

August 16, 2004

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

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Re: Proposed Changes to Project Plan for Clarksburg Town Center

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

Dear Mr. Berlage:

As Co-Chairs of the Clarksburg Town Center (CTC) Advisory Committee, we are writing as the collective voice of the community to express our strong opposition to the deviations (as contained within the Site Plan proposed by the developer, Newland Communities) from the approved Project Plan #9-94004. These deviations concern the commercial and other sections of the development as reflected in the Site Plan presented by Newland Communities during the July 27, 2004 meeting with CTC residents.

As proposed by the original applicants and developer, Clarksburg Town Center Venture and Terrabrook, and approved by the Planning Board, Clarksburg Town Center is a neo-traditional community reflecting the "New Urbanism" school of community planning and design. Accordingly, it is designed and intended to provide a unique pedestrian-oriented neighborhood that allows residents to walk to the recreational, retail, civic and other facilities dictated in the Master and Project Plans previously approved by the Board. Specifically, the Town Square was designed and intended to serve as the focus of public life, with retail and commercial establishments located on the East side of the development's Main Street and Town Square. The Master Plan also gave careful consideration to protecting the character of Clarksburg's Historical District, the Gateway to the Town Square.

Clarksburg Town Center is in the RMX-2 Zone, which allows for both "standard" and "optional" methods of development. Under the "standard" method, office and retail uses are not allowed at all. Accordingly, the developer submitted and the Board approved an "optional" method of development that allowed for high-density residential units mixed with commercial uses if in accordance with the guidelines of the Master Plan, and that explicitly required certain public amenities and facilities. It appears that the developer thus could not have gotten approval for this high-density residential project without including in its application the community-oriented and pedestrian-friendly plans for the Town Center's retail and commercial development that the Commission ultimately approved.

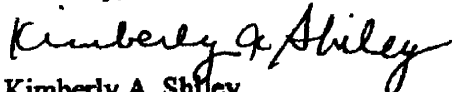
Newland Communities (who purchased the development from Terrabrook late last year) is now proposing a radical change to the retail and commercial areas of the Town Center. Under this proposal, the retail and commercial establishments to be located along Main Street and the Town Square will be replaced with four-story condominium buildings and other multi-family residential units, thus increasing the residential density of what is already a high-density development. The retail and office square footage has been reduced by 53.2% of the approved square footage and the proposed plan consists of a huge square parking lot bordered by a 58,800-square foot grocery superstore (reportedly Giant) with retail establishments adjoining on each side, a proposed drive-thru bank, one freestanding restaurant and a combination office/retail building located along the south side of the parking lot.

Although its configuration is in the shape of a square, Newland Communities' proposed change is the very antithesis of the "Town Square" concept that is a defining characteristic of neo-traditional communities, and that was at the heart of the Clarksburg Town Center plan that the Board approved. It simply replaces the pedestrian-friendly, community-oriented Town Center concept with a regional strip mall, but with one important difference—Newland Communities' proposed regional strip mall will be located in the heart of a high-density residential community. Indeed, one of the two principal thoroughfares for automobile ingress to and egress from the shopping center will be through and/or adjacent to the Town Square, departing even further from the pedestrian-friendly approach that both the Master and Project Plans define as the main characteristic of Clarksburg Town Center.


As you can well imagine, Newland Communities' proposal is inconsistent with the Planning Board's Master Plan and subsequent Project Plan and is not reflective of the community marketed by the builders of CTC nor is it in keeping with the concept that was solicited at the Visitor's Center when my neighbors and I were making our decisions to purchase homes in Clarksburg Town Center. Many others in the vicinity of CTC are opposed to Newland Communities' proposed changes as well. At the July 27, 2004 meeting with Newland Communities to discuss their proposal, the room was filled to capacity with concerned Clarksburg residents from the Town Center and from the general community, while additional concerned residents stood in the hall. The following week, a meeting held by residents of CTC regarding the same issue attracted over 100 residents and the CTC Advisory Committee was established to address these issues. The Clarksburg Civic Association, which has been instrumental in the planning and implementation process for Clarksburg Town Center for over a decade is also opposed to Newland Communities' deviation from the Project and Master Plans.

Based on these issues, we respectfully request that the Board not approve Newland Communities' proposed site plan, and require Newland Communities to abide by the original terms of the Project Plan. We would ask that the Board not take any action on the proposed site plan, requests for amendments, or requests for zoning variances pertaining to a reduction in the RDT Zones until it has studied the proposal thoroughly and received the input of the residents of the Clarksburg Town Center, the Clarksburg Civic Association and all other interested parties. Thank you for your consideration.

Sincerely,



Kimberly A. Shiley
Co-chair, CTC Advisory Committee



Carol L. Smith
Co-chair, CTC Advisory Committee

cc: Sue Edwards, Team Leader I270 Corridor Area, M-NCPPC
John Carter, Chief, Community Based Planning Division, M-NCPPC
Wynn Witthans, Development Review, Planning Department, M-NCPPC
Clarksburg Civic Association
Clarksburg Historical Society
Montgomery County Historical Society
Doug Duncan, County Executive, Montgomery County
Kathy Matthews, Director of Upcounty Regional Services
Nancy Hislop, Assistant Director of Upcounty Regional Services
Mike Knapp, County Council, Montgomery County
Brian Long, Aide to Council Member Mike Knapp
Kimberly Ambrose, Vice President of Operations, Newland Communities
Taylor Chess, Vice President Investments, Regency Centers
Susan Singer-Bart, The Gazette

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

December 8, 2004

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

VIA: Joyce Coleman, Special Assistant

Dear Mr. Berlage:

It is with great interest in upholding the vision and intent of the Clarksburg Town Center Master Plan that we are writing to you. As you may recall, per the letter you received from our group in August, 2004, the CTCAC (Clarksburg Town Center Advisory Committee) was formed in response to the Town Center residents' discovery of deviations by the developer (Newland Communities) to the Master Plan concept and Project Plan Guidelines. The residents elected the CTCAC to represent them in taking action with MNCPPC and the developer to ensure adherence to the vision and intent of the Master Plan.

Since the CTCAC was elected in July, 2004, we have become very active in researching not only the intent of the Master Plan and approved Project Plan, but also the detailed parameters within the Conditions and Findings, as well as the processes within MNCPPC for site plan submission and approval. As part of our process, we have researched and read every document available on file with MNCPPC relative to Clarksburg Town Center. In doing so, we have made ourselves aware of all requirements under the "Optional Method of Development" for the RMX2 zoning and the related requirements for complete compliance with the Conditions and Findings of the approved Project Plan #9-94004 and Preliminary Plan #1-95042.

The CTCAC and residents are in full agreement with the Land Use Objectives of the Clarksburg Master Plan, especially with regard to creating a pedestrian-friendly town center that will serve as the central focus for the entire study area. The CTCAC finds that in order to uphold these objectives, it is imperative for the developer to adhere completely to the Project Plan Guidelines/Conditions and Findings.

We have determined multiple areas in which Newland has departed from the intent and vision of the Master Plan and, more seriously, violated the Project Plan Conditions and Findings. The most pressing issue is Newland's violation of the height restrictions. The approved Project Plan restricts building heights to 4 stories/45' for residential and 4 stories/50' for commercial. The Master Plan and Project Plan clearly state the necessity for ensuring compatibility of scale with the historic district. As confirmed to us by John Carter and Nellie Maskal of Community Based

Planning, and Michael Ma of Development Review, this was a driver for the height limitation of 45' for residential structures.

CTC residents are gravely disturbed that buildings already constructed in Phase 1-B3 of the CTC development (Bozutto condominiums) measure 57', as recently confirmed to CTCAC by MNCPPC Development Review. Newland also confirmed a height in excess of 45', but stated that the building was 53'4". In either case, the structures are not compatible in scale with the historic district. This is a serious violation which requires immediate attention.

In addition to the buildings already constructed in Phase 1-B3, there are also buildings currently under construction within Phase 2B (Craftstar 2/2 Condominiums – Parcels B & N) which also violate the height restrictions, with planned heights of 51'7". Further, there are several other site plans previously approved for Phase 2C which include additional Craftstar 2/2 Condominiums and Bozutto Condominiums with planned heights exceeding the 45' maximum allowable according to the Project Plan Guidelines. Apparently, the site plans for these structures were erroneously approved, and/or the developer did not specify heights on the site plan (beyond "4 stories") and has violated the height restriction without MNCPPC's awareness. The CTC residents are seeking immediate action by MNCPPC to correct this situation before new buildings are constructed.

Ensuring compatibility with the historic nature of Clarksburg, especially in terms of scale as described with the Master and Project Plan, is essential to creating the type of community that was presented to the residents by the developer and builders when we purchased our properties in Clarksburg Town Center. We appreciate the assistance that we have received from MNCPPC to date in this regard. We have scheduled another meeting with Community Based Planning and Development Review for December 13th to discuss the specifics relative to the height violations described. However, the CTCAC respectfully requests a meeting with you to discuss our overall concerns.

We would appreciate it if a meeting could be scheduled with you prior to December 17th. We will contact Joyce Coleman to arrange the meeting at your convenience.

Sincerely,

Kim Shiley, Co-Chair, CTCAC
Amy Presley
Randy DeFrehn
Joel Richardson
Niren Nagda
Lynn Fantle

Carol E. Smith, Co-Chair, CTCAC
Tim DeArros
Mark Murphy
Jen Jackman
Tricia Larade
Jeff Lunenfeld

Krasnow, Rose

From: Synergiesinc@aol.com
Sent: Tuesday, December 14, 2004 11:11 AM
To: Carter, John
Cc: Ma, Michael; Witthans, Wynn; susan.edwards@mncppc-mc.org; Krasnow, Rose; councilmember.knapp@montgomerycountymd.gov; catherine.matthews@montgomerycountymd.gov; nancy.hislop@montgomerycountymd.gov; Berlage, Derick; Coleman, Joyce; nnagda@ENERGENconsulting.com; smithcar@mail.nih.gov; Shileykim@aol.com
Subject: Follow-up

Hello, John, Rose, Michale, Wynn, and Susan.

First, I want to thank you for meeting with us yesterday. Kim, Carol, Niren and I greatly appreciate your time and assistance in our attempts to ensure that Clarksburg Town Center is developed according to the vision and intent of the Master Plan, and in compliance with the Project Plan guidelines. On behalf of our entire CTCAC, we thank you for your efforts to date.

As we mentioned, we have the utmost respect for the work that was done by Community Based Planning, together with the Clarksburg Civic Association, the Historical Society, and all other contributors, to develop the Master Plan vision and the subsequent Project Plan guidelines to uphold that vision throughout the development process.

With regard to the height violation evident in the existing Bozutto condominium, and height violations of additional residences planned but not yet built, we are gravely concerned. As discussed yesterday, violations must be called out by MNCPPC as violations. Otherwise, the entire validity of the Project Plan process is nullified. It is not appropriate to enable developers to arbitrarily deviate from Project Plan conditions and findings...especially in an RMX2 project under "optional method of development" where such conditions and findings are "expressly tied to" and "not automatically severable" from the Project Plan, without remanding the entire Project Plan back to the Board for consideration. There is a proper process for the Board to review and address such developer desires in a hearing *prior* to the construction of structures which clearly violate terms and conditions of the Project Plan.

We do not believe that the height violation issue(s) can be properly addressed during the January hearing for supplemental amendments desired by the developer. As stated yesterday, we would expect MNCPPC to issue a violation to the developer and establish a Board hearing specifically on this issue.

As stated by Michael Ma, and confirmed by Wynn Witthans, the site plan(s) for the Bozutto condominiums as well as the 2/2's, did not contain specific height measurements - they merely stated "four stories." Therefore, we do not believe that MNCPPC is responsible for the violations. With a designation of "four stories" it would be expected that the site plan would be approved under the current Project Plan. The oweness is upon the developer to ensure that builders of those "four stories" comply with the heights specified in the Project Plan. The developer is clearly accountable and responsible for compliance with all conditions and findings of the Project Plan. It is evident that the developer was aware of the 45' height limitation for residential structures, and, under the "Site Plan Enforcement Agreement," takes full responsibility for development in accordance with that limitation.

We cannot sit idly by while developers change Project Plans at whim, according to market drivers. We appreciate your help in ensuring the sanctity of the Master Plan/Project Plan process.

We will await your response regarding issuance of a violation notice to the developer. Again, thank you for your time and assistance.

Sincerely,
Amy Presley (on behalf of the CTCAC)

Ms. Amy Presley
(On behalf of CTCAC)

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

Dear Ms. Presley,

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

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

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

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

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

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

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

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

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

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

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

Notably, the Master Plan language does not set a numerical cap on the maximum height of apartment buildings (– which is exactly why Community Based Planning felt it necessary to include a numerical cap within the Project Plan Findings submitted to and approved by the Board. The goal of assuring compatibility with the future development of the historic district, relative to scale, was a driver for specification of the height limitations within the Project Plan Findings.) , stating in relevant part only that “[a]ll apartment buildings in the future Town Center will be four stories or less” Clarksburg Master Plan p. 44 (emphasis added). Therefore, the proposed “four-story” limitation was deemed to conform to the applicable requirements of the RMX-2 Zone, irrespective of any specific numerical limitation (However, this limitation was not deemed sufficient by Community Based Planning at the time of preparing the Project Plan Findings. Had Community Based Planning felt that “four stories” as allowed within the Master Plan and RMX-2 Zone, without a specified height cap, was sufficient language to ensure “scale and compatibility” with the Historic District, they would not have specified a 45’ residential and 50’ commercial height cap within the Data Table contained within the Findings of the Project Plan.) In the Site Plan staff report, the proposed height limitation for residential buildings was similarly set at four stories, however, no specific numerical limitation was recommended (Please note that the Development Review staff was not at liberty to independently and arbitrarily change or omit at Site Plan review/submission any of the requirements, conditions and findings previously approved by the Board and contained within the Project Plan. If the Staff intended to do such, it would have been required to create an Amendment. Under the rules and guidelines for “Minor Amendment” a change of this nature would not have been allowed without full Board hearing. There is no existing documentation of any amendment to the Project Plan Findings. Please refer to document table and pertinent notes attached – 59-D-2.6.) It was, and continues to be, Commission Staff’s view that no specific numerical limitation is necessary in order to conform with the requirements of the zoning ordinance and the master plan (It is astounding to the CTCAC that the Commission Staff would state that “no specific numerical limitation is necessary.” According to M-NCPPC Board, by way of approval of the Project Plan Findings, it *is* necessary for development within CTC to conform to the “specific numerical limitations” contained within the Project Plan conditions and findings as approved and adopted, not just the Master Plan and Zoning Ordinances in general. It is a necessity for all development within the Clarksburg Town Center, under the Optional Method of Development, to comply with *all* requirements, conditions and findings of the Project Plan.); and, moreover, that a delineation of four proposed stories, with no specific numerical limitation, is consistent with the Project Plan approval (The Project Plan was approved with Findings containing a specific delineation of the height for those “proposed” four stories. Therefore, with a generic delineation of “four stories” on the Site Plan, it must be expected – and if not, then confirmed by Development Review – that those “four stories” would be in compliance with the specific definition of “four stories” as proposed within the Board-approved and adopted Project Plan Findings. Please refer to the Project Plan Findings – Data Table – and our document table and pertinent notes attached.). On Staff’s recommendation (“Staff” submitted to the Board a revised Data Table along with its recommendation. This Data Table was inconsistent with the Data Table contained in the Project Plan Findings previously approved by the Board. It

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

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

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

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

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

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

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

Sincerely,

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

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CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

January 25, 2004

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

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

Dear Mr. Berlage:

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

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

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

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

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

Sincerely,

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

CLARKSBURG TOWN CENTER ADVISORY COMMITTEE
Clarksburg, MD 20871

April 22, 2005

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

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

Dear Chairman Berlage:

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

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

Subsequent to Planning Board approval of the Project Plan, which includes height restrictions, Planning Board staff altered the Data Table containing the specific height restrictions to show only the general 4 story height restriction. This altered table was the basis, in part, of the Planning Board's April 14th decision. Importantly, this change was

not considered or approved by the Planning Board. Therefore, the Board-approved specific height restrictions are still binding.

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

In light of this new information, CTCAC requests the Planning Board to expeditiously reconsider its decision of April 14, 2005. With no valid amendments to relieve the Developer from the requirements set forth under Site Plan No. 8-98001, the Developer has breached the Site Plan Enforcement Agreement and violated the "Certified Site Plan" referenced within that Agreement. Thus, there is ample evidence to support CTCAC's allegation of noncompliance.

Sincerely,

Amy Presley
(on behalf of CTCAC)

cc: Fischer & Steinhilber