



Montgomery County Department of Park and Planning
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION
8787 Georgia Avenue
Silver Spring, Maryland 20901

MCPB
Item: 3
Date: October 25, 2005

MEMORANDUM:

TO: Montgomery County Planning Board

VIA: Charlie Loehr, Director
Bill Mooney, Acting Deputy Director

FROM: Rose Krasnow, Chief, Development Review Division

SUBJECT: Delineation of Additional Alleged Violations

PROJECT NAME: Clarksburg Town Center

REVIEW BASIS: Div. 59-D-3.6 of the Montgomery County Zoning Ordinance

Case #: **8-98001 & amendments and 8-02014 & amendments**

ZONE: RMX-2

LOCATION: In the northeastern quadrant of the intersection of Stringtown Road and Frederick Ave (MD RT. 355), Clarksburg

MASTER PLAN: Clarksburg and Vicinity Master Plan

HEARING DATE: October 6, 2005

Purpose: To list the allegations that the Clarksburg Town Center Advisory Committee (CTCAC) is expected to include in their presentation to the board. It is not the intent of this memorandum to make any conclusions as the merits of the allegations. The developers and builders of Clarksburg Town Center (CTC) will make a presentation to the board on November 3rd. The record will remain open until November 18th. At that time, staff will prepare findings and schedule hearing date(s) for the board to consider the violations.

I. PREFACE

The Planning Commission has already held three hearings with respect to alleged violations in Clarksburg Town Center. On April 14, 2005, the Board voted 4-1 (with Commissioner Wellington dissenting) to approve a motion that no violation had occurred. On July 7, 2005, the Board held another hearing to reconsider the height issue and to consider whether violations had also occurred with respect to front setbacks. At the conclusion of that hearing, the Board unanimously found height and setback violations.

On October 6, 2005, the Board considered three additional violations: amenities phasing, the location and timing of Moderately Priced Dwelling Units (MPDUs) and timeliness of site inspections.

The Board ruled by a 5-0 vote that the developer was in violation of the requirement that community-wide recreation facilities within Phase One of the project were to be provided prior to the release of the 540th building permit for the project as a whole.

Although there was general agreement among the Commissioners that no violation had occurred regarding phasing or clustering of MPDUs, the Board wanted additional information and voted to defer a final decision. Staff was directed to review in greater detail whether the developer had provided MPDUs in the locations specified in the approved Phase I and Phase II site plans, and, if not, whether they had followed proper procedures with either MNCPPC or DHCA to relocate the required MPDUs.

All of these matters were heard by the Board in response to allegations presented by the Clarksburg Town Center Advisory Committee (CTCAC). CTCAC has voiced a concern that there has been a pattern of Site Plan violations by the developer (Newland Communities) and the builders (Bozzuto, Craftstar, NV Homes, Miller & Smith, and Porten). To back this claim, they have presented to the Board letters and spreadsheets detailing many other alleged violations.

On Tuesday, October 25, the Board will allow CTCAC up to six hours to present their evidence regarding each of the allegations that remain to be heard. On Thursday, November 3rd, the developers and the builders will have up to six hours to present to the Board their response to the alleged violations. The record will remain open for input from CTCAC, the developer, the builders, or the public until Friday, November 18th, 2005. Once the record has closed and with all of this information in hand, staff will then prepare its own findings with respect to the alleged violations, so that the Commission can then schedule the necessary hearings to fully adjudicate the outstanding matters. Following these hearings, the Board will consider sanctions and/or a Plan of Compliance for Clarksburg Town Center.

II. DISCUSSION OF ISSUES RAISED IN CTCAC LETTER OF OCTOBER 18, 2005

Before listing individual allegations raised by CTCAC, staff would like to address the preliminary considerations raised in the October 18, 2005 letter received from CTCAC via their attorney, David Brown.

With respect to Piedmont Woods -- the 63.72 acres of RDT-zoned land north of what is now Snowden Farm Road -- staff confirms that this area is still a part of the Clarksburg Town Center Project, as presented in the Project and Preliminary Plans. Clarksburg Town Center has always been split zoned, with 201.34 acres falling within the RMX-2 zone and 68.82 acres (Piedmont Woods) contained in the RDT zone.

Although the project plan indicates that single family dwellings could be built in part of Piedmont Woods, the zoning would only have allowed one unit per 25 acres or a total of two units. No plan has ever been presented to the Board, however, to build these two units, nor does staff expect that any units will be built in this area. The density of 1300 units that was approved for Clarksburg Town Center at the time of Preliminary Plan was based upon the acreage available in the RMX-2 portion of the property.

Regarding the suggestion that "requested information has not been provided," staff wants to assure the Board that extraordinary efforts have been made to provide all reasonable information to CTCAC. All information that MNCPPC has received from Newland and its project engineer, Charles P. Johnson & Associates (CPJ) with respect to building height and setback, and methodologies used to compute such height and setbacks have been received by CTCAC as well.

Following the July 7th hearing, Newlands and the builders agreed to provide height information calculated in two different ways. One of these was aerial photogrammetry. CTCAC requested the raw data obtained as a result of the aerial flyover, but this information was proprietary. CTCAC was interested in receiving this information because they stated they had access to a software program that was not used at MNCPPC which they claimed would enable them to provide extensive substantive documentation of their claims.

MNCPPC later decided to attain its own aerial photogrammetry study to enable staff and the independent, third-party engineering firm hired by the Commission to better analyze all of the matters raised by the complainants. As soon as this data was obtained, it was distributed to all parties, including CTCAC and the Developer/Builders. This was done on October 6, 2005, as had been promised. CTCAC then claimed that the data was still not in a form they could use, but again, it should be stressed, we shared the information we had with all parties in the format in which we obtained it. To allege that the data had been "inappropriately preprocessed by the contractor (Virginia Resource Mapping) prior to delivery to CTCAC is not accurate. CTCAC did continue to work with staff to retrieve the raw data, which took a few extra days.

III. VIOLATIONS NOT YET HEARD BY THE BOARD

A. Violation of Standards

Given the number of outstanding allegations, staff believes it will be helpful to group them by category. The first category has to do with violation of development standards. The pertinent document for at least the start of this discussion is the well-known data table that appeared on the approved project plan, preliminary plan, and Phase I Site Plan. (See Attachment 1). The complainants have alleged that there have been violations of most, if not all, of these standards, including:

Net Lot Area: The table clearly shows that the Net Lot Area for Single Family Homes was set at 4,000 square feet and townhouses were supposed to be on lots that had a minimum of 1,120 square feet.

Lot Width Minimum at Building Line: The data table calls for lot width minimums at the building line of 40 feet for Single family detached and 16 feet for townhouses. Staff has asked the independent, third-party engineer (KCI) hired by MNCPPC to check in the field this and other items below.

Rear Yard Minimums: The data table calls for 25-foot rear yard minimums for single-family detached dwellings and 20-yard minimums for townhouses.

Side Yard Minimums: Side yard minimums for single-family detached homes should total a minimum of eight feet. In other words, the side yards on either side of a single-family home may differ, but the two combined must equal 8 feet. Townhomes clearly do not have side yards; a different standard would apply for the distance between the end of a stick of townhouses and the next building. Multi-family buildings are supposed to have 10 feet on either side.

Minimum Space between Buildings: This standard refers to the fact that there should be 20 feet between sticks of townhouses and thirty feet between multi-family buildings.

Accessory Buildings/Lot standards: The data table also sets forth that accessory structures should not cover more than 50 percent of the yard. This standard was set to control the amount of impervious surface that would be created by a neo-traditional development in a special protection area. Yet, as the project began to be built out, many units that were originally supposed to have integral garages were modified to create freestanding, detached garages behind the dwelling unit.

B. Road and Parking Issues:

Allegations have been raised that a number of private streets and alleys do not meet the standards set forth in the Road Code. CTCAC specifically Chapter 49, Article II, Section 34(f)(1), which says that two-way, tertiary residential streets require a right of way of 27' 4" and a pavement width of 26'.

Since the time of Site Plan approval for both phases, numerous changes have occurred with respect to unit type, which could alter the parking requirement, and street layout. A thorough analysis of the parking available within the project is called for to see if the required number of spaces required for the type and mix of units are, in fact, available.

C. Record Plat Violations

CTCAC has alleged that record plats were recorded for Phase II prior to approval of the Phase II signature set documents.

D. Environmental Issues

Several alleged violations can be grouped under this category, including grading changes, alteration of environmental features, and inadequate green area.

CTCAC has alleged that there have been massive changes in grading on site and that, in some cases, what is called the "natural grade" on later sets of documents is higher than the natural grade on earlier documents.

E. Changes to and the Elimination of Streets (O Street, the Pedestrian Mews, etc.) and Changes in Unit Types

CTCAC asserts that the loss of "O" Street and the Pedestrian Mews has had a significant impact on the community. Other streets have been changed as well, apparently in an effort to add some additional density. Although the project was capped at 1,300 dwelling units, it has been clear for some time, given topography and other realities of the site that are not always evident at the planning phase, that 1,300 units would not be achieved. Indeed, the latest estimates by the developer are that less than 1,200 units will be in place at build-out. In addition to the changes in streets, CTCAC will present information regarding changes in unit type over the course of the project – including changes in the location of MPDUs.

F. The Manor Houses

In February of 2005, the Board approved amendments to both the Phase 1 (8-98001G) and Phase II (8-02014B) Site Plans to allow the Manor Houses to increase in size from 9 units to 12. Although CTCAC actually testified in support of the Manor

Houses at that hearing, they have since voiced a number of concerns about these multi-family buildings. Among the issues being raised is the timing of building permit issuance and compliance with the approved plans at the time of issuance. Also raised is compliance with the signature set, setbacks, grading, and parking requirements.

G. Alterations to and the Validity of Documents

CTCAC has raised doubts about the validity of the Phase II Signature Set. The question that has been raised is why so much time elapsed between the time the Board approved the Site Plan (2002) and the date it was signed (October of '04).

The lapse is due to the amount of time required to review a signature set for a complex project. After Board approval, site plans often require the submission of many additional documents. In the case of Clarksburg Town Center, it is evident that protracted negotiations were being conducted between MNCPPC legal staff and the Board of Education over the planned park/school site. In many cases, a developer's need to finalize the signature set often serves as an inducement between the parties in a negotiation to provide all necessary documents.

In addition to the time lapse, changes in the site plan are also questioned. It is correct that MNCPPC could not find a signed copy of the actual Site Plan portion of the Signature Set in its files (the signed Landscape Plans were on hand), so a set was requested from the developer well after the investigation into alleged violations at Clarksburg Town Center had begun. What is of significant interest is the data table. The data table is identical to that found on the signed Phase II Signature Set, i.e. the height line has been deleted and setbacks are "As Shown." The Signature Set for the C Amendment was signed in June of 2003. Later amendments were more minor in nature and did not include data tables.

H. Adequacy of Amenities

As part of its investigation into the required timing for completing and turning over community-wide amenities in Clarksburg Town Center, staff also looked into the provision and adequacy of the local amenities and found them to be lacking. However, the developer argued that no notice had been given that this would be part of the October 6, 2005 hearing, so the item was pulled to allow all parties more time to respond.

I. Pattern of Developer Violations

Should the Board determine that several violations have occurred, the question will then be addressed as to whether a pattern of violations on the part of the developer and/or builders has occurred.