



**MONTGOMERY COUNTY PLANNING BOARD**  
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

NOV 16 2008

**MCPB No. 08-163**  
**Preliminary Plan No. 11995042A**  
**Clarksburg Town Center**  
**Dates of Hearing: November 6, 2008 and December 11, 2008**

**RESOLUTION<sup>1</sup>**

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on April 25, 2007, Newland Communities LLC ("Applicant"), filed an application for approval of an amendment to a preliminary plan of subdivision of property that included a maximum of 1,300 dwelling units, 150,000 square feet of retail uses and 100,000 square feet of commercial office on 267.5 acres of land located at the southeast quadrant of the intersection of Clarksburg Road and Snowden Farm Parkway ("Property" or "Subject Property"), in the Clarksburg Master Plan and Hyattstown Special Study ("Master Plan") area; and

WHEREAS, Applicant's preliminary plan amendment application was designated Preliminary Plan No. 11995042A, Clarksburg Town Center ("Preliminary Plan," "Preliminary Plan Amendment," or "Application"); and

WHEREAS, the Application included requests for a change in the approved mix of uses, abandonment of certain previously dedicated public roads, and modification of the phasing schedule for certain required roadway improvements; and

WHEREAS, Planning Board staff ("Staff") issued a memorandum to the Planning Board, dated October 22, 2008, setting forth its analysis and recommendation for approval of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Staff and the staffs of other governmental agencies, on November 6, 2008, the Planning Board held a public hearing on the Application ("Hearing"); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

AS TO LEGAL SUFFICIENCY  
*[Signature]* 7/16/09  
 LEGAL DEPARTMENT

<sup>1</sup> This Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion.

WHEREAS, after a lengthy discussion of the case the Planning Board requested additional information and recessed the hearing so that Staff and the Applicant could respond; and

WHEREAS, on December 11, 2008, the Planning Board continued the Hearing and approved the Application subject to certain conditions, on motion of Commissioner Robinson; seconded by Commissioner Alfandre, with a vote of 4-0, Commissioners Alfandre, Cryor, Hanson, and Robinson voting in favor, and Commissioner Presley absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 11995042A on 267.5 acres of land located ("Property" or "Subject Property"), including a waiver of Section 50-29(a)(2) of the Subdivision Regulations pursuant to Section 50-38 to permit lots without frontage on a public street, a waiver of Section 50-26(d) of the Subdivision Regulations pursuant to Section 50-38 to permit streets with less than the minimum permitted centerline radii, a finding pursuant to Section 50-26(c)(3) of the Subdivision Regulations to permit less than 25' corner truncations at certain intersections, and subject to the following conditions:

- 1) Development under this approval is limited to 194,720 gross square feet of commercial development, including 69,720 square feet of specialty retail; and 1,213 residential dwelling units, including 12.5 percent MPDUs, consisting of 219 one-family detached units, 701 one-family attached units (includes live/work units) and 287 multi-family units.
- 2) The following phasing requirements are conditioned upon issuance of building permits for the subject Preliminary Plan:
  - a. Construction of (1) Public Road A from Stringtown Road to Overlook Park Drive, (2) Overlook Park Drive from Public Road A to Clarksburg Square Road, and (3) Clarksburg Square Road connection from Overlook Park Drive to Burdette Forest Drive in the residential area to the north must be complete and these road segments must be open to traffic prior to release of 901<sup>st</sup> residential building permit and prior to issuance of Use & Occupancy permit for any of Clarksburg Town Center retail development.
  - b. Construction of Stringtown Road from Public Road A to Snowden Farm Parkway must be complete and this road segment must be open to traffic prior to release of 1,101<sup>st</sup> residential building permit.
  - c. Reconstruction of Clarksburg Road from Overlook Park Drive to Snowden Farm Parkway must be complete and this road segment must be open to traffic prior to release of 1,101<sup>st</sup> residential building permit.

- d. Construction of Snowden Farm Parkway for a length of approximately 400 feet east of Clarksburg Road to complete the gap that currently exists at this location must be complete and this road segment must be open to traffic prior to release of 1,101<sup>st</sup> residential building permit.
  - e. Reconstruction of Clarksburg Road from Overlook Park Drive to Spire Street must be complete and this road segment must be open to traffic prior to release of Use & Occupancy permit for any of the Clarksburg Town Center retail development.
  - f. Reconstruction of Clarksburg Road from MD 355 to Spire Street must be complete in participation with MCDOT.
  - g. Construction of eastbound and westbound left-turn lanes along Clarksburg Road at MD 355 must be complete and these road segments must be open to traffic prior to release of 1,101<sup>st</sup> building permit.
- 3) Prior to recordation of any plat containing property that is subject to the road abandonment petition, the Applicant must submit a copy of the County Council Resolution confirming the necessary abandonment of portions of the previously dedicated rights-of-way for Overlook Park Drive, Clarksburg Square Road, and Clarksridge Road.
  - 4) Prior to certification of the site plan, the Applicant must submit traffic signal warrant analyses for projected traffic volumes at the intersections of Overlook Park Drive with Clarksburg Road, and Public Road "A" with Stringtown Road for M-NCPPC and MCDOT approval. If a traffic signal is warranted at either location, the Applicant must bear the costs of design and construction of the traffic signal(s).
  - 5) Compliance with Environmental Planning Division conditions of approval regarding the requirements of the forest conservation law. Except for plats to be recorded pursuant to the Interim Site Plan approvals (Site Plan Nos. 82002014D and 81998001), which may be recorded at any time, Applicant must meet all conditions prior to recording of any remaining plats or MCDEP issuance of sediment and erosion control permit, as appropriate.
  - 6) The Applicant must comply with the conditions of the MCDPS stormwater management and final water quality plan approval dated October 6, 2008.
  - 7) The Applicant must comply with the conditions of the MCDOT approval letter dated October 6, 2008, unless otherwise amended by MCDOT.

- 8) The Preliminary Plan must be in conformance with the requirements of Project Plan 91994004B and is expressly tied to and dependent upon the continued validity of Project Plan. Each term, condition, and requirement set forth in the Preliminary Plan and Project Plan are determined by the Planning Board to be essential components of the approved plans and are, therefore, not automatically severable. Should any term, condition, or requirement associated with the approved plans be invalidated, then the entirety of the approved plan must be remanded to the Planning Board for further consideration. At that time, the Board shall determine if all applicable requirements under State and County law will be met in the absence of such term, condition and requirement, and if some alternative, lawful conditions or plan revisions related to the severed term, condition, or requirement are then required.
- 9) This Preliminary Plan will remain valid until March 26, 2011, and prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed.
- 10) The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid until March 26, 2014.
- 11) The Applicant must dedicate the land parcels to Montgomery County for a library or other civic building site and related parking as shown on the "Block 'CC' Public Street Plan" attached as Exhibit A. The square footage for the land dedication shall be verified by Staff prior to approval of the Certified Site Plan.
- 12) Record Plat and Certified Site Plan must reflect a public ingress/egress easement over Parcel F, Block EE to provide access from Clarksridge Road to Clarksburg United Methodist Church. This parcel may be conveyed by the Applicant to the Church or to the Homeowner's Association.
- 13) The following prior conditions of approval for Preliminary Plan 119950420, contained in the Planning Board Opinion dated March 26, 1996, remain in full force and effect:
  - a. Agricultural areas within the environmental buffer will be taken out of production and stabilized with a suitable grass cover no later than Spring, 1996.
  - b. Dedication of the following roads as shown on plan must be provided as follows:
    - i. Clarksburg Road (MD RT 121) for ultimate 80' right-of-way.
    - ii. Piedmont Road (Master Plan A-305) for ultimate 80' right-of-way.
    - iii. Stringtown Road (Master Plan A-260) for ultimate 120' right-of-way.

- c. Dedication of the proposed park/school, as shown on the Applicant's revised preliminary plan drawing, is to be made to M-NCPPC. In order to facilitate the implementation of the combined park/school facilities, the following provisions apply.
- d. M-NCPPC and the Applicant will enter into an agreement specifying that an exchange of land, identified as areas "B1" and "B2" on the park/school concept drawing set out on Circle Page 49 of the staff report, will occur prior to the execution of the Site Plan Enforcement Agreement.
- e. Dedication of the approximately 8 acre area, identified as area "A" on the same park/school concept drawing identified above, will occur either at the time of recordation of the plats for the adjacent phase of the project or at such time as funds for construction of the future elementary school are added to the County CIP, whichever occurs first.
- f. The Applicant will provide site grading, infield preparation and seeding of the replacement athletic fields on the approximately 8 acres of dedicated land at a time which insures that there will be no disruption in the continued use of the existing athletic fields prior to completion of the replacement athletic fields.
  - i. In the event that dedication occurs when funds for the proposed school are shown in the CIP, Applicant will complete work on the replacement fields prior to the construction of the proposed school.
  - ii. In the event that dedication occurs prior to funding for the school being shown in the CIP, then upon construction of Street "F", as shown on the revised preliminary plan, Applicant will commence work on replacement of the baseball field. In addition, if at site plan it is determined that there is sufficient earth material on site to construct both replacement fields, then Applicant will also rough grade and seed the replacement soccer field when construction of Street "F" begins. Area tabulations for the proposed park/school complexes to be submitted for technical staff review at site plan. Final grading plan for the park/school site to be submitted for technical staff approval as part of the site plan application.
- g. In accordance with Condition f above, Applicant to enter into an agreement with the Planning Board to provide for site grading, infield preparation and seeding of the replacement athletic fields in accordance with Parks Department specifications, as shown on the preliminary plan drawing, and as specified in the Department of Parks' Memorandum dated September 22, 1995. The construction of the replacement athletic fields must occur as specified in Condition f.

- h. Record plats to reflect delineation of conservation easements over the areas of the 100 year floodplain, stream valley buffer, wetland buffer and tree preservation and/or reforestation and greenway dedications.
- i. Final number and location of units to be determined at site plan.
- j. Access and improvements as required to be approved by MCDOT and MDSHA.

14) The following prior condition of approval for Preliminary Plan 11995042R as contained in the Planning Board Opinion dated August 14, 2001, remains in full force and effect:

- a) Stockpiling and borrow of dirt for use in a timely fashion only in connection with this preliminary plan, at designated locations, prior to site plan approval provided:
  - i. M-NCPPC technical staff review and approval of sediment control plans prior to issuance of permits by MCDPS; and
  - ii. Applicant to enter into agreement with the Planning Board in advance of any land disturbance that they will conform with all aspects of stockpile and borrow plans.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Amended Preliminary Plan substantially conforms to the Clarksburg Master Plan.*

The Planning Board finds that the Amended Preliminary Plan continues to substantially conform to the recommendations of the Master Plan by creating a transit- and pedestrian-oriented community with a Town Center as the focus of community life. The Application includes an interconnected network of public and private streets that provide both local access within neighborhoods, and connections to nearby commuter roadways and the proposed Clarksburg Town Center Transit Station.

The Application conforms to the Master Plan's vision for a mix of uses. The revised plan now includes live/work units along with single-family attached and detached residential dwellings, multi-family residential dwellings, and a Town Center with a retail core and a civic plaza and building. The Master Plan greenway with its natural surface trail system and recreational bikeway that links

to major surrounding parks is preserved, along with the elementary school site that has already been dedicated and built, and a new public park that will be dedicated to M-NCPPC on the north side of Piedmont Road.

The Application also addresses goals for protection of natural features and water quality. The plan retains and enhances a forested buffer along all streams, and a "no net loss" of wetlands policy has been established. A variety of green spaces and landscaping are also incorporated into the development. Stormwater management is provided to mitigate the impacts of the development on water quality by a network of facilities that are included in the Final Water Quality Plan.

2. *Public facilities will be adequate to support and service the area of the proposed subdivision.*

An extension of the APF validity period for the Preliminary Plan was granted on March 20, 2008. The APF determination remains valid until March 26, 2014. Prior to this date, the Applicant must obtain building permits for the entire development or request an additional extension.

Roads and Transportation Facilities

No additional trips beyond those associated with the previous approval of the Preliminary Plan are being generated as a result of this Amendment. The previously required transportation improvements for surrounding roads and intersections provide sufficient transportation capacity and meet the applicable APF test. Several of these improvements have been constructed and the recommended modifications to the previous conditions of approval incorporate a more specific phasing schedule for the completion of the remaining improvements to ensure that the roads are open to traffic in a timely manner and critical connections are made as development is occurring.

The revised internal road network includes realignment of portions of Overlook Park Drive, Clarksburg Square Road, and Clarksridge Road. Portions of the previously dedicated road rights-of-way for Overlook Park Drive and Clarksburg Square Road on the southwest side of the greenway are proposed for abandonment. In addition, some of the previously approved public roads that were never dedicated have been redesigned as private streets. The County Council must grant the abandonments, but the Planning Board recommends approval of the Amended Preliminary Plan conditioned upon the Council taking this action prior to the certification of the site plan. The Board finds that the newly designed road network and associated sidewalks and bikeways will continue to provide safe and adequate access and circulation for vehicles and pedestrians.

Other Public Facilities and Services

The Planning Board finds that public facilities and services continue to be available and will be adequate to serve the proposed development. The Property is served by public water and sewer systems. The amended plan has been reviewed and conditionally approved by the Montgomery County Fire and Rescue Service, who have determined that the Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as police stations, firehouses, and health services are operating according to the Growth Policy resolution in effect when the APF approval was granted and will be adequate to serve the development.

3. *Practical difficulties exist which prevent the development from complying with Section 50-29(a)(2) requirements for lot frontage on a public street.*

Section 50-29(a)(2) requires, except as otherwise provided in the zoning ordinance, that every lot shall abut on a street or road which has been dedicated to public use, or which has acquired the status of a public road. The Application includes several lots without frontage on public streets. Some of these lots will have frontage on private streets. For these lots, a finding needs to be made that they abut at least one street that can otherwise attain the status of a public road. The Planning Board finds that the proposed private streets meet the minimum standards necessary to make this finding because they will be fully accessible to the public; accessible to fire and rescue vehicles, as needed; and they are designed to minimum public road standards, except for right-of-way and pavement widths.

There are several other lots that do not have frontage on either a public or private street. Instead, the frontage is either on private driveways or on green space. Since these driveways and green spaces are the only frontage provided for the lots, a waiver of Section 50-29(a)(2) is needed to permit the proposed configuration. Section 50-38(a) authorizes the Planning Board to grant waivers of any part of the Subdivision Regulations based upon a finding that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements. The Board finds that waivers of lot frontage are justified based on the practical difficulties associated with implementing neo-traditional design principles within Clarksburg Town Center if lot frontage is always required. Such a design implements the intent and recommendations of the Clarksburg Master Plan by facilitating a community that has a hierarchy of streets, including a series of alleyways, with a mix of housing types and densities, and green areas dispersed throughout. The Board finds that the proposed neo-traditional neighborhood design best implements the intent of the Master Plan, particularly with regard to integrating green spaces throughout the development. The waiver facilitates the replacement of certain roads with green spaces that reduce the

amount of paving in the development, increase the areas available for treatment of stormwater runoff, and create visible open areas and gathering spaces for the community.

The Planning Board finds that all houses will be adequately served and accessed by proposed private driveways. Therefore, the Planning Board grants a waiver of Section 50-29(a)(2), pursuant to Section 50-38(a) and finds that the waiver is the minimum needed, is not contrary to the recommendations of the General Plan, and is not adverse to the public interest.

4. *Practical difficulties exist which prevent the Applicant from complying with the minimum centerline radii requirements for Sugar View Drive, Clarksmeade Drive, Trading Post Drive, Benton Park Circle, and Basil Park Circle.*

Section 50-26(d) of the Subdivision Regulations requires that the horizontal alignment of roadways be designed so that all curves have specific minimum centerline radii. For tertiary streets, the minimum centerline radii are 100 feet. Several tertiary streets on the Amended Preliminary Plan (specifically, Sugar View Drive, Clarksmeade Drive, Trading Post Drive, Benton Park Circle, Basil Park Circle, and Clarksridge Road) are designed with curves that have less than 100-foot centerline radii. These roads were approved as part of the original site plan, but no specific findings concerning the reduced centerline radii were made. All of the roads have been recorded, and all are constructed except for a small section of Clarksridge Road.

Section 50-38(a) authorizes the Planning Board to grant waivers of any part of the Subdivision Regulations based upon a finding that practical difficulties or unusual circumstances exist that prevent full compliance with the requirements. The Board finds that the waivers of the minimum centerline radii requirements for the above-referenced roads are justified based on the practical difficulties associated with creating a neighborhood that is urban in character and pedestrian-oriented. The design of the subject roads reduces vehicle speeds and makes the roads safer for pedestrians. It also permits open spaces to be incorporated, which promotes a pedestrian friendly environment.

5. *Minimum 25' corner truncations must be provided for the northeastern side of the intersection of Clarksburg Square Road and Overlook Park Drive, and for public street intersections with Clarksburg Road and Stringtown Road as shown on the Preliminary Plan, but are not needed for other internal public roads.*

Section 50-26(e)(3) requires corner lots at intersections to be truncated for road dedication purposes by straight lines joining points 25 feet back from the theoretical property line intersection in each quadrant, however, the Planning Board may specify a greater or lesser cut-off if it is needed for safe sight distance

or traffic channelization. The Preliminary Plan supports the Master Plan goal of providing a pedestrian-friendly, transit-oriented community by reducing corner truncations to the minimum necessary to provide safe site distance and turning movements for vehicles. Thus, the intersections with Clarksburg Road and Stringtown Road have truncations that meet the minimum standard, but most of the internal street intersections have reduced truncations, or none at all. These non-standard intersections, many of which are already constructed, are narrower and more pedestrian friendly because they shorten road crossing distance and slow down traffic.

The non-standard corner truncations were included in the previously approved preliminary and site plans, and the Planning Board supports the additional instances that are included as part of the Amended Preliminary Plan.

6. *The previous waiver granted by the Planning Board to permit less than 600' between road intersections on Clarksburg Road still applies.*

Section 50-26(c)(2) of the Subdivision Regulations (Section 50-26(e)(2) when the original preliminary plan was approved) states that proposed intersections with an arterial or major highway must be spaced no closer together than 600 feet. As part of the approval of the original preliminary plan, the Board granted a waiver of this section to permit certain road intersections to be closer together. The waiver (granted pursuant to Section 50-38 of the Subdivision Regulations) was necessary to provide a stronger grid system for the town center with more interconnections between the east and west sides of Clarksburg Road. The roadways involved have already been dedicated pursuant to the original plan.

7. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

The current revision to the Final Forest Conservation Plan revises the previously approved plans and incorporates proposed Piedmont Park. The Application will meet forest conservation requirements by retaining 39.65 acres of existing forest, planting 22.7 acres, and using 2.56 acres of landscape credit. In order to accomplish this, the Applicant will need to identify an additional 0.40-acre planting area in a revised final forest conservation plan to be submitted with the certified site plan.

8. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site.*

The Final Water Quality Plan for the amended plans was approved by MCDPS Stormwater Management Section on October 6, 2008. The stormwater management concept includes a variety of interconnected stormwater

management facilities, including bioretention areas, infiltration trenches, dry ponds, and a wet pond, which will provide both water quantity and quality control.

BE IT FURTHER RESOLVED, that this Resolution incorporates by reference all evidence of record, including maps, drawings, memoranda, correspondence, and other information; and

BE IT FURTHER RESOLVED, that the date of this Resolution is JUL 16 2009 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

\* \* \* \* \*

#### CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Robinson, seconded by Commissioner Cryor, with Commissioners Hanson, Robinson, Alfandre, and Cryor voting in favor of the motion, and with Commissioner Presley recused, at its regular meeting held on Thursday, July 16, 2009, in Silver Spring, Maryland.



Royce Hanson, Chairman  
Montgomery County Planning Board