-family building, which has received site plan approval, but is not yet under construction. Please incorporate this letter and all exhibits referenced herein in the record of the proceeding.

Initially, we have been provided with a copy of the letter from Stephen Z. Kaufman and Todd D. Brown of Linowes and Blocher on behalf of NNPII—Clarksburg LLC and Newland Communities, LLC, the project development manager (collectively, “Newland Communities”) dated June 10, 2005, to the Board also requesting that the Board reconfirm its prior decision that no site plan violation has occurred (the “June 10, 2005 Newlands Letter”). With reference to the allegations of height non-compliance of Buildings No. 3 and No. 6 which are the subject of this hearing, Bozzuto incorporates by reference those sections of the June 10, 2005 Newlands Letter dealing with building height compliance as well as those sections dealing with lack of standing of the CTCAC and reliance in good faith on permits issued by Montgomery County and recommended for issuance by M-NCPPC as if fully set forth in this letter.

L&B 436617v1/01056.0026

The Honorable Derick Berlage  
And Members of the  
Montgomery County Planning Board  
June 22, 2005  
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On April 14, 2005, the Planning Board adopted the Staff Recommendation and found no height violation had occurred. By letter dated April 22, 2005, the CTCAC requested reconsideration alluding to evidence that the CTCAC had recently discovered but did not attach. By letter dated April 27, 2005, the CTCAC submitted an alleged copy of Site Plan 8-980016 covering Phase 1B – Part 3 for Building Permit #301788, further identified as “Bozzuto ‘Bldg. #3’.” The CTCAC further alleged that this site plan had been retrieved from DPS. Finally, the CTCAC submitted a one-page document which it entitled “MC Department of Permit Services Building Review Detail – Page 1.” The basis for the CTCAC’s reconsideration request was that the site plan found at DPS had contained a data table stating a height requirement of 45 feet for multi-family buildings and that this site plan was signed by Wynn Witthans on behalf of the M-NCPPC on October 31, 2002 and by Clark Wagner on behalf of Bozzuto Homes on June 27, 2002. As stated, this site plan, denoted No. 8-980016, dealt exclusively with Phase 1B-Part 3 and contained minor revisions approved by Staff to the footprint and configuration of certain multi-family buildings in Phase 1B – Part 3, including Building No. 3 (the “Phase 1B – Part 3 Site Plan”).

What the April 27, 2005 letter from the CTCAC improperly fails to disclose is that the Phase 1B – Part 3 Site Plan was submitted as a part of a complete building permit application package filed with DPS. Apparently, the CTCAC merely excerpted the Phase 1B – Part 3 Site Plan from this entire package and the full set of plans was *not* submitted to the M-NCPPC as part of the reconsideration request. This “selective” submission fails to disclose that the Building Permit Application for Building No. 3 was an application for a four-story, multi-family building with a height in feet, as measured in accordance with the Zoning Ordinance, of approximately 53 feet (hereinafter “53 feet” or “53-foot”). The entire filing with the architectural plans showing the 53-foot height for Building No. 3 as part of the submission demonstrating the context in which the site plan submitted should have been brought to the attention of the Board, not just the chart depicted on the site plan.

Attached as Exhibit “A” is a copy of the Building Permit Application for Building No. 3 (“Application”). This Application, together with the full set of plans attached as Exhibit “B”, forms the basis of the approved building permit, a copy of which is attached as Exhibit “C”.<sup>1</sup> The date of issuance of the building permit is July 31, 2003. The plans, showing the 53-foot building, are stamped “Approved” by Montgomery County Division of Building Construction

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<sup>1</sup> Since Exhibit “B” contains multiple pages of building plans, only one set is being provided with the record copy of this letter, which will be provided to Rose Krasnow.

The Honorable Derick Berlage  
And Members of the  
Montgomery County Planning Board  
June 22, 2005  
Page 3

for Permit 301788. These plans clearly contain the elevations which demonstrate the 53-foot height of Building No. 3. Further, as evidenced by the letter dated June 21, 2005 from Les Powell of CPJ to Clark Wagner of Bozzuto (attached as Exhibit "D"), in June of 2002, as part of the submission of the minor modifications to the layout of the multi-family buildings in Phase 1B – Part 3, CPJ provided the architectural elevations to the Planning Board Staff, which illustrated the height of Building No. 3 at 53 feet. These architectural elevations formed the basis of the building plans that similarly demonstrate the 53-foot building.

Therefore, as indicated by the course of dealing and the full set of plans, it had been the consistent position of Planning Board Staff that the height of the multi-family buildings was controlled by the four-story requirement and was not further limited by a 45-foot restriction in height. Accordingly, Bozzuto's actions taken as a whole, as evidenced by the Building Permit Application submission to DPS and the subsequent sign-off by the M-NCPPC on the building permit for Building No. 3, issuance by DPS of the Building Permit, and issuance of the Use and Occupancy Permit for Building No. 3 were all perfectly consistent with this understanding. The fact that a data table that erroneously indicated 45 feet was reproduced in the Phase 1B – Part 3 Site Plan, does not negate the extensive course of dealings and consistent good-faith actions of Staff and Bozzuto with regard to the treatment of the height requirements as four stories or constitute a site plan violation.

The consistent administrative actions of multiple builders and agencies in filing for and issuing permits with regard to height for the Clarksburg Town Center, which height was controlled by compliance with the story limitations is the controlling factor in interpreting the Project Plan and Site Plan Opinion requirements, not an erroneous data table and unfortunate, but irrelevant, purported staff modification to the data table allegedly occurring in November of 2004. This long-standing course of administrative actions, issuance of permits and construction of buildings pursuant to those permits and receipt of occupancy permits must override the inadvertent and mistaken placement of a data table on a site plan document. There was clearly no effort or intent to misstate, hide, or otherwise obscure the heights of these buildings, as underscored by the very document submitted by the CTCAC as the basis of its reconsideration request when that document is taken as a whole as opposed to one sheet taken out of context. Finally, as noted in the June 10, 2005 Newlands Letter, we again emphasize that the modification by Planning Board Staff of the chart last fall was irrelevant. Not only was this written modification in no way relied on by Bozzuto in any aspect of the permitting of the buildings or in defense of the complaint in the April hearing, but was not even known by Bozzuto until presented at the April hearing.



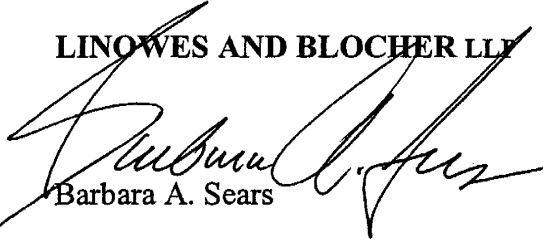
The Honorable Derick Berlage  
And Members of the  
Montgomery County Planning Board  
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Therefore, the materials submitted by the CTCAC do not establish a violation of the site plan. Instead, they merely show the use of an erroneous chart. The use of this erroneous chart to establish the height requirement is completely outweighed by the approvals history, and multiple and long study actions of the parties, M-NCPPC and DPS confirming and approving the proper interpretation of the height requirement.

In summary, whether the erroneous data table appears on the Phase 1B – Part 3 Site Plan or not, the property as it pertained to Building No. 3 was not impressed with a 45-foot height limitation and no violation has occurred. As to Building No. 6, this building falls within the Phase 2 Site Plan, which contains no such data table. For the above reasons, and those to be presented at the hearing on this matter, Bozzuto respectfully requests that the Board find no violation of building height limits in the Clarksburg Town Center.

Very truly yours,

**LINOWES AND BLOCHER LLP**

  
Barbara A. Sears

Enclosures

cc: Mr. Tom Bozzuto  
Mr. Clark Wagner  
Ms. Jackie Mowrey  
Mr. Charlie Loehr  
Ms. Rose Krasnow  
Mr. Michael Ma  
Michele Rosenfeld, Esq.  
Stephen Kaufman, Esq.  
Todd Brown, Esq.  
Timothy Dugan, Esq.  
Kevin Kennedy, Esq.  
David Brown, Esq.



FOR OFFICE USE ONLY ZONING

Classification: Sheet Number: Board of Appeals: Checked By:

BUILDING PERMIT APPLICATION

DPS - #1

SEDIMENT CONTROL NUMBER: 206452

PART ONE 1A. WORK TYPE (ACTION):

- Construct Extend/Add Alter/Renovate Demolish/Move Repair

1B. PRINCIPLE USE: (Check one)

- Assembly Boarding House Business\* Educational Industrial Commercial Swim. Pool Hotel Institutional Mercantile Motel Multi-Family Restaurant Place of Worship Public Utility Fence Single Family Storage Townhouse Misc. Structure Multi-Family Senior Building

1C. 4 No. of Stories (units if multi-family)

1D. 28,750 Sq. Footage of Land Disturbance

1E. 28,750 Sq. Footage of Area Created or Effected by this Action

\*If Business, please specify use:

1F. Construction Cost Estimate \$ 2,435,000

1G Model Name: BUILDING 3

1H. Plans for this model have been reviewed and approved as a "Model House Type" under Permit #: N/A

1I. This is a Site OR Structural Revision to Permit #: N/A

1J. This is a refer-back to Permit # N/A Subdivision: N/A

Contact Person: JOHN RENNER Telephone No.: (301) 446-2215 FAX No.: 301 / 486-1315

Name of Applicant: BA CLARKSBURG LLC Daytime Phone No.: 301 / 220-0100

Address: 6401 GOLDEN TRIANGLE DR. City: GREENBELT State: MD Zip: 20770

Contractor: BOZZUTO HOMES, INC. Contractor Reg. No.: 16599715 / LICENSE NO. BC 3694

Contractor Address: 6401 GOLDEN TRIANGLE DR., GREENBELT, MD 20770 Contractor Phone No.: 301 / 220-0100

Plans Prepared By: THE LESSARD ARCHITECTURAL GROUP Registration No.: 12530 Telephone No.: 703 / 760-9344

Location of Building/Premise

BUILDING 3

Street Number 12824 Street Name: CLARKSBURG SQUARE ROAD

Town/City CLARKSBURG Zip 20871 Election District 2ND

Nearst Cross Street CLARKSMEADE DRIVE

Lot 3 Block F OR Liber N/A Folio N/A Parcel N/A

Subdivision CLARKSBURG TOWN CENTER, PHASE 1B - PART 3

PART TWO 2A. TYPE OF SEWAGE DISPOSAL:

- WSSC Septic Other:

2B. TYPE OF WATER SUPPLY:

- WSSC Well Other:

PART THREE IS THIS AN IMPACT TAX AREA? Yes No

Do you choose to use impact tax credits for this application? Yes No If Yes, attach a copy of approved credit and state the amount of credit you wish to apply to this application: \$ N/A

PART FOUR IS THIS AN EDAET OR DAP AGREEMENT FOR THIS LOT? Yes No If yes, submit copy of agreement.

TO BE READ BY APPLICANT

Any information that the applicant has set forth in this application that is false or misleading may result in the rejection of the application. A condition for the issuance of this permit is that the proposed construction comply at all times with the plans as approved by all applicable government agencies. I hereby declare and affirm, under the penalty of perjury, that all matters and facts set forth in this building permit application are true and correct to the best of my knowledge, information and belief.

Date

Signature of Applicant



# APPLICATION FOR A PERMIT FOR CONSTRUCTION ON PROPERTY DEDICATED TO PUBLIC USE

DPS Permit No. \_\_\_\_\_  
(DPS use only)

Building Permit Reference \_\_\_\_\_

Name of Applicant: JOHN RENNER, BA CLARKSBURG LLC Phone No.: (301) 446-2215  
(Owner, Person, Firm or Corporation Proposing to Execute or to have work executed)  
Address: 6461 GOLDEN TRIANGLE DRIVE, SUITE 200 Fax No.: (301) 486-1315  
GREENBELT, MD 20770

## LOCATION OF WORK

Address 12824 CLARKSBURG SQUARE ROAD, CLARKSBURG 20871

SUBDIVISION NAME (legal description): CLARKSBURG TOWN CENTER, PHASE 1B - PART 3 Lot: 3 Block: F

The Application is for: (Check all categories that apply)

- This application is for: (Check appropriate categories)
  - Residential
  - Commercial
  - Industrial
  - Institutional

### PERMIT CONDITIONS:

- If there is an existing permit for the driveway apron, provide the following information.  
Driveway Permit No. \_\_\_\_\_  
GP Permit No. \_\_\_\_\_  
Letter of Permission (If the applicant is not the permittee of the existing driveway or GP permit provide written authorization from the permittee)

- New entrance to serve this site.
- Existing entrance will be used to access the site during construction.
- A temporary construction entrance will be constructed to access the site during construction.
- Additional work in the public right of way is required for this site. (Sidewalk, storm drain connections, street trees, street lights, streetscaping features, etc.)
- A dumpster will be placed in the public right of way during construction.
- The public sidewalk, and/or a travel/parking lane will have to be closed during construction.
- A crane will occupy the public right of way sometime during this construction.
- A construction fence will be placed in the public right of way during construction.
- Provide a copy of the approved Record Plat (If an access easement is involved.)
- Provide a copy of the approved preliminary/site plan and DPWT's written requirements (For development approved by MNCP&PC)
- Other, please describe \_\_\_\_\_

**OFFICE USE ONLY**

**FIELD REPORT - Driveway Aprons**

No. of Dwys: \_\_\_\_\_ Dwy. Std. No. \_\_\_\_\_  
 Pipe Size: \_\_\_\_\_  
 Sight Dist. Check Req: \_\_\_\_\_  
 Modification (Explain): \_\_\_\_\_  
 \_\_\_\_\_  
 Add. Work Req.(Explain): \_\_\_\_\_  
 \_\_\_\_\_  
 Rural Rustic Road: \_\_\_\_\_  
 Date: \_\_\_\_\_ Insp: \_\_\_\_\_  
 Field Supervisor: \_\_\_\_\_

**Permit Acceptance Status**

Approved  Disapproved  
 Not Required  Pending Approval

Field Investigation Required:  Yes  No  
 Reviewed By: \_\_\_\_\_

The proposed work shall be performed in accordance with the conditions of this permit, subject to the provisions of the Montgomery County Head Construction Code, Standards, Specifications and Inspection and control of the Director of the Department of



DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan  
County Executive

Robert C. Hubbard  
Director

**BUILDING  
PERMIT**

Issue Date: 7/31/2003

Permit No: 301788  
Expires: 7/31/2004  
X Ref.  
Rev. No:  
ID: AC901624

THIS IS TO CERTIFY THAT: B.A. CLARKSBURG, LLC  
6401 GOLDEN TRIANGLE DRIVE  
GREENBELT MD 20770

HAS PERMISSION TO: CONSTRUCT MULTI-FAMILY DWELLING

PERMIT CONDITIONS:

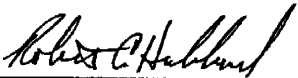
PREMISE ADDRESS: 12824 CLARKSBURG SQUARE RD  
CLARKSBURG MD 20871-

LOT NA	BLOCK NA	ZONE	GRID
LIBER	ELECTION DISTRICT	PLATE	PARCEL
FOLIO	TAX ACCOUNT NO.:		PS NUMBER 0
PERMIT FEE: \$104,470.81	SUBDIVISION		

**MUST BE POSTED ON JOB SITE  
AN APPROVED FINAL INSPECTION IS REQUIRED  
PRIOR TO USE OR OCCUPANCY**

NOTICE  
THIS APPROVAL DOES NOT INCLUDE  
PLUMBING, GAS PIPING OR ELECTRICAL  
OR CONSTRUCTION IN ANY  
DEDICATED RIGHT-OF-WAY.

NOTE  
THIS PERMIT DOES NOT INCLUDE  
APPROVAL FOR ANY ELECTRICAL  
WORK. YOU MUST HAVE A  
SEPARATE ELECTRICAL PERMIT  
TO DO ANY ELECTRICAL WORK.

  
Director, Department of Permitting Services

# Charles P. Johnson & Associates, Inc.

Planners Engineers Landscape Architects Surveyors

Silver Spring, MD

Frederick, MD

Fairfax, VA

# CPJ Associates

June 21, 2005

Mr. Clark Wagner  
Bozzuto & Associates, Inc.  
7850 Walker Drive  
Suite 400  
Greenbelt, MD 20770

Re: Clarksburg Town Center Site Plan No. 8-980016 for Phase 1B – Part 3

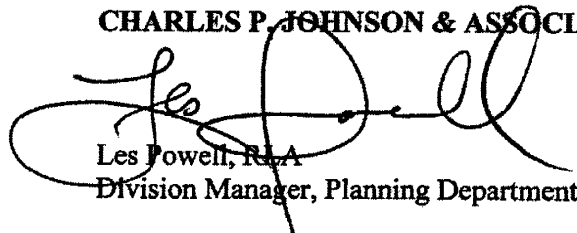
Dear Mr. Wagner:

This letter will confirm that, on behalf of Bozzuto Homes, Inc., Charles P. Johnson & Associates, Inc. ("CPJ") submitted certain minor modifications to the above-referenced Site Plan in June of 2002. This submission was for the purpose of obtaining some minor modifications to the footprint and the layout of certain multi-family buildings, including Building No. 3. As part of this submission, CPJ provided architectural elevations to staff, which illustrated the height of Building No. 3 at approximately 53 feet.

Prior to this time, CPJ had discussed the height restrictions applicable to multi-family buildings such as Building No. 3 with the staff reviewer. It was our understanding that Park and Planning interpreted the height restriction applicable to such multi-family buildings to be four stories and not further limited by a height restriction of 45 feet. CPJ did place a data table on the aforementioned site plan that indicated a height of 45 feet for multi-family buildings. However, CPJ did so since the data table had been identified as the one to place on the site plan by staff and not as a statement that the height in feet superseded the four-story limitation CPJ understood to apply to the multi-family building.

I hope the above is responsive to your inquiry. Should you have any questions, please feel free to call me.

CHARLES P. JOHNSON & ASSOCIATES, INC.



Les Powell, RLA  
Division Manager, Planning Department

N:\29100\bozzuto\wp\050621-Letter to TBozzuto.DOC

1751 Elton Road • Silver Spring, MD 20903 • 301-434-7000 • Fax 301-434-9394

Exhibit "D"

**LINOWES**  
**AND BLOCHER LLP**  
ATTORNEYS AT LAW

June 24, 2005

**Barbara A. Sears**  
301.961.5157  
bsears@linowes-law.com

Ms. Rose G. Krasnow  
Chief, Development Review Division  
M-NCPPC  
8787 Georgia Avenue  
Silver Spring, MD 20910

Re: Clarksburg Town Center Building Heights - Bozzuto Homes, Inc.

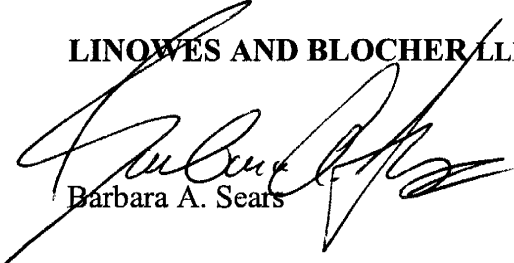
Dear Ms. Krasnow:

On behalf of Bozzuto Homes, Inc., enclosed please find a copy of the Use-and-Occupancy Certificate for Bozzuto Multi-Family Building #3 at Clarksburg Town Center, which was issued on August 11, 2004. Please incorporate this letter and enclosure in the hearing record in the above-referenced matter.

Thank you. Should you have any questions, please feel free to contact me.

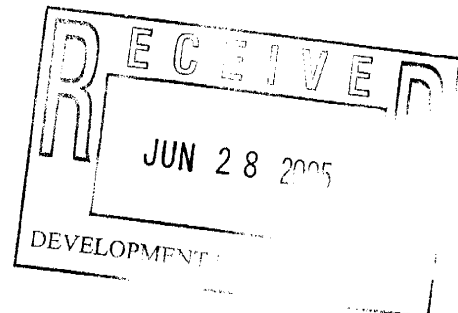
Very truly yours,

**LINOWES AND BLOCHER LLP**

  
Barbara A. Sears

Enclosure

cc: Michele Rosenfeld, Esq.  
Mr. Clark Wagner  
Ms. Jackie Mowrey  
David Brown, Esq.



L&B 449135v1/01056.0026



DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan  
County Executive

Robert C. Hubbard  
Director

USE-AND-OCCUPANCY  
CERTIFICATE

Issue Date: 8/11/2004

Expires: NONE

Certificate No.: 220831

ID: AC901624

Residence or building location: 12824 CLARKSBURG SQUARE RD  
CLARKSBURG MD 20871-

Proposed Use: DWELLINGS, MULTI-FAMILY

The applicant has applied for a certificate of Use and Occupancy under the provisions of the Montgomery County Code. The use for each floor, or part thereof; the live load (p.s.f.); the fire grading; the construction type; the code/edition; and any special conditions must be as follows:

Floor	Use Group Class	Maximum Live Load	Fire Grading	Occupancy Load	Construction Type	Code/Edition	Conditions
1-4	R-2	40	N/A		VA	2000IBC	

This certificate applies only to the above-described residence or building and is valid until the permitted use changes. Changes in use require recertification or new registration, pursuant to the Building Code.

Director, Department of Permitting Services

RECEIVED  
28 2005  
DIVISION