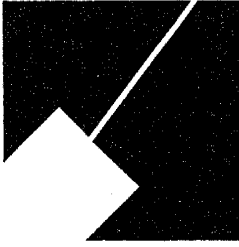


M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

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June 1, 2006

**MEMORANDUM**

**TO:** Montgomery County Planning Board

**FROM:** John Carter, Chief (301.495.4575) *JC* Rose Krasnow, Chief (301.495.4591) *RK*  
Community-Based Planning Division Development Review Division

**SUBJECT:** Plan of Compliance  
Clarksburg Town Center

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**RECOMMENDATION**

The staff recommends approval of the Plan of Compliance for the Clarksburg Town Center with the following comments.

- 1. Resolution of Violations** - The staff recommends that the Plan of Compliance, with its proposed new amenities and facilities as well as other enhancements be accepted as an appropriate alternative to imposing fines or monetary penalties in accordance with Section 59-D-3.6 (a)(4) of the Montgomery County Zoning Ordinance. The Plan of Compliance will remediate and resolve all findings of violations including other alleged violations that have not yet been resolved by the Planning Board.
- 2. Future Review Process** - The Plan of Compliance proposes amendments to the approved Project Plan and the certified Site Plans as indicated in the enclosed "Description of Major Elements Making Up Plan of Compliance", and the "Plan of Compliance Design Concepts" (see attachments). The future approvals include the interim review of Site Plan amendments for Sections 2D and GG and for Manor House Buildings 10, 11 and 12, to be followed by the review of the overall modified Project Plan, Preliminary Plan, the Site Plans, and a new Site Plan for the retail core, as described in the phasing.

Although the other agencies have been given an opportunity to review the Plan of Compliance, the staff recognize that the information presented is conceptual in nature and that additional review of more detailed plans may require some modifications. At the same time, the staff also recognize the importance that the Mediation Group placed in the Plan of Compliance. The Mediation agreed that any significant changes to the document brought about as a result of the additional level of review will require binding arbitration.

3. **Phasing and Next Steps** - As part of the Plan of Compliance, the staff recommends that the following phasing of development be approved:
- a. **First Stage: Begin Construction** – At the current time, stop work orders are in place in certain designated areas of the community. The public interest is to have construction resume in the Town Center as quickly as possible. If the Planning Board approves the Plan of Compliance, the initial stage of the development will lift the stop work orders on some lots in Section 2D and GG (see Exhibit R of the Plan of Compliance), and Manor House Buildings 7 and 9. The construction of Stringtown Road and Clarksburg Road will also continue. The Planning Board has already approved these lots as shown on a certified Site Plan and Record Plat. Staff does not recommend any modifications to these lots. Section 2D (near the elementary school) and Manor House 9 are located east of Overlook Park Drive. Section GG is located south of Clarksburg Square Road near the retail core and Manor House 9 is located west of Overlook Park Drive to the north of Clarksburg Square Road. These lots include single-family detached units, townhouses, and multi-family buildings. Construction of Stringtown Road between MD 355 and Overlook Park Drive, and Clarksburg Road between MD 355 and Spire Street can also continue in this First Stage.
  - b. **Second Stage: Approval of a Revised Site Plan for Section 2G and GG** – The applicant will submit a revised Site Plan for the remaining portions of Section 2D and GG, as well as for Manor House Buildings 10, 11 and 12. Construction will only proceed after the Planning Board approves these revised Site Plans. These Site Plans could be submitted and approved before the modified Project Plan, Preliminary Plan and Site Plans for the entire development are approved.
  - c. **Third Stage: Approval of a Revised Project Plan, Preliminary Plan and Site Plan** – The approved overall Project Plan, Preliminary Plan, and Site Plans will need to be revised, and a new site plan for the retail core will need to be approved, before the remaining development in Clarksburg Town Center will be able to proceed. This step is intended to incorporate all of the elements of the Plan of Compliance into an amended overall Project Plan, Preliminary Plan, and the newly approved or amended Site Plans. A new phasing plan for the entire development will also be included as part of this third stage review.

## **PURPOSE**

The Plan of Compliance is intended to address violations of the approved Project Plan and Site Plans and to provide significant improvements to the Clarksburg Town Center to address all violations and other concerns. This Plan of Compliance is the result of a joint effort by the Clarksburg Town Center Advisory Committee (CTCAC), and the developer (Newland Communities) and builders (Bozzuto, Craftstar, Miller and Smith, NV, and Porten Homes).

**Violations** - On July 7, 2005 after notice to the applicant, the Planning Board found that the approved development was not in compliance with the certified Site Plans. The following violations were found:

1. Established building height limits of 35 feet for single-family units, and 45 feet for multi-family units were exceeded
2. Established front yard setbacks were less than the established design standards
3. On October 6, 2005, after notice to the applicant, the Planning Board also found that the approved development was not in compliance with the approved Site Plans. The Planning Board found that the Amenities and Facilities were not constructed in accordance with the approved Phasing Plan.

**Other Concerns** - In addition to the identified violations found by the Planning Board, staff was also investigating several other alleged violations, including the following:

1. Elimination of "O" Street and the Pedestrian Mews
2. Phasing and Location of MPDUs
3. Conformance with the Development Standards (including setbacks for side and rear yards, minimum lot area, and lot width minimums)
4. Elimination and Reduction in Size of Alleys and Roadways
5. Changes in Blocks with Respect to Unit Types and Configuration Without Planning Board Approval
6. Modification of Environmentally-related Features
7. Parking Requirements
8. Altered Documentation

On November 25, 2005, the applicant and the Clarksburg Town Center Advisory Committee requested time to address these concerns as part of a mediated attempt to resolve all issues. On December 2, 2005, the Planning Board suspended all violation hearings with the hope that the parties could come to an agreement with respect to a Plan of Compliance that could be submitted to the Planning Board for review and approval.

The parties selected a mediator, the Honorable Barbara Howe, and worked to come to an agreement over a period of 5 months. On May 3, 2006, a Plan of Compliance was submitted to the Planning Board. The proposed Plan of Compliance is intended to address all of the concerns identified above and provide improvements that will foster the creation of a unique community. This report provides the project description, staff analysis and recommendations for the Plan of Compliance.

## **PROJECT DESCRIPTION**

The Plan of Compliance includes a set of plans, illustrations, and a written description of the proposed modifications to the existing Project Plan, Preliminary Plan, and Site Plans. This plan is the result of an extensive process to both improve the existing approved project and to address violations and concerns.

The Plan of Compliance calls for significant revisions to the plans submitted, but never approved, for the retail core. The Plan creates a mixed-use core that includes a revised town plaza and town green space, a grocery store, small shops, a library, a mix of live-work units, townhouses, and multi-family units. The new town plaza and green space includes a site for a library, seating areas, street lighting, street trees, and an open air market building for outdoor civic events that will serve as the central focus for the Town Center. Instead of extensive surface parking as proposed in the plan that had been submitted previously to the Department of Park and Planning, the new mixed-use core includes two parking garages lined by three story retail spaces and residences to maintain a pedestrian scale and orientation. These features provide a significant improvement to the approved project.

The Plan of Compliance also proposes a grand stairway with landscaping leading from the Town Center to the Clarksburg United Methodist Church. This will help establish a strong link between the old and the new while creating a much more attractive view. Additional landscaping will be provided along the adjacent street. The Plan also calls for the developer to dedicate an existing town center lot to the church for the provision of a driveway, additional parking, and access for the handicapped. These measures will greatly improve both the vehicular and pedestrian connections from the community to the church.

Along the main street for the Clarksburg Town Center (Clarksburg Square Road), improvements to the land bridge will be provided including new walls, streetlights special paving, curb ramps, and seating areas. The Clark Family Memorial will be constructed at the western edge of the land bridge near the intersection of Overlook Park Drive. This highly visible area serves as the transition area between the eastern and western portion of the Town Center.

The Plan of Compliance seeks to balance the enhanced retail core in the area west of the Greenway with enhanced recreational amenities in the area east of the Greenway. The eastern portion of the Clarksburg Town Center includes Sinequa Square, and the recreation center and pool area. In addition to the features included in the approved Project Plan, Sinequa Square is proposed to include an outdoor amphitheater and additional landscaping. The pool complex will include a new 1,200-square foot community building, providing meeting space with audio/visual wiring and a non-commercial kitchen. The existing pool will be enlarged to accommodate regulation swim meets and a water slide will be added. In addition, a new building containing a year-round, heated lap pool is proposed, along with another 800-square foot concessions building, and expanded parking. These new facilities should more than compensate for the loss of a small pool facility in the western portion of the community and will help unite the two sides of the neighborhood.

The Plan of Compliance also augments and enhances the other amenities in the Clarksburg Town Center. Murphy's Grove Pond, located near Stringtown Road at Clarks Crossing Drive, will include enhanced landscaping, the removal of an existing white picket fence, a fishing pier, and a walking trail. Some of these improvements will be put in place on an interim basis, because the final enhancements to the pond cannot be completed until the facility is no longer needed to provide sediment control for the ongoing construction activity. In addition, the stormwater management area located behind Burdette Forest Road (Stormwater Management Pond #3) will feature a seating area, and a trail connecting to the town plaza. The Plan of Compliance also calls for a new park and townhouses to be provided instead of Condominium Building 6, which was to be a 26-unit building immediately across from and identical to existing Condominium Building 3.

At the end of Clarksburg Square Road, the 70-acre Piedmont Woods Park will be retained. This park will include hard surface courts and picnic areas. The new features in the Plan of Compliance also call for a dog park and hiking trails. This area is proposed for future dedication to the M-NCPPC for maintenance.

## ANALYSIS

### 1. Conformance with the Clarksburg Master Plan

The proposed Plan of Compliance conforms to the guidelines in the Approved and Adopted Clarksburg Master Plan. The Clarksburg Master Plan developed high expectations for building a complete community in the Town Center area. The Plan of Compliance updates and enhances the Town Center area approved in the Project Plan dated April 4, 1995 to foster the creation of a complete community.

**Land Use and Mix of Residential Units Plan** - The Plan of Compliance is consistent with the guidelines in the Clarksburg Master Plan for the mix of unit types. The Plan of Compliance provides more single-family units and fewer multi-family units than the approved Project Plan. A key feature of the Plan of Compliance is the elimination of one condominium (multi-family) building, and its replacement with townhouses and an additional green area or park. The following table identifies the mix of unit types and the maximum number of total units.

**Table: Mix of Residential Units**

<b>Unit Types</b>	<b>Master Plan Guidelines</b>	<b>Approved Project Plan</b>	<b>Plan of Compliance</b>
Single Family Detached	10-20%	15% (195 Units)	20% (241 Units)
Single Family Attached and Townhouses	30-50%	50% (650 Units)	54% (661 Units)
Multi-Family Units and Live Work Units (500 Units)	25-45%	35% (455 Units)	26% (319 Units)
Total Units	1,380	1,300	1,221

**Mixed-Use Core Including the Retail Center** - This area will be substantially revised and improved. The majority of the retail will be located along pedestrian friendly streets instead of adjacent to a surface parking lot. Land will be dedicated for a library and an additional site that can accommodate a parking garage to serve the library. The existing town green will be modified to include a plaza area, an open-air market building, and a smaller green area to serve as the central gathering area for the Clarksburg community. A grocery store will be provided. Structures adjacent to the grocery store will include retail or office space on the first floor with residential uses on the second and third floors.

**Transportation and Mobility Plan** – The Plan of Compliance retains the emphasis on constructing sidewalks, bikeways, and natural surface trails as proposed in the approved Project Plan. A separate bike trail will be provided parallel to Overlook Park Drive. A natural surface trail will be provided near the existing stream. These items were already included in the approved Project Plan and Site Plans. In addition, the Plan of Compliance will improve the balance of parking throughout the entire development. It includes a minimum of two parking structures within the retail core. On street parking along specified streets will be revised to meet the requirements of the Montgomery County Fire and Rescue Service.

## 2. Conformance with the Development Standards

The proposed Plan of Compliance is in conformance with the requirements of the RMX-2, and the RDT Zones as indicated in the following table.

**Table: Comparison of Development Standards in the RMX-2 Zone**

Items	Required/ Allowed	Approved Project Plan	Plan of Compliance
Lot Area (acres)	NA	197.3 (RMX-2) 63.0 (RDT) 260.3 total	197.3 (RMX-2) 63.0 (RDT) 260.3 total
Green Area			
1. Commercial Area	15%	+15%	+ 15%
2. Residential Area	50%	+ 50%	+ 50%
Density of Development (Master Plan Recommendations)			
1. Retail and Office	920,000 SF	250,000 SF	195,500 SF
2. Residential	1,380 DUs (5-7 DUs/acre)	1,300 DUs	1,221 DUs
MPDUs	12.5%	12.5%	12.5%

Note: Standards for building height and setback within the different sections of the development will be determined as part of the amended Project Plan and Site Plan.

**Building Height** – The Plan of Compliance proposes to modify some of the existing Manor House buildings, eliminates an approved multi-family building, and establishes new development standards for the remaining buildings to be approved in the Town Center. The following items summarize the proposed revisions:

- **Retail Core** - Buildings in the retail core will be limited to three stories instead of the four stories approved in the original Project Plan.
- **Condominium Building** - An approved condominium building will be eliminated and replaced with townhouses and a small park.
- **Compatibility Features** - The landscaping plan will be augmented by \$1,000,000 to establish compatibility and improve the appearance of the development. These funds, in addition to other features, will be used to mitigate the impact of height and setback on existing units. The Plan of Compliance confirms the construction standards for all existing buildings that will remain. As part of the new Project Plan, Preliminary Plan, and Site Plans, the specific building heights and setbacks for new buildings within each section of the project will be delineated.

**Design Standards for Side and Rear Yard Setbacks, Minimum Lot Area, Lot Width at Building Line, and Lot Coverage** - The Plan of Compliance accepts the development standards for those buildings already constructed. The revised Project Plan, Preliminary Plan, and Site Plans will carefully describe the development standards for the future development.

### 3. Amenities and Facilities

The proposed Plan of Compliance augments and enhances the amenities and recreation facilities approved in the Project Plan and Site Plans. The following tables compare the amenities and recreation facilities approved in the original Project Plan with the additional amenities and recreation facilities proposed in the Plan of Compliance.

**Table: Comparison of Amenities**

Approved Project Plan	Plan of Compliance
- Town Green	- Large enhanced Town Green and Civic Plaza
- Land for a future civic building without parking	- Land for a future library with nearby parking
- Streetscape system	- Streetscape system augmented by a contribution of \$1,000,000 in addition to the approved streetscape
- Neighborhood squares and formal green areas	- Neighborhood squares and formal green areas augmented by additional landscaping and parking areas
- Greenway dedicated for park use	- Greenway dedicated for park use
- Specialty planting along greenway roads	- Specialty planting along greenway roads augmented by additional features along the bridge area
- Dedicated elementary school site	- Dedicated elementary school site
- Murphy's Grove Pond area	- Augmented landscaping and park features for the Murphy's Pond area

The Montgomery County Public Libraries reviewed the Plan of Compliance. They support the proposed location and size of the library. The present site provides for a two-story library with a gross floor area of approximately 15,000 square feet and a footprint of 10,000 square feet. The library will be a central feature of the community located in the central plaza area. The proposed location of the parking will allow approximately 45 surface spaces or 90 spaces in a parking garage. The FY 08 Capital Improvements Program includes the cost to design the library, but it does not include the cost of construction for the building or a parking garage. The construction for the library should be coordinated with the construction of the retail core.



**Table: Comparison of Recreational Facilities**

Approved Project Plan	Plan of Compliance
- 4 Tot lots	- 4 tot lots
- 6 multi-age playgrounds	- 6 multi-age playgrounds
- 3 hard surface courts (tennis courts)	- 3 hard surface courts (2 tennis courts, and 1 basketball court)
- Bikeway system	- Bikeway system
- Natural surface trail within greenway	- Natural surface trail within greenway
- Small outdoor swimming pools (2)	- Enlarged outdoor swimming pool for community swim meets with an additional lap pool for year round use, an 800-square foot public building, a 1,200-square foot civic building, and additional parking areas
- Wading pool (2)	- Wading pool (1)
- Large recreation area/Piedmont Park	- Large recreation area/Piedmont Park*

Note: \*The Parks Department has been carefully reviewing the requirements for this park if it is to be a county owned and maintained facility.

**4. Phasing and Placement of Moderately Priced Dwelling Units**

The Plan of Compliance includes the required number (12.5 percent) of moderately priced dwelling units. These units will be located proportionally throughout the Clarksburg Town Center. A maximum of 55 moderately priced dwelling units will be located west of Overlook Park Drive to ensure that the units are evenly placed throughout the development. Specific block locations will be established during the review of the Project Plan, Preliminary Plan, and Site Plans.

**5. Design Standards for Streets and Alleys**

The staff met with the Department of Public Works and Transportation. They have been involved in the review of this project and other similar projects for more than a decade. In addition to safety and access, they recognize that appropriate street standards often establish the first impression of a community. At this point in time, the Department of Public Works and Transportation has identified the following items that may need additional review:

- Intersection spacing and sight distance especially for the intersections along General Store Road and Overlook Park Drive

- Pedestrian crossing to connect to Piedmont Park
- Phasing construction for public and private roads especially Overlook Park Drive and Clarksburg Square Road
- Classification of internal roads and the location of on-street parking especially in the retail core

Because the Plan of Compliance is a concept document, these items should be addressed in depth during the review of the modified Project Plan, Preliminary Plan, and Site Plans.

**Modifications for the Fire and Rescue Service** - The Montgomery County Fire and Rescue Service identified concerns with the function and width of some of the streets. The Plan of Compliance addressed these concerns and proposes eliminating on-street parking on one side of some streets as requested by the Fire and Rescue Service to accommodate emergency access.

**Connection to MD 355** - Clarksburg Square Road is proposed to be connected (right-in and right-out) to MD 355, preferably along an alignment that does not require the historic house to be relocated. Final location will be indicated on the future Project Plan, Preliminary Plan, and Site Plan. Improvements are limited to the dedication of the public right-of-way and a construction cost of \$500,000.

## 6. Environmental Plan

The proposed Environmental Plan is intended to preserve the natural environment and establish a transit and pedestrian oriented town without further compromise to the land use plan or the environment. A forested buffer will be retained along all streams, existing mature trees will be preserved and augmented, and a “no net loss” of wetlands policy has been established. The Plan of Compliance will replace one large condominium building with townhouses and a large green area. Additional landscaping will be provided around the Murphy’s Grove stormwater management pond, along Overlook Park Drive adjacent to the retail core and stormwater management pond #2, and adjacent to the single-family detached units located near stormwater management pond #3. Other elements of the approved Project Plan remain unchanged.

The Department of Permitting Services has also been involved in the review of this plan and similar plans for over a decade. At this point in time, the Department of Permitting Services has identified the following items that may need additional review:

- Recalculate the impervious area
- Revise the water quality plan
- Provide adequate access to the stormwater features
- Meet area wide Special Protection Area requirements

The Department of Permitting Services looks forward to the next step in the development process.

## **7. Condominium Buildings and Manor Houses (Condominium Building 5 and 6, and Manor House Building 7, 9, 10, 11 and 12)**

Several modifications to these approved buildings are proposed. The following paragraphs summarize the modifications.

**Condominium Buildings** - Condominium Building 5 will be constructed as shown in the approved Site Plan with revisions that include the elimination of a surface parking area and replacing the parking area with two new townhouse lots.

Condominium Building 6 will be eliminated and the area previously shown for Building 6 will be developed with a new park and townhouses. The townhouses are designed to be four stories not to exceed 55 feet with the back of the first story below grade.

**Manor Houses** - Building 7 is substantially complete. It will be finished with modifications as shown on the approved Site Plan for the Manor Houses (approved by the Planning Board on February 10, 2005). The Plan of Compliance proposes revisions to the Building 7 parcel to provide for the addition of a curb cut, demolition and reconstruction of an existing parking garage, reconfiguration of surface parking areas, and a new dumpster location.

Manor House Building 9 will also be constructed in accordance with the approved Site Plan with modifications to the building facades. Building 9 is designed to be three stories not to exceed 45 feet. In addition, the following improvements will be provided for Building 9:

- The building façade will be finished with brick veneer on the front and sides only with a stone water table
- The porches will be redesigned
- Window patterns will be adjusted to be consistent with the floor plans

Manor House Buildings 10 and 11 will also be constructed in accordance with the approved Site Plan with modifications. These buildings are designed to be up to four stories and not to exceed 55 feet. In addition, the Plan of Compliance proposes the following improvements to Buildings 10 and 11:

- The buildings will be rotated 90 degrees to face the west to improve the view of these buildings from the retail core area
- The elevations will be adjusted to locate the first floor below grade at the back of the buildings and at grade along the street façade
- Each building façade will be finished in brick veneer on the front and sides only with a stone water table
- The porches will be redesigned
- Window patterns will be adjusted to be consistent with the floor plans

Building 12 will be constructed in accordance with the approved Site Plan with modifications to the building facades. This building is designed to be three stories and not to exceed 45 feet. The modifications include the following:

- The building façade will be finished with brick veneer on the front and sides only with a stone water table
- The porches will be redesigned
- Window patterns will be adjusted to be consistent with the floor plans

## **8. Parking Requirements**

Final off-street parking layouts will be shown in the future Site Plans. On-street parking will be modified as recommended by the Department of Fire and Rescue Service. A parking plan will be included in the Plan of Compliance that meets the required number of spaces. The Plan of Compliance includes the following standards:

**Parking for Commercial Core Area** - At least two parking structures will be provided for the retail area. Land will be also available for another parking garage to serve the future library. On-street parking will be a key feature of the core area. The combination of on-street and off-street parking will meet the requirements of the Zoning Ordinance.

**Parking for Dwelling Units** - Each dwelling unit will include the required number of parking spaces for residents and guests. The combination of on-street and off-street parking will meet the requirements of the Zoning Ordinance.

## **9. Street “O” and the Pedestrian Mews near the Adjacent Church**

A new, grand stairway and an access ramp for the handicapped will be provided to connect to the Town Center to the adjacent church. A vacant lot will also be transferred to the church at no cost to provide additional parking, and a potential vehicular connection. Additional landscaping will also be provided.

## **10. Additional Landscaping and Streetscaping**

Additional street trees will be provided adjacent to Sinequa Square; two stages of landscaping will be provided for the Murphy’s Grove Pond area. Landscaping and fences will be added to reduce the visibility of the alleys from adjacent residences. The landscaping shown in the approved Site Plans will be augmented in the amount not to exceed \$1,000,000 above the approved streetscape system.

## **11. Sequence of Development Including the Amenities and Facilities**

The Plan of Compliance proposes to increase the number and enhance the quality of amenities and facilities. The proposed town plaza and green, the significantly improved swimming pool and recreation area, and improvements to Sinequa Park represent three examples of improvements to the number and quality of amenities and facilities. In general, all phasing of amenities and landscaping will occur during the construction of the adjacent structures. During the review of the Project Plan, Preliminary Plan, and Site Plan, the applicant will provide a detailed phasing plan.

**First Stage: Begin Construction** – If the Plan of Compliance is approved, construction could commence immediately in parts of Section 2D (located east of Overlook Park Drive near the elementary school) and in parts of Section GG (located south of Clarksburg Square Road near the retail core). The stop work orders should be lifted in only these two sections upon approval of the Plan of Compliance for all lots platted in accordance with the approved site plans and construction can proceed. These sections (see Plan of Compliance, Exhibit R) include both single-family units and townhouses. The almost completed Manor House Buildings 7 and 9 are also included in the first stage.

**Second Stage: Approval of a Revised Site Plan for Section 2G and GG** - The remaining portions of Section 2D and Section GG will proceed to construction as soon as the Planning Board approves Site Plan modifications related to these areas. Because the Site Plans for these areas have been fully designed and approved, modified Site Plans will be submitted before the new Project Plan and Site Plans for the overall development are presented for approval. The Site Plan for Manor House Buildings 10, 11, and 12 will be included in this Site Plan submittal.

**Third Stage: Approval of a Revised Project Plan, Preliminary Plan and Site Plan** - The modifications to the existing Project Plan, Preliminary Plan, and Site Plans, as well as a new Site Plan for the retail area, will need to be submitted for review and approval before the remaining development can proceed. A new phasing plan will be included as part of the review of the amended Project Plan, Preliminary Plan, and Site Plans. Work to expand the pool area will not begin until after the summer 2006 season so that residents will not be inconvenienced by these changes.

## **12. Economics of the Plan of Compliance**

The staff recommends that the enhancements proposed in the Plan of Compliance be accepted as an appropriate alternative to imposing fines or monetary penalties. The enhancements provide significant improvements to the planning and design features of the future Clarksburg Town Center. The value of the enhancements proposed in the Plan of Compliance appears to substantially exceed the value of the initially proposed fines. In addition, an extended period of time would be needed to hold hearings and process additional violations and assess fines. Because the proposed Plan of Compliance exceeds the potential value of the initially proposed fines, proposes significant enhancements to the overall Town Center development, and eliminates the extensive time that would be needed to continue to hold violation hearings, the staff finds that acceptance of the Plan of Compliance is in the public interest and offers the best resolution of all outstanding concerns.

The following paragraphs compare the estimated costs of enhancements with the estimated cost of potential fines or penalties. The staff has estimated the costs, and they are not part of the Plan of Compliance. They are intended to provide an order of magnitude for comparison purposes.

**Estimated Costs of Enhancements** - The Plan of Compliance includes enhancements to the approved Project Plan, Preliminary Plan, and Site Plans. The costs of enhancements estimated by staff follow:

**Table: Cost of Enhancements**

• Additional landscaping	\$1,000,000
• Improvements to Redgrave Place/Clarksburg Square Road	\$500,000
• Additional landscaping for Street "O"	\$50,000
• Two parking garages for the retail core (840 spaces X \$10,000 additional cost per space)	\$8,400,000
• Indoor lap pool	\$2,000,000
• 1,200-square foot civic building	\$180,000
• 800-square foot building for community uses	\$120,000
• Market building	\$240,000
• Civic plaza	<u>\$2,200,000</u>
<b>Total</b>	<b>\$14,690,000</b>

These costs do not include the elimination of one condominium building, the modifications to the Manor Houses, or the costs incurred as a result of the lengthy work stoppage.

**Fines and Penalties** – The intent of the Plan of Compliance is to address all of the violations approved by the Planning Board and the identified concerns. The intent is also to enhance existing approved plans for the Clarksburg Town Center with specific and higher quality improvements instead of fines.

To compare the cost of improvements identified in the Plan of Compliance with the cost of the initial fines, the staff has compared the costs established in the above list of improvements with a list of potential fines. The staff report dated November 25, 2005 provided a potential list of fines against builders for failure to comply with the requirements of an approved Site Plan. The following items identify the estimated fines that could be assessed for the violation of the standards for building height and setback:

**Table: Violations Approved by the Planning Board and Potential Fines:**

• Building Height: 433 Townhouse and 56 Multi-family Violations (489 X \$1,500 each = \$733,500)*	\$733,500
• Building Setback: 102 Violations (102 X \$1,500 each = \$153,000)*	\$153,000
• Phasing of Amenities and Facilities*	\$250,000
Note: * Specific amounts for the fines have not been determined	

**Table: Staff Recommendations of Fines for Violations not Approved by the Planning Board (Recommended in the November 25, 2005 Memorandum):**

• Recording lots before approval of Phase II Signature Set	\$140,000
• Obtaining building permits before approval of record plats	
• Phase II Signature Set	\$1,930,000
• Seeking building permits not in conformance with signature sets (Bozzuto)	\$20,000
• Beginning construction before signature set approval (Bozzuto)	<u>\$20,000</u>
<b>Total</b>	<b>\$3,246,500</b>

On December 2, 2005, the Planning Board suspended the discussion of violations and fines to give the developers and builders, and the Clarksburg Town Center Advisory Committee time to address issues and resolve any differences. The Plan of Compliance is the result of the mediation efforts during the Planning Board suspension of the discussion of violations and fines. Staff understands that the amount of fines shown in the above table could be less than the fines that might be imposed by the Planning Board if the discussion of violations continues. Since the enhancements proposed in the Plan of Compliance seem to significantly exceed the value of the fines, the staff recommends that the Plan of Compliance be accepted.

## **PUBLIC OUTREACH**

Before the mediation team met to discuss issues, the Planning Board held a hearing in Clarksburg. After a tour of the Town Center area, the Planning Board received testimony from the staff and the general public. The hearing produced an extensive list of amenities, facilities, and requests for improvements to the Town Center. The list of improvements formed the initial list of items to be addressed during the mediation process.

The mediation group met to resolve differences between December 2005 and May 2006. The Plan of Compliance is the result of the joint effort of the mediation group that included representatives of the Clarksburg Town Center Advisory Committee and the developer and builders (developer: Newland Communities, and builders: Bozzuto, Craftstar, Miller and Smith, NV, and Porten Homes). During the meetings held by the mediation group, the staff of the Community-Based Planning Division and the Development Review Division served as observers and, upon request, as a primary resource for the group including the retained architects, landscape architects and engineers. Other staff attended these meetings, including representatives of the Countywide Planning Division, representatives of the Park Planning Section, and staff from the County Executive, including representatives of the Department of Permitting Services and the Department of Public Works and Transportation. During the meetings, the staff did not participate in the specific negotiations between the Clarksburg Town Center Advisory Committee and the developer and builders.

After the Plan of Compliance was prepared, the Planning Board held a second hearing to receive testimony and comments from the Clarksburg community. This hearing produced a generally favorable response from the community concerning the items included in the Plan of Compliance. The community seemed especially pleased with respect to the new design and the enhancements proposed for the future development.

Since this second hearing, staff has held a series of meetings with numerous County agencies. Meetings have been conducted with representatives of the Parks Department, the Montgomery County Public Libraries, the Department of Permitting Services, the Department of Public Works and Transportation, and the County Executive's office. Comments from these agencies have been incorporated into the analysis section of this report.

## **CONCLUSION**

The staff recommends approval of the Plan of Compliance. The staff finds that the mediation efforts have produced significant improvements and enhancements to the Clarksburg Town Center. The Plan of Compliance conforms to the guidelines in the Master Plan, and the development standards in the RMX-2 Zone. It provides significant civic spaces and recreation facilities, and a new mixed-use center.

Approval of the Plan of Compliance will end the discussion of violations and allow the applicant to proceed with development in accordance with the staging plan described in the above paragraphs. Approval of the Plan of Compliance will render the alleged violations moot. The staff finds that the Plan of Compliance is sufficient to remediate and resolve all categories of violations at this time.

JAC:RK:ha: j:\2006 staff reports\Clarksburg Plan of Compliance

### **Attachments:**

1. Clarksburg Town Center - Submission of Plan of Compliance (Letter from Linowes and Blocher, dated May 3, 2006)
2. Clarksburg Town Center - Plan of Compliance Design Concepts, dated April 20, 2006
3. Correspondence Received



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

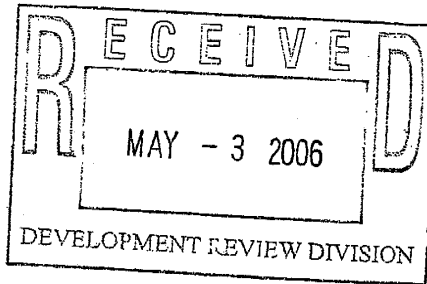
May 3, 2006

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**Todd D. Brown**  
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**By Hand Delivery**

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



Re: Clarksburg Town Center – Submission of Plan of Compliance

Dear Ms. Krasnow:

On behalf of Newland Communities LLC and NNPII – Clarksburg LLC (collectively, “Newland Communities”) and in accordance with the Planning Board’s direction, the purpose of this letter is to submit for Staff review a proposed Plan of Compliance for the Clarksburg Town Center development. This Plan of Compliance was prepared in detailed collaboration with and is assented to by Newland Communities, Clarksburg Town Center Advisory Committee (“CTCAC”), and each of the builders within the Town Center (*i.e.*, Bozzuto Homes, Miller and Smith, Craftstar Homes, Porten Companies, and NV Homes).

The Plan of Compliance is also being submitted in furtherance of the mediated settlement agreement reached among the parties.

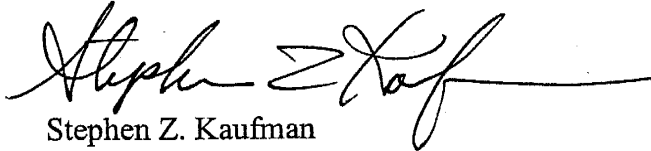
The Plan of Compliance consists of a comprehensive set of baseline plans, a detailed narrative description of proposed modifications to the baseline plans, including a detailed description of the intended effect of the Plan of Compliance, and supporting exhibits depicting the proposed modifications. It is anticipated that in the event the Staff recommends and the Planning Board approves the Plan of Compliance, detailed amendments to the existing Project Plan, Preliminary Plan and Site Plan approvals will be prepared consistent with the Plan of Compliance and submitted for review by Staff and action by the Planning Board.

Ms. Rose Krasnow  
May 3, 2006  
Page 2

We have enclosed three (3) complete copies of the proposed Plan of Compliance with the above identified exhibits. If additional copies of the Plan of Compliance or any of its component parts are needed, please contact us.

Sincerely,

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman



Todd D. Brown

cc: (w/o enclosures):  
Planning Board Members  
Hon. Barbara Kerr Howe  
Mr. Douglas Delano  
Martha Guy, Esq.  
Sharon Koplan, Esq.  
David Brown, Esq.  
Robert Brewer, Esq.  
Timothy Dugan, Esq.  
Barbara Sears, Esq.  
Scott Wallace, Esq.  
Ms. Nanci Porten

#606039 v1

## CLARKSBURG TOWN CENTER

### DESCRIPTION OF MAJOR ELEMENTS MAKING UP PLAN OF COMPLIANCE

#### Retail Core

The Clarksburg Town Center ("CTC") will have a mixed-use core made up of five distinct blocks, including a residential area and a significant central civic plaza located on the north side of the original main street identified as Clarksburg Square Road ("CSQ").

The retail core (identified as Blocks 1, 2, 3, 4 and 5) will be constructed along both sides of a new main retail street known as General Store Drive and it is anticipated it will contain a mixture of small and large shops and several restaurants. It will also include a grocery store with a footprint of approximately 51,000 square feet ("sf"), plus a potential mezzanine space that would allow expansion up to a total of 65,000 sf. The overall retail square footage will be at least 168,000 sf of which 40,000 sf will be contained in live/work townhouse units having retail on the street level and two-story residential above. The overall retail square footage may be expanded by an additional 18,000 sf if an alternative option is chosen to be built in Block 4 of the retail core.

Block 5 of the retail core will be the location of the grocery store. Construction of Block 5 will begin first, with construction of Block 3 to begin shortly after groundbreaking on Block 5. Each will be built around one, 2 to 3-level parking structure depending on the topography and will contain retail at street level with either 2-story residential above the retail or will be lined with 3-story live/work townhouse type units.

As previously indicated, Block 4 will be presented in a 2 alternative format, one with townhouse and live/work units constructed around a surface parking lot. The second alternative would contain an additional 18,000 sf of street retail space which in turn may trigger the need for a third parking structure. The decision as to which alternative will be constructed on Block 4 will be made by Newland based upon market conditions. In either event, it is intended that the three core retail blocks be constructed in a continuous manner and simultaneously with the residential units and civic plaza located on the north side of CSQ in the area identified as Blocks 1 and 2 of the core. At minimum, plans are to complete Block 5 of the main retail area prior to full occupancy of the residential units in the five block, mixed-use core of the Town Center.

The new civic and community plaza will contain a centrally located and expanded site for the proposed Clarksburg library to be constructed by Montgomery County with a nearby area also set aside for library parking. The plaza will be lined on the north with 23 live/work townhouse units and it will contain a 2,000 sf roofed open-air market building with appropriate janitorial and utility facilities provided. The civic plaza will also feature a bosque, and a central fountain with seat wall and paved and landscaped sections adjacent to the library and market building. The eastern portion of the civic plaza will be a landscaped town green and will be adjacent to Overlook Park Drive and the stream valley that separates the east and west neighborhoods of the CTC. The memorial to the Clark family will also be moved to an area at the intersection of CSQ and Overlook Park Drive.

## **Amenities and Landscaping**

To replace the once-contemplated smaller pool on the west side of the community, the existing pool complex on the east side will be enhanced to create a multi-use recreational center. The enhanced center will contain a year-round enclosed heated 2-lane x 25 meter lap pool with associated bath and locker facilities. In addition, the existing main pool will be extended to measure 25 meters in length, and the pool surface area will be widened by an additional 8 feet. A water slide will be added. Two new civic buildings will also be constructed. One will be a 1,200 sf community building with meeting space and a non-commercial kitchen. The second building will contain 800 sf and will be located at the corner of Sugarloaf Chapel and Catawba Hill Road. It will have utilities provided and will be operated as a shop by the Homeowners Association ("HOA"). In providing the changes to the expanded pool complex, Newland will endeavor to minimize disruption of summer pool use and will begin construction as soon after 2006 summer season as required government approvals and permits will allow.

The revised concept for completion of the CTC also envisioned several other enhancements to proposed amenities. These include a redesigned Sinequa Square Park with amphitheater-style tiered lawn seating above a hardscape elliptical plaza. There will be additional tree-lined parking, and interim and long-term upgrades to the stormwater management feature known as Murphy's Grove Pond. Recreational facilities will also be provided in the 70-acre area east of the recently constructed Piedmont Road including two tennis courts, a basketball court, a dog park with natural features, a multi-age playground, picnic area, lighted parking area, and natural surface paths with seating areas. These facilities and the 70-acres will be dedicated to the County park system.

In addition to the design and physical changes to the CTC, there will be significant upgrading of general landscape and streetscape features to be provided in the remaining areas to be constructed in both the retail and residential sections of the core area of the plan. There will also be enhancements to selected existing street and landscape areas in the previously built parts of the community and to stormwater ponds #2 and #3. The Clarksburg Town Center Advisory Committee ("CTCAC") will be consulted concerning planning and design preparation for the plan amendments to be filed with the County and will have discretion to direct the expenditure of a \$1 million fund for land and streetscape enhancements as part of the overall amenity, land and streetscape program (this \$1 million fund is identified in Paragraph L, "Additional Landscaping/ Streetscaping", below).

### **Phasing of Significant Amenity and Landscaping Elements Situated Outside of the Retail Core**

A number of significant amenity and landscaping elements will be coordinated with the construction of the new Retail Core as follows:

1. The land bridge connecting the east and west neighborhoods of the CTC will be constructed in conjunction with the completion of Overlook Park Drive and will be open to traffic when Overlook Park Drive is opened.

2. Completion of the Clark Memorial will be coordinated with the dedication of the new Retail Town Square.
3. The bike path adjacent to Overlook Park will be constructed in coordination with the timing of construction of Overlook Park Drive.
4. The modifications and additions to the existing pool complex will be constructed as described in the amenities and landscaping section of this Plan of Compliance.
5. The improvements to Sinequa Square and the bosque parking areas will be completed in conjunction with the pool modifications and additions.
6. The park in Block H will be developed in conjunction with and immediately following construction of all adjacent residential buildings.
7. Work on the initial phase of Murphy's Grove Pond will begin immediately after approval of the Plan of Completion and issuance of any required permits. The Second Phase will be implemented as soon as construction of Stringtown Road and all development of land associated with stormwater drainage to Murphy's Grove Pond has been completed.
8. Burdette Forest Park (stormwater management facility) will be put in its final configuration immediately upon completion of residential build-out in Phase 2D.
9. At the time of submission of amendments to the Project and Site Plan, Newland will propose a phasing schedule for Piedmont Woods improvements and dedication to the County of the park and related acreage for no later than March 31, 2008.
10. At the time of submission of amendments to the Project and Site Plan, Newland will also propose a phasing schedule for completion of all greenway trails in coordination with the completion of the retail core area. At that time, Newland will also develop the phasing plan for completion of landscaping and hardscaping for each individual construction area as soon as practically possible after all construction activity is completed and damage to landscaping materials can be avoided.

### **Clarksburg United Methodist Church Connection**

The revised plan for the CTC envisions a new grand stairway and ADA compliant ramp and driveway to connect the Clarksburg United Methodist Church directly to the community. Land will be offered to the church to help meet its parking needs.

## **Master Developer and Builder Coordination**

Going forward, the Master Developer and the Builders, in coordination with CTCAC, will cooperate to create a new set of overall development standards subject to the provisions hereof. The new standards will bring all existing, built homes into compliance with respect to height, setbacks, lot size, and other development standards, as well as set the standards for new construction. In sections 2D, Block GG (Lots 10-25, plus any replacement lots for Block GG, Lots 26-32, 2 and 3), Block L (Lots 7-11), and Block EE (Lots 18, 19, and 38 or their replacements), homes will be built in accordance with previously recorded plats, and the Builders' Existing plans already approved by the Master Developer (Newland or its predecessor). Such Builder Plans will be used to establish the development standards for these sections going forward and to allow those earlier approved unit types to be constructed. CTCAC, the Master Developer, and the Builders will review the existing Clarksburg Town Center architectural guidelines for possible modifications to be applied to new areas of construction, with the exception of the lots described above. Individual Builders have committed to CTCAC that they will address "high visibility lots" in a manner consistent with past procedures and/or make architectural changes to certain buildings.

## **County Participation**

Implementation of this Plan of Compliance is dependent upon the cooperation of all applicable regulatory agencies and governmental authorities in the expeditious processing, review and approval of all relevant applications for development approval and construction activities, including the grant of any waivers to implement this plan which are authorized by law and are consistent with the public health, safety and welfare.

## **Detailed Plan of Compliance**

The Plan of Compliance shall be as shown on Exhibit A with the following specific modifications subject to the specific provisions hereof. All measurements are approximate and subject to reasonable construction tolerances:

### A. Development Program

1. A maximum of 1,221 units shall be developed.<sup>1</sup>
2. The unit mix shall be governed by the following maximum counts:<sup>2</sup>
  - 241 single family detached units
  - 266 multi-family units

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<sup>1</sup> Total Unit Count includes up to 8 potential townhouse units in Section GG pursuant to Paragraph A.4. below and up to 44 units in Block 4 of the retail core pursuant to Paragraph A.5. below.

<sup>2</sup> Unit mix does not reflect potential 3 additional units of various types under the Block 4 Alternative plan.

661 townhouse units (including flex units)

50 live/work residential units

3. The retail core shall contain at least 168,000 square feet of retail uses, inclusive of 40,000 square feet of first floor live/work retail/office space. An additional approximate 7,680 square feet of first floor live/work or retail/office flex space and 11,200 square feet of retail space may be developed in accordance with an alternative plan for Block 4 within the retail core, to be shown on proposed Project Plan and Site Plan applications ("Block 4 Alternative"). Under the Block 4 Alternative plan, a total of 42,040 square feet of retail/live work space would be provided for a retail core total of 195,500 square feet of retail, including first floor live/work space.
4. Up to an additional eight townhouse units may be developed in Block GG pending environmental review and suitability.
5. Up to an additional 3 units of various types may be developed within Block 4 in accordance with the Block 4 Alternative plan, bringing the total number of units in Block 4 to 44 units under the Block 4 Alternative.

**B. Retail Center (Blocks 1-5)**

Blocks 1-5 shall be developed as shown on Exhibit B, including the following elements:

1. Dedicate land for library and related parking structure and grade to surrounding road system. Library and related parking structure to be constructed by Montgomery County.
2. The plaza at the library site shall include a fountain with seating wall, conceptually in accordance with Exhibit C-1 or C-2.
3. Construct a single story 2,000 square foot roofed, open air market building, with a janitor/storage closet (with sink), water/sewer and electrical connections.
4. Block 3 immediately to the east of Block 4 with frontage on both Clarksburg Square Road and General Store Drive will contain first floor retail with two-story residential above, live/work units, and liner townhomes, all constructed around a 1-2 story parking structure.
5. Development located on the southeast side of Block 4 shall be approved in the alternative as either (i) flex residential with first floor retail/office space permitted at the unit owner's discretion; or (ii) as retail space (*i.e.*, the Block 4 Alternative plan).
6. The footprint of the grocery use in Block 5 shall be approximately 51,000 square feet. The grocery store may also include mezzanine space, but the total leaseable square footage of the grocery store shall not exceed 65,000 square feet. Block 5

will also contain a structured 2 or 3 story parking garage with the upper parking level at grade to accommodate the grocery store.

7. The depth of the retail uses along General Store Drive shall be 60 feet.
8. The loading dock of the grocery store shall be located as close to the rear of the grocery building as grades will allow.
9. Units adjacent to the grocery store building and units located on the southwest side of the parking structure within Block 5 shall be approved as flex residential space, with first floor retail/office use permitted at the unit owner's discretion.

#### C. **Parking**

A composite parking plan exhibit will be prepared and submitted to M-NCPPC as part of this Plan of Compliance, taking into account the following:

1. Parking shown on Exhibit A shall be modified in accordance with the plans approved by the Montgomery County Fire and Rescue Services attached hereto as Exhibit Q; and
2. Parking within the Retail Core (*i.e.*, Blocks 1, 2, 3, 4 and 5) shall be modified to provide (a) on-street parking where practicable; (b) separate structured parking facilities each in Blocks 3 and 5; (c) a third structured parking facility in Block 1 for the library to be funded and constructed by Montgomery County; and (d) potentially a fourth structured parking facility that may be constructed in Block 4 in the event the Block 4 Alternative with the additional uses described above is constructed.

#### D. **Block GG**

1. Six live/work units shall replace the eight townhouse lots and one single-family detached lot currently platted (Plat Nos. 22766 (Lots 2 and 3, Block GG) and 23038 (Lots 26-32, Block GG)). The alignment of Clarksburg Square Road shall be adjusted to create a green space on the north side of the road. An additional unit shall be permitted to close in the driveway in Block FF.
2. The residential block west of the live/work units discussed in D.1. above shall permit first floor office/retail at the unit owner's discretion.
3. Eight additional units shall be permitted within the stream valley buffer, provided impacts upon adjacent stream can be sufficiently reduced to protect water quality.

#### E. **Route 355 Connection**

1. Clarksburg Square Road shall be extended to connect with Route 355, preferably along an alignment that does not require the historic house to be removed or relocated. The proposed alignment or acceptable alternative shall be shown on



the Project Plan Amendment and Site Plan applications to be filed to implement this Plan of Compliance.

2. Newland's total cost to make the Route 355 connection shall not exceed \$500,000.

**F. Clarksridge Road**

1. A grand stairway and handicap accessible ramp shall be constructed to connect Clarksridge Road with the Clarksburg United Methodist Church property consistent with the concept design shown on Exhibit D.
2. Following approval of the Project Plan amendment and Site Plan applications (including certified site plans) needed to implement this Plan of Compliance, fee simple title to Parcel C, Block EE, as shown on Plat No. 22368 recorded among the Land Records of Montgomery County, Maryland shall, if desired by the Church, be offered to and transferred at no cost to the Clarksburg United Methodist Church.
3. Developer will add \$50,000 to its landscaping budget for Clarksridge Road landscaping between the Church and Public House Road.

**G. Clark Family Memorial**

1. The Clark Memorial shall be installed at the corner of Clarksburg Square Road and Overlook Park Drive as shown on Exhibit E-1 or Exhibit E-2.
2. Clark Family items shall be incorporated into the memorial per Exhibit F.

**H. Recreation Center/Pool Complex (Exhibit G)**

1. The pool complex located west of Overlook Park Drive shall be deleted and replaced with not less than three additional detached-garage townhouse lots and eight additional integral-garage townhouse lots or similar combination.
2. An enclosed heated lap pool (2 lanes x 25 meters) shall be constructed as a part of the recreation center/pool complex located east of Overlook Park Drive. This facility shall contain restrooms, including lockers, water and sewer, and electrical connections.
3. The existing main pool shall be extended in length to 25 meters and shall be widened by 8 feet.
4. A slide shall be installed for the main pool at the appropriate depth location.
5. An approximately 1,200 square foot civic building shall be constructed at the pool complex providing meeting space with audio/visual wiring and a non-commercial kitchen.