



March 8, 2005

The Honorable Derick Berlage, Chairman
and Members of the
Montgomery County Planning Board
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Response to Letter dated January 25, 2005 from Clarksburg Town Center Advisory
Committee ("CTCAC") Regarding Building Height in Clarksburg Town Center

Dear Chairman Berlage and Members of the Planning Board:

Our firm represents Bozzuto Homes, Inc. ("Bozzuto"), owner and developer of certain portions of the Clarksburg Town Center. The purpose of this letter is to respond to the January 25, 2005 letter complaint of the CTCAC alleging height violations of existing and proposed buildings in the Clarksburg Town Center.

Complaint

The specific contention of the CTCAC is that height violations exist in the Clarksburg Town Center because certain unspecified buildings, although 4 stories, exceed 45 feet in height, which is the maximum height in feet that the CTCAC contends was established by the approved Project Plan. As a result, the CTCAC is requesting, pursuant to Section 59-D-3.6 of the Zoning Ordinance, that the Planning Board "... issue a stop work order regarding Site Plans previously approved for buildings not yet built, but also having the potential to exceed the height guidelines as defined in the Board-approved Project Plan." See January 25, 2005 CTCAC letter. The complaint does not specify the existing building(s) alleged to be in violation or those not yet built but allegedly having the "potential" to exceed the purported height limitation of 45 feet. However, based on information Bozzuto has obtained from discussions with Staff and others, Bozzuto understands that the allegations as they pertain to Bozzuto are limited to the following two multi-family buildings: (i) Building #3, a 30-unit condominium building which has been constructed and sold to others, and (ii) Building #6, a

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30-unit multi-family building, which has received site plan approval, but is not yet under construction.

Factual and Legal Background

The Clarksburg Town Center is zoned RMX-2 (Residential Mixed-Use Development, Specialty Center) and is an optional method project. The optional method of the RMX-2 Zone does not specify a maximum building height for the development. Under the optional method, general commercial uses and higher density residential uses are allowed if they comply with the optional method of development regulations of the RMX-2 Zone (Sec. 59-C-10-3.1) and the density, numerical limitations, and other guidelines contained in the applicable Master Plan (Sec. 59-C-10.2.2). In addition, a project plan and site plan(s) must be approved by the Planning Board under the optional method.

Project Plan No. 9-94004 for the Clarksburg Town Center (the "Project Plan") was approved by the Planning Board by Opinion mailed on May 11, 1995 (the "Project Plan Opinion"). In the Project Plan Opinion, the Planning Board specifically finds that the Project Plan conforms with the requirements and intent of the RMX-2 Zone and the approved and adopted Clarksburg Master Plan & Hyattstown Special Study Area (1994) ("Master Plan"). As noted above, the RMX-2 Zone does not specify a maximum height as a development standard. In this regard, Section 59-D-2.12(d) regarding project plans requires only that a project plan include a land use plan showing, *inter alia*, the "... general bulk and height of the principal buildings ...". Section 59-D-2.42 provides that, to approve a project plan, the Planning Board must find, *inter alia*, that it complies with the intents and requirements of the zone, including the applicable Master Plan. The CTCAC argues that although it is uncontested that Buildings #3 and #6 are 4 stories, both the Master Plan and the Project Plan required a maximum height limitation for residential buildings in the Clarksburg Town Center of 45 feet. This argument is without merit. Initially, the Master Plan, as more fully discussed below, does not specifically state or in any way imply that a 4-story structure in excess of 45 feet is incompatible with the Master Plan recommendations for the Historic District, as advanced by the CTCAC. Second, the Project Plan establishes the required height of the residential building to be 4 stories consistent with the Master Plan, but does not restrict the general height as to be 45 feet or less.

On this latter point, the CTCAC argues that because the Project Plan Opinion contains a data table indicating that the *required* height of residential buildings is "4 stories" and that the

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proposed height is "4 stories (45 ft.)," the Project Plan is somehow reflecting a strict compatibility requirement of the Master Plan that the buildings must not only be 4 stories, but also not exceed 45 feet in height rather than a general anticipated height in feet for a 4-story building as required by Section 59-D-2.12(d). As noted, Buildings #3 and #6 are 4 stories. The final measurement of the height of Building #3 in feet is approximately 53 feet 7-3/4 inches and that of Building #6 approximately 50 feet. This height in feet in no way violates the 4-story requirement of the Project Plan, nor the applicable provisions of the Master Plan as more fully discussed below.

Master Plan

A careful review of the Master Plan indicates that there is no basis for the contention of the CTCAC that any residential building in the Clarksburg Town Center in excess of 45 feet somehow violates the Master Plan. In this regard, the Master Plan does not set a specific height limitation for buildings in the Town Center in terms of feet. Specifically, the Master Plan states at p. 46 as follows:

"All apartment buildings in the future Town Center will be four stories or less except within walking distance of the transit stop, where a building height of six to eight stories may be allowed if Master Plan recommendations concerning compatibility with the historic district can be achieved."

Additionally, Figure 21 of the Master Plan, entitled "Clarksburg Historic District Buffers," graphically illustrates the specified Master Plan guideline found at p. 48 of the Master Plan to create certain buffer areas adjacent to the Historic District. The Master Plan recommends that the areas on the east side of the Historic District, specifically within 400 feet east of existing MD 355 and/or on land which is within the Historic District, development be limited to single-family detached structures that are no higher than 2 stories. The Master Plan further recommends that certain areas between existing MD 355 and relocated MD 355 to the west (an area of approximately 550 feet) also be limited to detached housing with a maximum of 2 stories. Finally, the Master Plan calls for the area between relocated MD 355 and the transitway (approximately 500 feet) have residential housing with a maximum of 3 stories.

According to the Master Plan, these specific buffer recommendations were intended to "... help assure a sympathetic relationship between the 'old' and 'new' areas of Clarksburg," thereby

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effecting compatibility with the Historic District. These Master Plan recommendations on height limitations are very specific and deal with stories only, not specific limitations in feet. Moreover, the "buffer" recommendations regarding the Historic District deal with areas that do not encompass and are indeed far removed from Buildings #3 and #6 of the Clarksburg Town Center. These areas are in the Town Center and the Master Plan specifically permits 4 stories to as many as 8 stories if within walking distance of the transit stop. Therefore, there is no basis for the CTCAC's contention that the scale and character of the Clarksburg Historic District requires the Master Plan to be read as prohibiting residential structures in the Town Center in excess of 45 feet or that the Project Plan restricts the height to 45 feet. All that is required is that these structures be 4 stories, a requirement that has been fully complied with.

Site Plan

The RMX-2 Zone further requires an approved site plan prior to building permit. The CTCAC contends that since the Project Plan purportedly capped the height of the multi-family residential buildings at 45 feet, the Site Plan could not permit a 4-story structure with height in feet excess of 45 feet. Once again, this conclusion is unsupported by the facts and the law. The Planning Board approved the Phase I Site Plan in an Opinion mailed on March 3, 1998 (the "Phase I Site Plan Opinion"). The Phase I Site Plan Opinion specifically found that the Phase I Site Plan was consistent with the approved Project Plan for the optional method of development and met all of the requirements of the RMX-2 Zone. Moreover, this Opinion provides Condition 38:

"The applicant may propose compatible changes to the units proposed, as market conditions may change, provided the fundamental findings of the Planning Board remain intact and in order to meet the Project Plan and Site Plan findings. Consideration shall be given to the building type and location, open space, recreation and pedestrian and vehicular circulation, adequacy of parking, etc. for staff review and approval."

The final determination of "height of building" expressed in feet is dependent upon several factors such as final architecture, setbacks, grading, etc., and will vary within a residential building of any number of stories. See 59-A-2.1. Moreover, due to the size and scale of the project, as illustrated by Condition 38, flexibility in matters not associated with fundamental findings of the Planning Board were anticipated after Site Plan approval. Based on a review of the Master Plan, the RMX-2 Zone and Project Plan and Site Plan findings, the notion that 45 feet



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was a fundamental finding of the Planning Board is erroneous. A 4-story structure consistent with the Master Plan recommendations and the definition of height from the Zoning Ordinance is the proper standard on which to assess compliance. It is the standard which the Staff used to respond to the CTCAC in properly rejecting its contention of height violations. Far from the unfortunate and misguided allegations by the CTCAC of "gross negligence" or undue influence by the Developer, the Staff applied the proper standards of review to the Project Plan and Site Plans and has properly rejected the CTCAC's claim of height violations.

Similarly, Building #6 was approved as part of the Phase II Site Plan for which the Planning Board issued an Opinion mailed June 17, 2002 (the "Phase II Site Plan Opinion"). Once again, the Planning Board found that the Site Plan was consistent with the Project Plan and requirements of the RMX-2 Zone. In the Phase II Site Plan Opinion, the Planning Board again identified the height of the buildings to be 4 stories and did not specify a height in terms of feet.

For the reasons stated above, there are no height violations by Bozzuto as it pertains to the buildings in question, of the Project Plan or Site Plan and, therefore, no grounds exist pursuant to Section 59-D-3.6 of the Zoning Ordinance for a finding by the Planning Board of a violation of the Site Plans.

Thank you for your attention to this matter. Should you require further information, please feel free to contact me.

Very truly yours,

LINOWES AND BLOCHER LLP

Barbara Sears /kw

Barbara A. Sears

cc: Mr. Clark Wagner
Ms. Jackie Mowrey
Ms. Rose Krasnow
Mr. Michael Ma
✓ Ms. Wynn Witthans

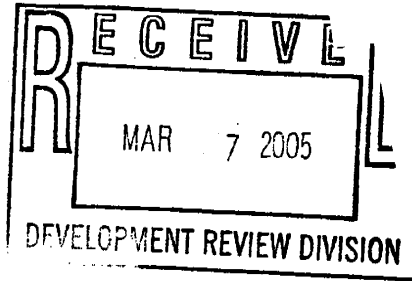


LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW

March 4, 2005

By Overnight Delivery

Hon. Derick Berlage, Chair
and Members of the Montgomery
County Planning Board
Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910



Re: Clarksburg Town Center -- Building Height Compliance

Dear Chairman Berlage and Members of the Planning Board:

This office represents NNPII-Clarksburg L.L.C. (formerly Terrabrook Clarksburg LLC) ("Newland"). Newland is the master developer of the Clarksburg Town Center. This letter responds to the January 25, 2004 complaint filed by the Clarksburg Town Center Advisory Committee ("CTCAC") concerning alleged building height violations within the development. Please include this letter in the public hearing record.

Clarksburg Master Plan

The thrust of CTCAC's argument seems to be that building height within a 4-story structure in excess of 45 feet is, *per se*, incompatible with the historic district and contrary to the recommendations of the Approved and Adopted Clarksburg Master Plan & Hyattstown Special Study Area (1994) ("Master Plan") and subsequent Planning Board approvals for the Town Center development. The CTCAC relies on language selectively extracted from the Master Plan as support for its contention. As discussed below, the language cited by CTCAC is taken out of context and consists of generally stated principles the Master Plan itself clarifies with specific recommendations. In its letter, the CTCAC fails to advise the Board of the specific provisions of the Master Plan relevant to the building height issue. In so doing, the CTCAC tends to mislead the Board and unjustly criticizes the significant efforts by Staff in administering this large and complex development.

First, the Master Plan contains absolutely no specific height limitation for buildings in the Town Center in terms of feet. To the contrary, the Master Plan recommends that "all apartment buildings in the future Town Center will be four stories or less except within walking distance of

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the transit stop, where a building height of six to eight stories may be allowed if Master Plan recommendations concerning compatibility with the historic district can be achieved.” p. 46.

Thus, the Master Plan does not support the CTCAC argument for imposition of a specific building height limitation in terms of feet. Moreover, the above-quoted passage demonstrates buildings in the Town Center District containing as many as **eight stories** are not, *per se*, incompatible with the historic district. Rather, the Master Plan confirms that a building containing up to eight stories may in fact be authorized if the Master Plan’s recommendations regarding compatibility can be achieved.

The CTCAC also quotes part of a general statement found in Master Plan Policy 6 that states assuring compatibility with the historic district was a guiding principle of the planning process. p. 26. However, the CTCAC fails to advise the Board that the detailed discussion under Policy 6 recommends a specific buffer concept around the historic district to protect its character. *Id.* The Master Plan describes the buffer concept in detail, along with other recommendations, to assure development around the historic district complements the district’s scale and character. p. 48-49. Again, the Master Plan recommendations in this regard do not contain any height limitation in terms of feet. Moreover, in pertinent part, the Master Plan recommends the following to assure the desired relationship between the “old” and “new” elements of Clarksburg:

“On the east side of the historic district, all development 400 feet east of existing MD 355 and/or on land which is within the historic district should be single-family detached structures which are no higher than two stories...New development near the church on Spire Street should be smaller in scale and sufficiently set back from the church.” p. 49. (Emphasis supplied.)

The Master Plan also contains a diagram (Figure 21) that graphically represents the above guidelines (Attachment 1). The CTCAC fails to disclose to the Board either the specific Master Plan recommendations regarding compatibility with the historic district or Figure 21.

Figure 21 and the Master Plan language quoted above demonstrate the buffer area and height limitations recommended to assure a compatible relationship with the historic district are limited to the areas immediately adjacent to the historic district. The buildings in question are located more than 400 feet east of MD 355 and therefore are not subject to the height limitations within the described buffer area. In fact, the Bozzuto Condominium buildings are located over 2,500

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feet from the designated buffer area and are not visible from the historic district. As a consequence, the previously discussed recommendation for apartments containing 4 stories is the controlling guidance in the Master Plan.

RMX Zone, Project Plan and Site Plan

The Town Center is classified RMX-2. The CTCAC cites certain provisions of the Zoning Ordinance for the proposition that optional method development in the Zone is intended to encourage development in accordance with the recommendations, including the numerical limitations, of the Master Plan. However, as discussed above, more than a selective reading of the Master Plan demonstrates its language does not support the specific height limitation the CTCAC seeks to impose. This is particularly evident since the CTCAC argues such height limit was imposed to assure compatibility with the historic district in accordance with the Master Plan. However, the Master Plan assured a compatible relationship between "old" and "new" Clarksburg by expressly including the specific (and inapplicable) buffer recommendations discussed above.

We further note the project plan is in the nature of a concept plan. For example, Section 59-G-2.12(d) of the Zoning Ordinance requires the project plan to show only "the *general* bulk and height of the principal buildings" and "a *preliminary* classification of dwelling units by type...."(emphasis supplied) Section 59-D-3.4 of the Zoning Ordinance confirms the general nature of the project plan by requiring a site plan "to be consistent" (*i.e.*, harmonious or compatible) with an approved project plan. Section 59-D-3.4 does not require the site plan to be an exact replica of the project plan. See *Logan v. Town of Somerset*, 271 Md. 42, 57-58, 314 A.2d 436, 444 (1974) (construction and maintenance of swimming pool found to be consistent with the use of land for public park purposes); *Carriage Hill-Cabin John, Inc. v. Maryland Health Resources Planning Commission*, 125 Md. App. 183, 222, 724 A.2d 745, 765 (1999) (in evaluating a comprehensive care facility application's "Less Costly or More Effective Alternatives" criterion, numerical cost comparisons are not relevant when costs fall within a reasonable range, and projects may be found consistent even if one applicant's costs exceed that of another's in a comparative review) (quoting COMAR 10.24.01.07H(2)(c); *MacDonald v. Board of County Commissioners*, 238 Md. 549, 555, 210 A.2d 325, 328 (1965) ("the building of a golf course, the dredging of Swan Creek, the reservation of a school site . . . and the authorization of public utility services . . . are as consistent with increased rural residential development as they are with the building of high-rise apartments"). Thus, decisional precedent also confirms "consistency" does not mean exactitude. Nevertheless, and the foregoing

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notwithstanding, we also note the data table included with the Board's opinion approving the Project Plan specifically identified the *required* building height as "4 stories." Therefore, construction of the four story apartments in question satisfied this criterion.

We further note the RMX-2 Zone does not specify a maximum building height for development. Rather, because development in the Zone requires approval of a site plan, building height limits are established by the site plan approval. The Planning Board approved Site Plan 8-98001 for Phase I of the Town Center by its Opinion mailed on March 3, 1998. In its Opinion, the Planning Board specifically found the Site Plan as conditioned was consistent with the approved Project Plan. Significantly, the Board did not impose a condition specifying a maximum building height for development. To the contrary, Condition No. 38 of the Opinion states:

"The applicant may propose compatible changes to the units proposed, as market conditions may change, provided the fundamental findings of the Planning Board remain intact and in order to meet the Project Plan and Site Plan findings. Consideration shall be given to building type and location, open space, recreation and pedestrian and vehicular circulation, adequacy of parking etc. for staff review and approval." (Emphasis supplied.)

Therefore, contrary to the CTCAC's contention that the Project Plan established numerical standards that were inviolate, the Board's opinion approving the Phase I Site Plan demonstrates unequivocally that the Board delegated authority to staff to "review and approve" modifications in units and building types and locations provided the fundamental findings of the Board remained intact and in order to meet the Project Plan and Site Plan findings. As discussed above, the Master Plan authorizes 4-story buildings in the Town Center outside the historic district buffer area and without limitation as to building height in terms of feet. Furthermore, the data table appended to the Project Plan Opinion identified 4 stories as the required height limit. We also note the January 16, 1998 Staff Report and Recommendation for Site Plan 8-98001 stated "The multifamily units are four story apartment style buildings . . ." p. 12. The Staff Report also contained a project data table which similarly identified both the "Permitted/Required" building height and the "Proposed" building height as 4 stories. p. 32.

Regarding the Phase II Site Plan (8-02014), the Board's Opinion mailed June 17, 2002 specifically found the Site Plan, as conditioned, was consistent with the Project Plan. Similar to the Project Plan Opinion and Phase I Site Plan Opinion, the Board did not impose a numerical condition regarding maximum building height. However, the Board incorporated the May 2,

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2002 Staff Report as a part of its Opinion. The Staff Report contains a project data table that identifies the "Permitted/Required" building height as 4 stories and the "Proposed" building height as 4 stories. No height limitation in terms of feet is referenced.

For the foregoing reasons, we respectfully request the Board find that no cause exists for issuing a notice of violation or a finding of noncompliance with the terms, conditions or restrictions of the Town Center site plans.

Thank you for consideration of these remarks. We look forward to discussing this matter before the Board at the upcoming hearing.

Very truly yours,

LINOWES AND BLOCHER LLP


Todd D. Brown, Esquire

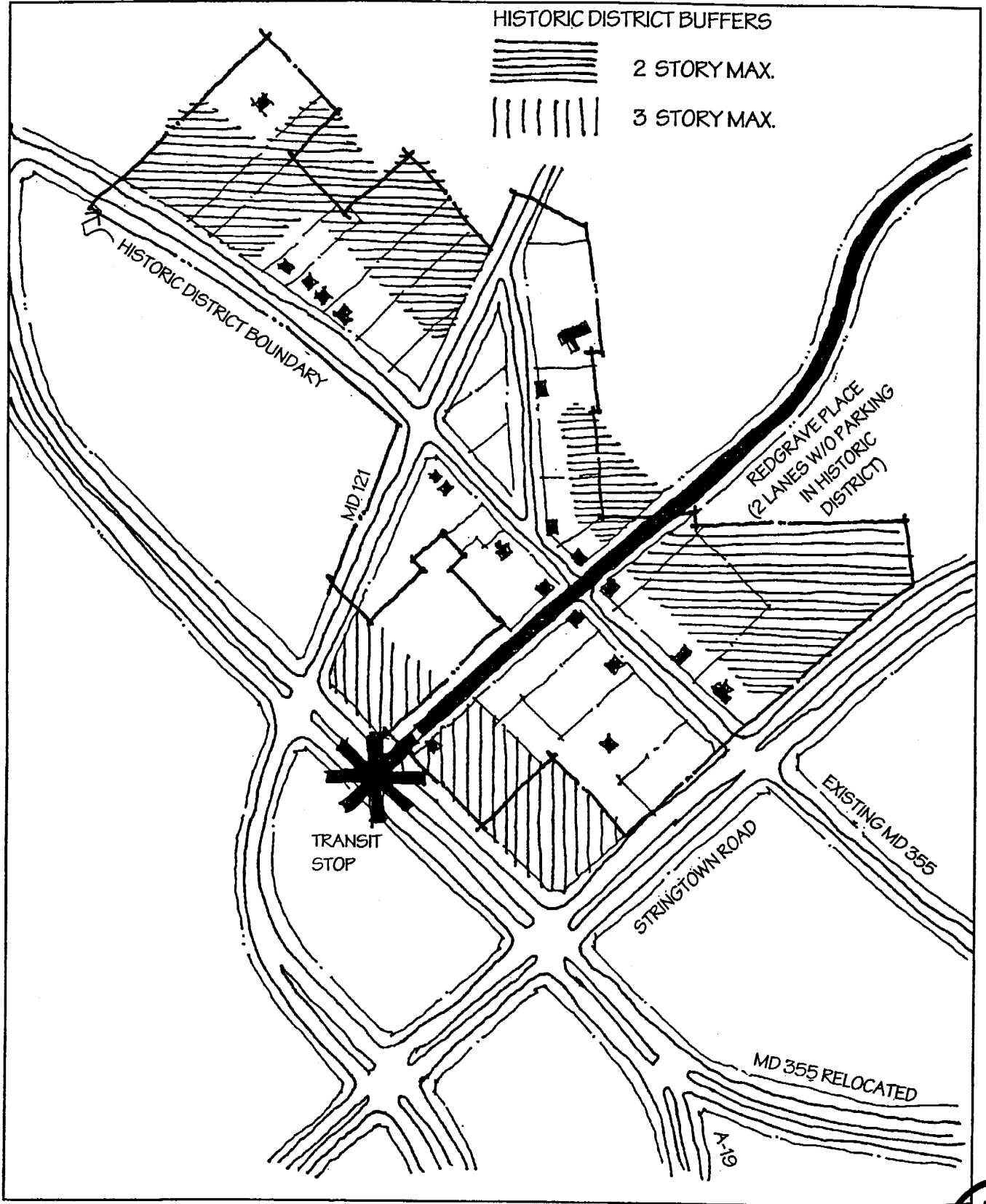
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Attachment

cc: Hon. Michael Knapp
Ms. Kim Ambrose
Ms. Rose Krasnow
Mr. Michael Ma
Ms. Wynn Witthans
Mr. John Carter
Ms. Sue Edwards
Ms. Nellie Maskal

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Clarksburg Historic District Buffers

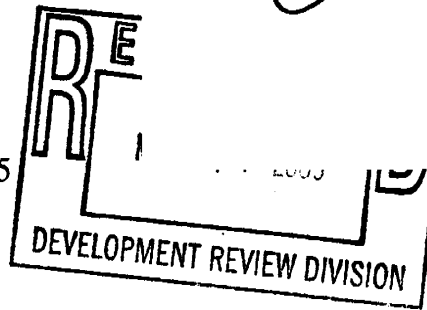
Figure 21



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March 10, 2005



The Honorable Derick Berlage
Chair, Montgomery County Planning Board
The Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910

Re: Building Heights in the Clarksburg Town Center

Dear Chairman Berlage and Planning Board Members:

We would like to express our support for the Development Review Division's position regarding the four stories. We relied upon the understanding that the development approvals require a flexible four story limitation. We did not understand them to impose a rigid 45' height limitation, and would oppose its imposition now. We ask the Planning Board to consider our substantial investment in the look and feel of the Clarksburg Town Center, a lovely area.

Below, we explain the design of our townhome models, which are well-built, attractive, marketable and fit well within the Clarksburg Town Center, and meet the four story standard.

Craftstar's two story townhome models are stacked one on top of the other. In the vernacular, the townhomes are called "two over two's." Each model contains two separate, two story, living areas or dwellings. The two models are called the Madison and the Jefferson.

The two over two structure measures about 46' 6" to the roof's midpoint. Interior and exterior design features are necessary to meet the aesthetic requirements for Clarksburg's traditional new town development and marketplace expectations. We provide a 9' ceiling for the living areas and an 8' ceiling for the bedrooms. Although adequate, but certainly not ample, much less extravagant, the ceiling heights accommodate the Clarksburg Town Center's traditional window designs and trim details, and afford a window size that meets the building code for emergency escape.



Less obvious, but no less important to the construction of a sound home, the structural floor system and the roof framing are typical for similarly sized townhomes. They are not unusual, yet they add to the height. Although we were able to successfully marry the traditional look and feel of the Clarksburg Town Center with marketplace demands, it was not an easy task. Eliminating the flexibility afforded by a four story standard with a rigid, numerical one, would have serious negative repercussions in terms of design and quality, and for no apparent reason.

The townhomes will be seen from various vantage points. Our "5/12 roof pitch" has a lower slope than others in the Clarksburg Town Center, which adds diversity and interest while maintaining the traditional new town look and feel. Even still, a 4'6" roof *versus* a 4'5" roof is imperceptible even close up. When viewed nearby from the street, the roof's pitch falls behind the 4'6" fascia board at the soffit, the end of the roof eave sloping above the upper windows.

As further comfort concerning the beauty and compatibility of our models, we note that we used the same dimensions, but with a slightly steeper roof pitch (6/12), nearby, in the Kentlands and in Quince Orchard Park, in Gaithersburg, and elsewhere in our Jefferson Park development in Fairfax County. In all locations, the models have been very popular.

We are very proud of our models, and, yet, we do not believe that they are overstated or overdone. Rather, like a traditional new town, they are of a human and comfortable scale, look and feel. We believe imposing a rigid 4'5" limit would be unwise, unfounded and unfair.

Thank you for your consideration.

Sincerely yours,



Curtis W. Adkins
Vice President
Craftstar Homes, Inc.

cc: Mr. Kenneth J. Mergner, General Manager, Construction, Craftstar Homes, Inc.

