

Clarksburg Town Center Advisory Committee

July 14, 2005

Montgomery County Planning Board
C/O The Honorable Chairman Derick Berlage
The Maryland National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Dear Chairman and Planning Board Commissioners:

We, the Clarksburg Town Center Advisory Committee (CTCAC), are hereby reaffirming the formal complaints as voiced by Ms. Amy Presley at the hearings on July 7, 2005 with regard to the numerous violations in addition to the two (height and setback) on which the Board ruled that day. For the convenience of the Board, we have summarized these additional violations, issues and discrepancies below:

1. **"O" Street and the "Pedestrian Mews."** The approved Site Plan #8-98001 and the Site Plan Enforcement Agreement explicitly included details for this pedestrian vista near the historic Church. The Developer has violated these provisions in failing to construct "O" street as shown on the Site Plan, in constructing a road in place of the Pedestrian Mews (lawn panels and John Clark Memorial), and in location/construction of townhouses within the area intended for "O" street.
2. **Phasing of Amenities.** Over 700 building permits have been issued to date, while community-wide facilities have not been completed and turned over the HOA, as committed by the Developer within the Site Plan Enforcement Agreement. The Site Plan Enforcement requires that "All community-wide facilities within Site Plan 8-98001, must be completed and conveyed to the Association no later than the earlier of the receipt of a building permit for the 540th Lot/Unit or..." The Board's obligation under the Site Plan Enforcement Agreement was to stop the issuance of building permits until the violation was cured. To date, the Board has neither reviewed nor taken action on this issue.
3. **MPDU Plans.** CTCAC has indicated that calculations regarding MPDU phasing (as submitted to CTCAC within the MPDU Phasing Calculation Plan) are not accurate with respect to what currently exists. Improper plans will lead to a situation where MPDU units are segregated. Such segregation will go against the basic concept of MPDU housing integration. The potential MPDU violations must be investigated and remedied.
4. **Discrepancies regarding Site Plan for Phase II.** The Phase II Site Plan "Signature Set" appears to have been signed by a Board designee on October 14, 2004 after many of the homes in Phase II were permitted, constructed and occupied. These site plan documents do not contain height information (as is necessary on any valid Site Plan according to Montgomery County Code). Further, based on other information as presented by CTCAC, authenticity of this set of documents has been seriously questioned. A review of the supplemental information and hearing on this issue is mandatory.

5. **Inspections related to Site Plan Enforcement Agreement.** The Developer appears to have failed to issue notification of request for inspection by the Board (as required by Site Plan Enforcement Agreement #8-98001), and the Board appears to have failed to perform its obligation pertaining to general inspections as outlined within the Site Plan Enforcement Agreement. The status and records related to such inspections were requested by the CTCAC.
6. **Altered Documentation.** The CTCAC turned in to the Board two supplemental documents (signed by Wynn Witthans). These documents were "before" and "after" documents as with the document (Phase I B Part 3) that Wynn Witthans previously admitted to having altered after our notification to her questioning height limitations, after buildings were built and occupied, but prior to the initial April 14, 2005 hearing. As with the document Ms. Witthans admitted to altering, these documents also have a full, unchanged data table on the first set, while the second set contains a line through the height information along with the hand-written notation of "4 stories". CTCAC submitted these documents to the Board, requesting investigation and reporting back to CTCAC.
7. **Pattern of Developer Violation.** CTCAC noted that indeed there seemed to be a conclusive pattern of Developer violations, versus merely an "unintentional" violation of heights and setbacks. It was requested of the Board to review all violations/allegations in order to accurately determine the scope of violations and assess intent.
8. **Sanctions for Violations.** CTCAC implored the Board NOT to move forward with either grandfathering units "under contract" or imposing sanctions until such time as they understood the total scope of violations and the impact to the Town Center.

The CTC residents have noted with deep disappointment that, despite CTCAC's urging of the Board to consider the additional violations prior to considering sanctions, the Board proceeded to schedule a sanctions hearing for July 28th on the height and setback violations. Without consideration of the merit and impact of additional violations, and the pattern established by the Developer in continued violation, the Board cannot possibly rule appropriately on existing violations. Treating violations in a piecemeal fashion will not only unnecessarily prolong the process, but will also result in further damage to the community – with diminished hope of remedial potential. Therefore, we reiterate in this letter the necessity for the Board to hear and rule on ALL violations prior to issuing sanctions.

We request that the Board hear and rule on ALL items at the July 28th hearing (i.e. prior to ruling on sanctions). If the Board is not prepared to hear and rule on all items by July 28th, the hearing must be postponed to the earliest possible date *prior* to the Board's summer recess. We want to stress that the failure by the Board to consider all of the issues and problems as requested, prior to ruling on sanctions, will appear negligent to the residents and community at large. We are deeply concerned about the ambiguity embedded in the Board's July 7th decision to "Grandfather built and occupied units and units under construction and under contract."

Certainly we believe that grandfathering the built and occupied units and units under construction and contract, is perhaps a necessary approach. However, such buildings, their location and impact on the Town Center, have not been identified. When such information was requested, even the Board's Staff acknowledged that they do not have clear and detailed information regarding these buildings. Thus, the board did not have all the facts before making its decision. As we have witnessed in the recent past, such an ambiguous decision is nothing but an invitation to the Developer and Builders to further abuse the system. We ask you to reconsider the decision in light of impact to the community. In doing so, the Board will need to be very specific in terms of what buildings are included, their addresses/locations, the date each contract was signed, the date of settlement (if any), current status and appropriate plans for mitigation based on the impact of each unit to the Town Center.

Additionally, with reference to the fines proposed by the Staff, we are outraged that Staff's recommendation would enable the developer and builders to get away with fines that are roughly 1/1000th of the price paid by the homeowners. The profits made through these illegal construction activities, on the other hand, are many fold those amounts. Elected officials have, as noted in recent Washington Post and Times articles, expressed the need for greater fines as a deterrent to Developers against future violation of legally binding Site Plans and development commitments – this being said regardless of whether violations were "intentional" or not. The CTCAC and Clarksburg Community expect a much stiffer penalty than that proposed by the Staff.

The Board must not only issue greater fines, but must also be prepared to present a mitigation strategy for the Developer/Builders to ameliorate the damage already done, and to prevent any further damage, within the Town Center. It is imperative that this strategy and requirements of the Developer/Builders be shared with the public at the July 28th hearing. As stated in our presentation on July 7, 2005, the violations such as the "disappearance of the pedestrian mews" are very clear when the existing construction is compared to the approved site plans and the enforcement agreements. Other areas of violation (as outlined above) may need to be investigated further. In any case, given that there are at least three or more serious violations, it does further establish a *pattern of violations* committed by the Developer and the Builders. We commend Chairman Berlage's commitment (as stated at the July 7, 2005 hearing) to "throw the book" at the Developer/Builders should he determine that violations were intentional. We expect Chairman Berlage to act on that commitment as a means of re-establishing the faith of citizens in the Board, its planning processes, and enforcement on behalf of the citizens.

Please acknowledge the receipt of this letter and respond to the CTCAC regarding a schedule for the upcoming hearing(s).

Sincerely,
Amy Presley, Kim Shiley, and Carol Smith (Co-Chairs), on behalf of CTCAC

cc: Montgomery County Council
Knopf & Brown
Delegate Jean Cryor
Senator Robert Garagiola
Tim Craig, Washington Post
Jon Ward, Washington Times
Susan Singer-Bart, Gazette