

MCP-Chairman

From: Elizabeth Forrest [betforrest@earthlink.net]
Sent: Friday, November 04, 2005 8:17 AM
To: MCP-Chairman
Subject: FW: Closiong statement

R E C E I V E D
 1856
 NOV 07 2005

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

Elizabeth Forrest
betforrest@earthlink.net
 Why Wait? Move to EarthLink.

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

From: Elizabeth Forrest
To: Amy Presley; kim shiley; Carol Leigh (NIH/NCI) Smith
Cc: Clarksburg Civic Assoc.; Dee Baris; El Cooper; Jean Casey; Phil Marti; Steve Burns; Tom Perrone; Wendy Harris
Sent: 11/2/2005 8:51:15 AM
Subject: Closiong statement

Amy, Kim and Carol

I just wanted to clear the air before tonight's meeting. Many times since I moved into my wonderful home I have heard dispersions at almost every meeting I have been too regarding the Condo's. I had heard that your Attorney in his closing arguments at the October 25, 2005 Public Hearing made the following statements:

Steps are needed to prevent another "bozutto beast", as he claims everyone calls them. (I think the design of the new Manor house is elegant and stately for the price point Bozzuto is trying to achieve.)

and

He said our homes looked like a "Cheap college Dormitory" Apparently the troglodyte never heard of Frank Lloyd Wright style as is our Residents Center taken after! I do hope this is not the case. Poor construction, roads too narrow, etc. etc. are the issue not your attorneys personal taste. If this is true he should ride around and look at some of the Plain townhouses, the fences needing more than the one coat of paint, the fake flamingo's in gardens, the religious grotto's on the front lawns, the plastic flowers in pots and around foundations, and I could go on and on! Why everyone seems to pick on the condo's is beyond me! There are actual human beings living and enjoying their homes and some actually love the look of their condo's. If this attorney did say these things he was certainly out of control and his statements were in extremely poor taste and completely out of context of the original violations suit.

I'm disappointed and saddened by these statements. Allot of people have mentioned MPDU's, I think this is a false smoke screen and they could care less about mixing in people of all financial and life circumstances. The condo's add another dimension to the flavor of the community and were always a part of the mixture. I for one only wanted either a single family home on one level or a condo with an elevator. My mother is 91 and stairs are not an option. I choose to have her live with me and not in a home. I moved from a magnificent home overlooking the Harbor in Northport, NY to this area to be closer to my three grandchildren and get involved in the pleasures of the area, instead I got in the middle of a hate campaign against my home.

I will see you all at the meeting tonight!

Betty Forrest

Elizabeth Forrest
betforrest@earthlink.net
Why Wait? Move to EarthLink.

LAW OFFICES OF

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(301) 545-6105

DAVID W. BROWN

November 7, 2005

REVISED

Via Email

Derick Berlage, Chairman
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, MD 20910

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

Re: Clarksburg Town Center

Dear Chairman Berlage:

This letter is a preliminary response of the Clarksburg Town Center Advisory Committee (CTCAC) to the developer/builder presentations on November 3, 2005. CTCAC intends to provide a more complete, detailed response before the record closes, possibly in multiple installments. For present purposes, however, CTCAC believes it important that a misleading perception integral to the November 3rd presentations not be allowed to linger.

Reduced to its essence, what the Board heard last Thursday was the claim that all CTC site plan changes were approved at the staff level according to a Board-approved delegation of approval authority – one upon which the developer/builders relied and had the right to rely. Moreover, if the Board is at all unhappy now with the fruits of that process, it is legally powerless to repudiate its results and lacks the impartiality to sort out blame between the regulatory staff and the objects of regulation.

The Board should recognize these assertions for what they are: a sweeping claim of immunity, without regard to intent or consequence. Thus, Newland tells the Board it should reverse its findings of building height and setback violations, notwithstanding that its own data (from CPJ) confirms hundreds of excessive heights and scores of inadequate front yard setbacks. Indeed, the logic of the developer/builder position is all but limitless: anything stamped approved by Ms. Witthans is immune, whether she was aware of the scope and extent of the changes or not, without regard to her (or any other staff member's) view of the merit of the changes, and without regard to whether the changes merited Board-level consideration.

The CTCAC, on the other hand, does not view Newland or the builders as the hapless victims of a derailed staff-level approval process that the Board is seeking to get back on the tracks at their expense. Critical evidence was presented by CTCAC on

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October 25th that Newland and the builders did not wait for approval from Ms. Withans to initiate development. Rather than rely on such approvals, they went forward on the assumption that *pro forma* approvals would be forthcoming later. This un rebutted evidence is flatly inconsistent with Newland/builder claims on November 3rd that her approvals were the talismans to change. Until a more complete response can be prepared, an example highlighted from our PowerPoint™ presentation concerning the Phase 1A Amendment will suffice to illustrate the point.

Slides 34-37 summarize what happened with respect to the townhouse purchased by CTCAC member Kim Shiley. The Board should recall Newland's claim, in its September 7, 2005 letter, that her purchase was made possible because the Phase 1A Amendment changed front-loaded townhomes to rear-loaded townhomes with detached garages – units that "did not even exist on the Phase I Site Plan the CTCAC seeks to enforce." *Id.* at 12. The reality is that Ms. Shiley's purchase was effectuated long before the change to a rear-loaded townhouse was approved.

What follows is the undisputed chronology in the documentary record for Ms. Shiley's townhome:

March 24, 1999 – Phase I Site Plan, Sheet 3

Shows area of Shiley lot to be part of Block D, lots 5-10, with front-loaded garage townhomes and a rear parking lot.

April 25, 2002 – Plat 22366 (Copy attached)

Apparent Board approval signature date for plat 22366 (Derick Berlage) completely redesigning Block D, adjusting its boundaries, and redesignating it as Block DD. [Why this date precedes all other dates on the plat is not explained.]

August 5, 2002 – Plat 22366

Apparent preparation date for plat 22366; signature date for surveyor's certificate.

August 7, 2002 – Plat 22366

Signature date for Owner's certificate (Tracy Graves, Terrabrook Vice President).

November 19, 2002 – Plat 22366

Date of plat recordation in the Montgomery County Land Records.

December 12, 2002 – Terrabrook-Miller & Smith Sale

Terrabrook sells Miller & Smith Lots 15-20, Block DD (along with a number of other lots in other blocks) for \$835,000. The deed is recorded on January 10, 2003, liber 22765, folio 538.

January 19, 2003 – Miller & Smith – Shiley Contract

Kim Shiley enters into a binding contract with Miller & Smith to deliver a townhouse with detached garage in the rear on Lot 16, Block DD.

February 25, 2003 – Building Permit 298734

Miller & Smith applies for permit to build Shiley Residence.

April 23, 2003 – Building Permit 298734

DPS issues building permit 298734. Construction commences almost immediately thereafter.

May 30, 2003 – Phase 1A Amendment

May 30, 2003 is the date Newland and the builders claim the Phase 1A Amendment was "approved" by Ms. Witthans. There is no documentation authorizing platting or permitting prior to this date.

Last Thursday, Newland offered not one iota of explanation for how it could presume approval of the Phase 1A Amendment and plat Ms. Shiley's home far in advance of the Phase 1A Amendment approval. Nor did Miller & Smith deign to explain how it felt free to sell her, in a binding contract, a unit it had no lawful ability to deliver at the time the contract was entered into, and then proceed with permitted construction prior to Phase 1A Amendment approval. There is only one possible explanation, which is why the Board heard nothing about it on November 3rd: the Witthans "approval" was mere paperwork Newland and the builders had no doubt would eventually be routinely approved. The absence of that approval was therefore no impediment to construction. The obvious mindset was to feed the flames of a hot housing market as quickly and as expediently as possible, without regard to honoring obligations delineated in a comprehensive, integrated, interrelated site plan approved by the Board in the late 1990's, unless and until, upon full

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and careful reflection, a change was in order. The proper inference to be drawn, on this record, is that Newland and the builders regarded Condition 38 as *carte blanche* to make any changes they wanted, whenever they wanted them, in the confident expectation they would be ratified later.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "David W. Brown", written in black ink over a horizontal line.

David W. Brown

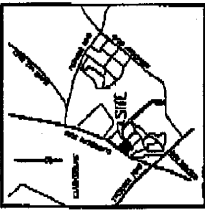
cc: Michele Rosenfeld, Esq.
Rose Krasnow, Chief, Development Review
John A. Carter, Chief, Community-Based Planning
Barbara A. Sears, Esq.
Todd D. Brown, Esq.
Timothy Dugan, Esq.
Robert G. Brewer, Jr., Esq.
County Council

OWNER'S CERTIFICATE

THE UNDERSIGNED, OWNER OF THE PROPERTY SHOWN HEREON AS THE SUBJECT OF THIS CERTIFICATE, HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT I HAVE NOT BEEN ADVISED OF ANY OTHER INTERESTS IN THE PROPERTY SHOWN HEREON...

9-7-02
TERRACORP CLARKSBURG, LLC
A LIMITED LIABILITY COMPANY
FORMED UNDER THE LAWS OF MARYLAND
BY: [Signature]

THE STATE OF MARYLAND
COUNTY OF MONTGOMERY
I, [Signature], Notary Public for Maryland, do hereby certify that the foregoing is a true and correct copy of the original of the above certificate...



SURVEYOR'S CERTIFICATE

I, the undersigned, being duly qualified and sworn as a Surveyor for the State of Maryland, do hereby certify that the foregoing is a true and correct copy of the original of the above certificate...

9-7-02
CPI
COURT REPORTERS & VIDEO
1000 W. WASHINGTON ST., SUITE 100
BETHESDA, MD 20814
BY: [Signature]

THE STATE OF MARYLAND
COUNTY OF MONTGOMERY
I, [Signature], Notary Public for Maryland, do hereby certify that the foregoing is a true and correct copy of the original of the above certificate...

NOTES:
1. THE PROPERTY SHOWN HEREON IS SUBJECT TO THE EASEMENTS AND RESTRICTIONS SET FORTH IN THE INSTRUMENTS REFERENCED IN THE LIST OF INSTRUMENTS ATTACHED TO THIS CERTIFICATE...

- 1. THE PROPERTY SHOWN HEREON IS SUBJECT TO THE EASEMENTS AND RESTRICTIONS SET FORTH IN THE INSTRUMENTS REFERENCED IN THE LIST OF INSTRUMENTS ATTACHED TO THIS CERTIFICATE...
- 2. THE PROPERTY SHOWN HEREON IS SUBJECT TO THE EASEMENTS AND RESTRICTIONS SET FORTH IN THE INSTRUMENTS REFERENCED IN THE LIST OF INSTRUMENTS ATTACHED TO THIS CERTIFICATE...

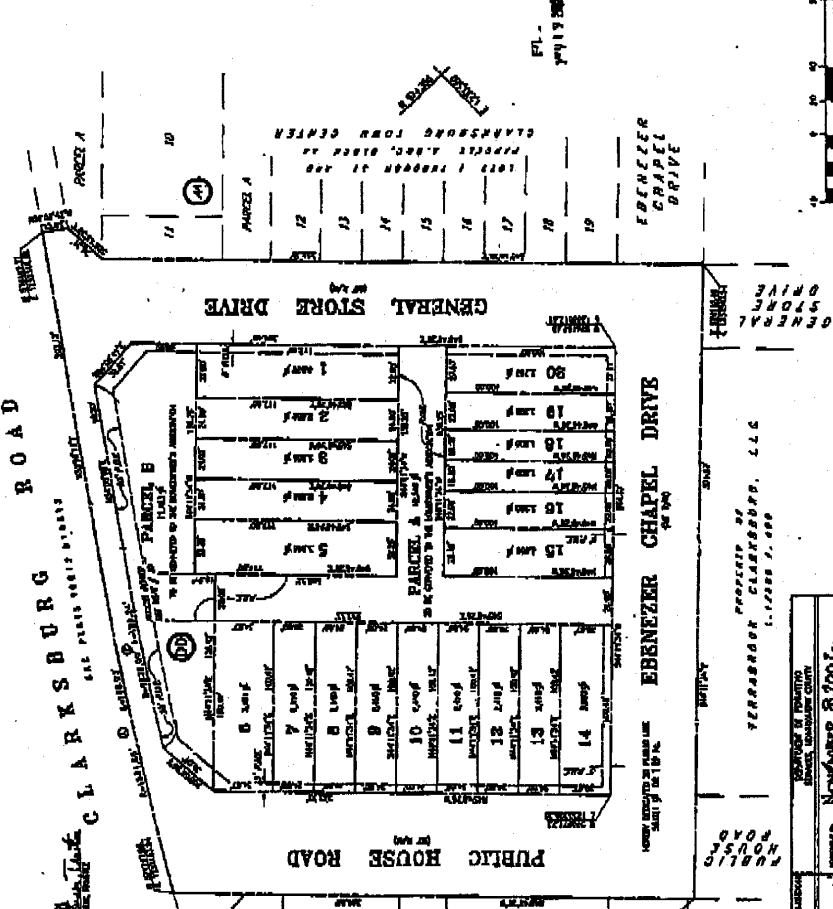
CURSE TABLE

DATE	BOOK	PAGE	BY	FOR
10/1/01	100	100	ABC	DEF
10/1/01	100	100	ABC	DEF

SUBMISSION RECORD PLAT
LOTS 1 THROUGH 20 AND
PARCELS A & B, BLOCK DD
CLARKSBURG
TOWN CENTER
CLARKSBURG (CID) DISTRICT
MONTGOMERY COUNTY, MARYLAND
SCALE: 1"=40'
AUGUST, 2002



74456
614-23
MSA SS4 12A1-08235



20 LOTS
2 PARCELS
100,000 SQ. FT.

9-7-02
TERRACORP CLARKSBURG, LLC
A LIMITED LIABILITY COMPANY
FORMED UNDER THE LAWS OF MARYLAND
BY: [Signature]

THE STATE OF MARYLAND
COUNTY OF MONTGOMERY
I, [Signature], Notary Public for Maryland, do hereby certify that the foregoing is a true and correct copy of the original of the above certificate...