

## Item 3 - Correspondence

**From:** [Amy Presley](#)  
**To:** [MCP-Chair](#)  
**Cc:** [Kronenberg, Robert](#); [Butler, Patrick](#); [Pereira, Sandra](#)  
**Subject:** Clarksburg Town Center - Regulatory Review Extension Request No.2  
**Date:** Tuesday, January 23, 2024 1:49:26 AM  
**Attachments:** [Letter to the Planning Board and Planning Staff-1-22-2024.pdf](#)

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**[EXTERNAL EMAIL]** Exercise caution when opening attachments, clicking links, or responding.

Dear Mr. Chair,

Attached please find my letter regarding the forthcoming hearing for a Regulatory Review Extension for Clarksburg Town Center. The attachments are too large to send within one file, so they will follow under separate cover.

I thank you and the Board members in advance for taking the time to read my submission.

Kind regards,

Amy

Amy Presley, REALTOR®  
301-526-7435  
[www.TrustedEstatePartners.com](http://www.TrustedEstatePartners.com)



Amy Presley  
23506 Sugar View Drive  
Clarksburg, MD 20871

January 22, 2024

**Attention:**

M-NCPPC Chair, Artie Harris;  
Montgomery County Planning Board Commissioners - Commissioner Mitra Pedoeem;  
Commissioner James Hedrick; Commissioner Shawn Bartley; Commissioner Josh Linden;  
CC: Deputy Planning Director, Robert Kronenberg; Upcounty Planning Chief Patrick Butler; and  
Regulatory Team Supervisor, Sandra Pereira

Dear Chair Harris and Commissioners:

It is with both a sense of urgency and dismay that I write to you today concerning  
Clarksburg Town Center Project Plan Amendment No. 91994004E, and Preliminary Plan  
Amendment No. 11995042.

First, as to my expressed urgency, these plans are coming before you for a “Regulatory Review  
Extension Request” on January 25, 2024. The proposed extension date for the Request is  
February 29, 2024. With only a few days between now and then for you to consider my input  
on the matter, I will get straight to the point. I submit that one month is insufficient time for  
the Planning Staff and the Applicant to address outstanding issues and serious discrepancies  
between the most recently submitted Plans and the Clarksburg Town Center Plan of  
Compliance. Therefore, I request that you extend the review period out to April 25, 2024 or  
later to provide ample time for the Staff and Applicant to address the discrepancies.

Second, as to my expressed dismay, the Plans as most recently submitted are not in compliance  
with the Clarksburg Town Center Plan of Compliance, initially approved by the Planning Board  
(with Plans for Stage I and II) on June 15, 2006. Subsequently (November 6, 2008 with  
Amended Conditions on December 11, 2008), the Planning Board approved Stage III Project,  
Preliminary, and Site Plans. Most significantly, after many delays by the Applicant at the time  
and multiple submissions which the Staff did not find to be in Compliance with the Plan of  
Compliance, the finding (Finding 4.3) was as follows (emphasis added):

**FINDING 4.3**

In accordance with the recommendations of staff, the Board finds that, subject to its  
completion according to its terms and in accordance with this Resolution, the Compliance  
Program constitutes a lawful and 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 Board is persuaded that implementation of the Compliance Program will  
remediate and resolve all Violations.

The Application as submitted does not fully comply with all of the terms as specified in the Compliance Program, specifically with respect to the parking structures, amenities and materials associated with the retail center, playgrounds and the proposed phasing. Since this application is a continuance of the violation hearings, further penalties could result if the Applicant does not adhere to the new conditions, including the timing associated with the Phasing Plan presented herein, if these are approved by the Planning Board as part of this action.

I have attached the full Staff Report of November 6, 2008 together the Staff Report of December 11, 2008 (adopted by the Board with Amended Conditions) for your review. Please note that within the Report, I have also added emphasis where salient points must be considered before approving any other Plans submitted by the current Applicant (Third Try LLC, initial Successor to Newland, and now, according to the Extension Request, CTC Retail, LC).

If the Plans are presented to the Board on February 29 or sooner without amendment to bring them back into compliance with the Plan of Compliance, the Board would not be able to lawfully approve the amended Plans. In fact, such approval would invoke a return to violation hearings and penalties that were to have been remediated by implementation of the "Compliance Program."

Because Clarksburg Town Center has had a protracted and complex past, it would take me 10 hours and 20-plus pounds of documentation to enlighten the current Board as to the precise history of the violations, the ensuing mediation, arbitration, and ultimate Settlement Agreement approved by all parties to the Agreement, the presentation by Judge Barbara Kerr Howe (the Mediator and Arbitrator) of the Agreement as adequate to remediate violations, the translation of the Agreement by Planning Staff (led by Rose Krasnow) into the Clarksburg Town Center Compliance Plan, and the ultimate adoption of the Compliance Program by the Board.

Anyone who is familiar with my past (my role in the initial violation hearings, the mediation/arbitration sessions that occurred over a period of one year, and the resulting Settlement Agreement) will recognize that I would not shy away from such a task as presenting to the Planning Board all of the documentation from 2005 through present. Such documentation corroborates my statements and the legally binding aspects of the Compliance Program. All of the necessary documentation is actually available in the files of M-NCPPC, dating as far back as 2005 and accruing through the most recent submissions. Yet, sadly, over the years Planning Staff seem to have lost track of the significance of all that has transpired and the legally binding aspects of the Compliance Program - which remain legally binding to this day.

In the interest of time - and reserving my right to further provide documentation and also to testify before the Board - I will state some of the most significant facts for your consideration. I will then Summarize my concerns and requests. My hope is that the facts alone will prompt you to find that the proposed Regulatory Review Extension Request does not allow sufficient time to remedy issues with the most recently proposed Plans. Further, I hope this letter will prompt the Board to require a full accounting by Staff as to the current Applicant's compliance and non-compliance with the legally binding Compliance Program, and redirect the Staff to require the Applicant to fully comply with the elements of the Compliance Program.

## Indisputable Facts

### Amy Presley:

- Member and Spokesperson for CTCAC (early 2005 through May of 2008)
- Together with CTCAC, exposed multiple violations of the Clarksburg Town Center Site Plans and Project Plans (including buildings built in locations other than what was approved; building heights in excess of approved height limitations; streets too narrow for emergency vehicle passage; missing and/or delayed amenities; and many other violations that can be validated within M-NCPPC's own records).
- At the request of County Council and Planning Board at the time, served in the mediation/arbitration of the violation issues with the development parties and their attorneys, with David Brown, Esq. (on behalf of CTCAC), and Judge Barbara Kerr Howe (Mediator and Arbitrator).
- Attended, participated in, and testified in all mediation/arbitration hearings from 2005 through to the resulting Settlement Agreement.
- Remains to this day a Party of Standing to the Settlement Agreement underpinning the Clarksburg Town Center Compliance Program.
- Served as Commissioner on Montgomery County Planning Board (June 2008-July 2016), and again as interim Vice-Chair from October 27, 2022 through appointment of a Successor.

### Settlement Agreement:

- Legally binding Agreement to Parties of Record, **their successors and assigns**.
- Found by Judge Barbara Kerr Howe to be sufficient to mediate violations and penalties that were otherwise to be levied.
- Submitted to the Planning Board/Planning Staff, who translated the elements of the Agreement into a Plan of Compliance.
- Plan of Compliance was submitted to and approved by the Planning Board in 2008.

### Clarksburg Town Center Plan of Compliance (also known as "Program of Compliance" and "Compliance Program")

- Approved and adopted by the Board on June 16, 2006.
- The Plan was divided into three stages:
  - Stage I - Residential units in Phases I (on which construction was allowed to proceed immediately, without further review by the Board)
  - Stage II - Required an interim review of certain units in Sections 2D and GG, and of Manor House Buildings 10, 1 and 12.
  - Stage III - Required an overall review of the entire site, including the modified project and preliminary plans, and a new site plan for the entire development including the as yet unapproved retail component.
- Stage III revised Project, Preliminary, and Site Plans were submitted by the Applicant at the time (Newland) to Staff in April of 2007; These resulted in numerous comments and requirements for revision resulting from DRC meetings.
- After numerous extensions granted by the Planning Board, revised Project, Preliminary, and Site Plans were submitted by the Applicant on May 19, 2008, which

received DRC comments on July 31, 2008, with M-NCPPC comments following on August 8, 2008.

- The Applicant submitted revised Plans in response to DRC and M-NCPPC comments on September 5, 2008.
- Due to the extensive changes and the revised Plans as submitted, Staff supported a 90-day extension for resubmission from September 18, 2008 to December 17, 2008.
- Planning Board supported an extension only with scheduled hearing for November 6, 2008 (Staff Report from November 6, 2008 Hearing attached - with emphasis added).
- As stated in the Staff Report of November 6, 2008 the new Plans as submitted were "in fulfillment of Stage III of the Compliance Plan which calls for all of the elements as agreed to by the parties to the mediation to be incorporated into an amended overall Project Plan, Preliminary Plan, and a new site plan that covers the entire development."
- The Planning Board approved the November 6, 2008 Plans, with revised Conditions of Approval as presented during their continued Worksession on December 11, 2008. The Staff Report and Revised Conditions (Appendix A) are attached with this letter.

#### **Supplemental Timeline and Current Status of Compliance Program:**

- In June of 2008, Amy Presley was appointed to the Planning Board as Commissioner.
- Amy Presley was henceforth prohibited from participating in hearings and/or commenting on Applicant submissions relative to Clarksburg Town Center.
- Newland (the original Applicant) continually failed to meet deadlines on Plan revisions and did not deliver the elements of the Compliance Program as required within the approved Conditions of the Planning Board hearings on November 6 and December 11 of 2008. Fines of \$500 a day per day were threatened by the Board, but never imposed (from 2009 through 2011).
- Newland sold the Clarksburg Town Center project in December of 2011 to its legal Successor, David Flanagan (Elm Street Development)/"Third Try, LLC."
- David Flanagan reported to Town Center Community members that he "bought it for \$1.00" based on the significant requirements that had been imposed on the project and that he would see if he could "make it work."
- Between December 2011 and present, the Planning Staff presented to the Board and the Board approved several amendments to the prior approved plans for the Town Center. Most critically, the amendments as submitted to the Board by Staff failed to provide any comparison to requirements of the Compliance Program.
- As can be verified from within M-NCPPC's own records, the eliminated elements of the Compliance Program amount to more than 8M (at that time) in reparations that were awarded by the Settlement Agreement, adopted and required by the Board through the Compliance Program.
- Presently, the Staff and Applicant (who appears to have changed names or moved the Clarksburg Town Center retail holdings to "CTC Retail, LC") are scheduled for a hearing on January 25, 2024 to present their "Regulatory Review Extension Request."

In summary, as of today the Clarksburg Town Center Compliance Program has still not been fulfilled after more than 16 years. I have been waiting, as have other members of the Clarksburg Town Center Community, for the elements of the Settlement Agreement/ Compliance Program to come to fruition. Instead, over the years, changes have been erroneously approved by the Board (the Compliance Program cannot lawfully be modified without changes to the underlying Settlement Agreement - requiring approval of all remaining Parties of Record). The good news is that there is still time for this Board to rectify the situation and bring Plans (most importantly for the Town Center Retail) back into compliance with the Compliance Program.

I am respectfully requesting that the Board not approve the Extension as requested, but rather approve a much longer Extension in order for the Board to fulfill its regulatory responsibility to enforce the Compliance Program. Apart from commitment to enforcement by the Board, I (as a Party of Standing to the underlying Settlement Agreement) will have no other recourse than to file a Motion to Enforce through the Circuit Court.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amy Presley", written over a horizontal line.

Amy Presley



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

**Staff Report: Project Plan Amendment 91994004B, Preliminary Plan 11995042A,  
Final Water Quality Plan and Site Plan 820070220 Clarksburg Town Center**

**ITEM #:** \_\_\_\_\_

**MCPB HEARING**

**DATE:** December 11, 2008

**REPORT DATE:** December 8, 2008

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Chief *RdK*  
Development Review Division

**FROM:** Robert Kronenberg, Supervisor *RAK*  
Development Review Division

Catherine Conlon, Supervisor  
Development Review Division



**REVIEW OF:** Continuation of the November 6, 2008 hearing for the Compliance Program: Clarksburg Town Center Project Plan #919940040, Preliminary Plan #119950420 and Comprehensive Site Plan #820070220 which incorporates Site Plan #819980010 and #820020140. **The application has been submitted to fulfill Stage III of the Compliance Plan which calls for all of the elements agreed to by the parties to the mediation to be incorporated into an amended overall Project Plan, Preliminary Plan, and a new site plan that covers the entire development.** Requests approval for 194,720 gross square feet of commercial development, (including up to 48,000 sf of specialty retail within live/work units); and 1,213 residential dwelling units, including 152 MPDUs, and a waiver to permit a reduction of parking spaces for the west side; on approximately 270 acres. Located at the southeast quadrant of the intersection with Clarksburg Road and Snowden Farm Parkway in the Clarksburg Master Plan

**APPLICANT:** NNPII Clarksburg, LLC

**RECOMMENDATION:** Approval with conditions

## **EXECUTIVE SUMMARY**

A public hearing for the combined Clarksburg Town Center plans that were submitted in response to the previously approved Plan of Compliance was conducted on November 6, 2008. The hearing resulted in a lengthy discussion of issues related to parking, design, landscaping, the location of the library site, paths and road connections, sidewalk materials, timing of construction and conformity to the Compliance Program.

The Planning Board reviewed the proposed conditions of approval and deliberated on the majority of them. The revised conditions of approval are provided in Appendix A. The Board narrowed the outstanding issues that were to be resolved at a follow-up hearing to the following: Parking – specifically how much parking is required to adequately serve the retail core, including the grocery, street level retail, live work units, liner townhomes, multi-family units and the library and whether a waiver is acceptable; Retail – specifically; the minimum depth of stores required by retailers and whether sufficient retail space is being provided; the Resident’s Club – specifically how the site can best accommodate the sports and fitness facilities proposed while still providing adequate deck space around the pools; the design of the Grand Staircase; enhancements to the landscaping plan and whether, with the revised conditions, the submittal can be found to be in conformance with the mediated plan.. The Board directed the Applicant and interested parties to provide Staff additional analysis on any of these specific issues by November 20, 2008. Staff was also directed to do additional analysis of the parking and other remaining issues in order to provide a recommendation to the Board in December.



## **Project Analysis**

### **Evaluation of Parking**

Parking for the Town Center, specifically the retail component, was the primary topic of concern during the November 6, 2008 hearing. Many of those present, including the Board, were concerned that the number of parking spaces proposed by the applicant was based, not on the actual requirements of the mix of uses, but on an economic assessment of the current retail market. Moreover, changes to the parking structures proposed in the original compliance plan would also have a direct impact on the overall design of the retail core, specifically with respect to viability of the retail space, depth of the retail stores, widths of sidewalks and design of outdoor public space.

Staff's analysis incorporates parking for the library, on-street parking, dedicated spaces for the residential units in the core area, viable depth of stores and specific requirements for the parking ratios to be used for residential and commercial uses.

*Community's Concerns:* Community members are not in agreement with one another regarding the parking issue. Several residents voiced the opinion that they do not like to use structured parking, that there is an urgent need to provide a grocery and other retail uses in Clarksburg, and that the applicant's proposal should be supported. Others strongly feel that the parking structures are integral to the pedestrian oriented, urban design of the retail center and are an essential component of the Compliance Plan.

CTCAC ("The Clarksburg Town Center Advisory Committee") focused on what the group believed to be the three inter-related issues pertaining to the plans and hearing: 1) conformance with the Plan of Compliance; 2) retail store depth; and 3) adequate parking. CTCAC proposes a parking ratio of 5/1000 in accordance with the zoning ordinance as well as additional 12.5/1000 parking space for restaurant space for a total of 1,307 spaces, inclusive of parking for the library.

Changing the parking structure in front of the grocery store from three levels to two and replacing the other parking structure with a surface lot also significantly impacts the design of the retail core by reducing the depth of the retail stores from 60 to 50 feet, increasing the need for retaining walls and creating a different feel for the main street by narrowing the sidewalks and using angled, rather than parallel, parking. The community is also concerned that retail tenants will not be attracted to the town center or will not be able to succeed if there is a shortage of parking in the retail area.

Correspondence was received from Mr. John Cook, Ms. Kathie Hulley and Mr. Patrick Darby (Clarksburg Chamber of Commerce), all of whom were present at the November 6, 2008 hearing. All three discuss the value of additional parking that will be needed for the town center retail, similar to the ratios recommended by CTCAC.

### *Applicant's Position*

The Applicant provides documentation and materials from various sources that attest to the adequacy and efficiency of the parking proposed for the retail core. Their supporting analysis indicates that a second parking garage is not needed to support the proposed retail development. The applicant states that, with the modified plans prepared by John Torti and submitted on November 20, 2008, 914 parking spaces are required and 914 spaces are being provided. Furthermore, their expert, Robert Gibbs, cites numerous studies that suggest that 3.0 to 4.0 spaces per 1000 square feet of retail development are more than adequate for a mixed use, town center development. The applicant argues that the original Compliance Plan only required 904 spaces and states that with their latest submission "virtually all of the Urban Design and Architectural Guidelines remain intact and are the same as the Compliance Plan".

The Applicant's modified plan includes 420 parking spaces in the lower level of Block LL (Grocery), an increase of 44 spaces from the previous submittal, and 156 parking spaces in Block KK, a reduction of 7 spaces. The surface parking located in Block MM includes 105 spaces, an increase of 5 spaces from the previous submittal. The parking analysis indicates a requirement of 4.3 spaces per thousand square feet for the retail, 4 spaces per unit for the live/work units and no requirement for the flex space. This methodology eliminates the 3 additional spaces currently required by code for the live/work units and the 39 spaces required by code for the flex space. Their exhibit also arbitrarily assigns 1.7 spaces per dwelling unit in the retail core, which is greater than the 1.5 spaces previously allocated for the multi-family units but less than the 2 required by the single-family detached units. Further complicating matters, the mix of retail and residential being provided continued to change. The applicant's latest submission shows only 183,150 square feet of retail, with 46 live/work units (compared to the 51 originally proposed) no mezzanine space, and only 90 multi-family units, vs. the 98 shown on their earlier submission. Of course, as the residential and retail numbers go down, so does the amount of parking that is required.

### *Staff Position*

Staff analyzed the scenarios presented by the various parties, conducted their own research with respect to acceptable parking ratios, and discussed expectations with experts in the retail field to determine how best to compute parking requirements for the mixed use center. Based upon the analysis, Staff has concluded that 3 – 4 spaces per 1000 square feet of retail is too low and that, in order for this center to be viable, adequate parking needs to be provided both on and off-street, the retail store depths need to be increased to a minimum of 60 feet in leasable area, and the amount of retail space should not be decreased just to maintain a balanced parking demand ratio as presented by the Applicant.

Staff also researched other jurisdictions in the nation, such as Portland, Oregon, Seattle, Washington, San Jose, California, and Sarasota, Florida with the intent of providing a

comparative analysis for mixed-use centers and as a basis for required parking for retail, restaurant space, live/work units and the various residential components. Staff reviewed variances or waivers associated with a reduction in the number of required spaces, most of which applied only in areas where transit was available.

Staff analyzed the parking ratios using the non-residential and residential numbers provided by the Applicant for the November 6, 2008 hearing even though new numbers have been generated by the most recent submittal. The previous numbers included a total non-residential component of 194,720 square feet.

Staff has calculated the overall number of parking spaces that needs to be provided in retail core as follows:

- 180 spaces for 10,000 square feet of restaurant space which equates to 18 spaces per thousand square feet.
- 188 spaces for the 47 live/work units, which equates to 2 spaces for the residential portion and 2 spaces for the commercial portion
- 592 spaces for the remaining 137,720 square feet of retail space, which equates to 4.3 per 1000 square feet
- 100 spaces for the library
- 147 spaces for the 98 multi-family, which equates to 1.5 spaces per unit
- 34 spaces for the 17 liner townhomes, which equates to 2 spaces per unit

As tabulated above, the total amount of parking spaces needed for a vibrant retail core equals 1,241 spaces. This figure already includes a reduction in the required amount of parking for the live/work units from 7 spaces to 4, and a reduction for the remaining retail from 5 spaces per thousand to 4.3. It also makes an assumption that there will be increased parking needs for 10,000 square feet of restaurant, although one might reasonably anticipate that restaurants would occupy up to 20% of the retail square footage, a common number according to Jon Eisen, a consultant with StreetSense. Earlier analyses of the parking requirements in the Town Center failed to take into account the higher parking requirements demanded by restaurant tenants.

Since the applicant is providing only 959 spaces (including 45 spaces in the library surface lot) there is a shortage of 282 spaces. This will require the Applicant to construct a second garage in Block KK and/or design additional spaces in Block LL (Grocery) or Block MM to account for the difference. In addition to providing the number of parking spaces Staff believes is necessary, the design must also reflect a minimum 60-foot store depth, not including the service area. In other words, the 60-foot depth should be the rentable or leasable space.

**Staff Recommendation: Staff recommends providing a minimum of 1,241 parking spaces in the retail core by providing a multi-level parking structure in Parcel KK (which presently calls for 156 surface parking spaces); adding an additional floor below ground in Parcel LL (grocery), and by making other changes, if possible, to the surface parking lots**

**and on-street parking within the retail core area (and including 45 spaces in the library surface lot, which is outside of the retail core). Staff further recommends providing one dedicated and reserved space for each live/work, multi-family and in-line unit within the retail core to be signed and marked for use solely by the resident of that space.**

**The change to the parking and retail space will require the Applicant to submit revised drawings, as part of a certified site plan that can be approved by Staff, unless the changes proposed alter the intent of the Board, which would require Staff to take the revisions back to the Board for approval.**

### **Residents Club (Community Center Sports Court)**

During the November 6, 2008 hearing, Staff recommended deleting the previously proposed lap pool and one small community building in favor of an all-sport court and an addition to the pool house to provide room for other community activities (movies, fitness classes). Staff called for the Applicant to fit-out the new buildings with appropriate furnishings and recommended that all other improvements to the pool and wading pool move forward as anticipated.

The Applicant provided Staff with two design concepts for the “sports court.” The Sport Court in Plan “A”, which is supported by the Applicant, is approximately 32’ x 66,’ whereas Plan “B” shows interior dimensions of approximately 25’ x 47.’ According to the Applicant, the larger facility (Plan “A”) provides a full-size basketball court, can be built with less disruption to the use of the existing pool facility, and improves accessibility. The problem arises because the larger Sport Court takes up a considerable amount of the deck space around the pool.

Both plans were provided by the Applicant to the Pool and Recreation Committee in Clarksburg Town Center, which voiced concern about the view that would be presented by the larger building and the loss of deck space both for residents and for swim meets.

**Staff recommendation: Staff recommend that the Board support Plan B, which calls for the smaller sports facility. Although the Applicant will remain responsible for fitting out the half-size sport-court and the community building (furniture, av system), the specifics of the fit-out must be determined by certified site plan. All other improvements to the pool and wading pool should move forward as anticipated in the Plan of Compliance.**

### **Environment**

Following the November 6<sup>th</sup> hearing, the Applicant met with Environmental Planning Staff to resolve issues associated with afforestation/reforestation, grading in the forest conservation easement, street tree credit and surface material and width of pathways. M-NCPPC agreed to the

clarifications outlined by the Applicant and their consultants to address modifications to the final forest conservation plan.

The modifications have been incorporated into the revised conditions of approval.

### **Grand Staircase**

Staff voiced concerns at the earlier hearing that a conceptual rendering showing seating and landscaping at the base of the Grand Staircase leading to the church had not been provided by the Applicant. Since that time, the Applicant has provided a concept plan that is acceptable to Staff and will be incorporated into the certified site plan.

### **Landscaping**

The issues surrounding the landscaping evolved into two distinct categories: 1) landscaping that was not installed as originally approved; and 2) the \$1 million dollars allotted to CTCAC for enhancement planting and streetscape throughout the town center. During the November 6, 2008 hearing, Staff stated that the missing landscaping in category 1 was separate from the additional enhancement planting required by the Plan of Compliance. The Applicant did not contest any of the conditions related to missing landscaping. With respect to the additional enhancement planting related to the \$1 million dollars, CTCAC identified areas within the Town Center that would satisfy this requirement with a dollar amount agreed to by the Applicant, but did not agree with the list that was contained in the November 6<sup>th</sup> staff report. The Board directed CTCAC to provide Staff a list of the areas for enhancement and streetscape with the purpose of providing the additional site plan elements on the plans.

Staff recommends that the additional enhancements be agreed upon by the Applicant and CTCAC by December 31, 2008, so as not to slow down the submission of the certified site plan. Staff wants the elements shown graphically on the certified site plan and described in a narrative format on a separate supplemental sheet to make it clear where the enhancements are to be provided, which ones are part of the \$1 million enhancement funding that was part of the Plan of Compliance, and which ones are being provided in-lieu-of landscaping that was not provided per the approved site plans in portions of the community already built.

### **Findings and Recommendations**

The findings from the previous hearing held on November 6, 2008 (Staff report memorandum dated October 22, 2008) that related to the Plan of Compliance, Project Plan Amendment, Preliminary Plan Amendment, Final Water Quality Plan and Site Plan are further supported by the additional requirements recommended in this report. The changes to the plans, including but not limited to the additional parking, improvements to the Resident's Club, environmental protection, and landscaping are reasonable and substantially in compliance with the Plan of Compliance. Furthermore, the recommendations in this report do not alter the objectives, intent or requirements expressed or imposed by the Planning Board.

The revised conditions of approval (Appendix "A") reflect the discussion of changes to the conditions from the November 6, 2008 hearing as well as the recommendations proposed in this report to the Board for the December 18, 2008 public hearing.

### **Conclusion**

Based upon the information provided by the various parties, Staff supports a recommendation that would provide additional parking in multi-level garage facilities to accommodate the retail, restaurant and residential uses in the core area. Staff remains concerned about the viability of the retail core area, given the costs associated with the structured parking garages, but finds that the layout proposed through the mediation process achieved a number of objectives essential to a pedestrian-oriented, retail core. Furthermore, the layout creates an adequate, safe and efficient environment for residents, patrons and retailers. Staff reemphasizes that the timing placed on the Applicant to follow through with these changes and recommendations is important to ensure that progress continues in the town center.

**Appendix A**  
**Revised Conditions of Approval**



**Revised Conditions**

**Project Plan Amendment 91994004B, Preliminary Plan 11995042A, Final Water Quality Plan and Site Plan 820070220 Clarksburg Town Center**

The Applicant must comply with the following conditions of approval:

**STAFF RECOMMENDATION FOR PROJECT PLAN:** Approval of Project Plan 91994004B for 194,720 square feet of commercial, which includes up to 69,720 square feet of specialty retail; and 1, 213 residential dwelling units, including 152 MPDUs, and a waiver to permit a reduction in the number of parking spaces, and reconfirmation of a reduction in setbacks from adjoining properties, on approximately 270 acres, with the following conditions:

**1. Development Ceiling**

The proposed development shall be limited to the following uses:

- a. Development under this approval is limited to 194,720 gross square feet of commercial development, including 69,720 square feet of specialty retail; 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. Building Height/Mass**

The height of the proposed buildings for the uses described shall not exceed the maximum permitted height as follows:

One-family detached	45 feet
One-family attached	44 feet
Liner Townhouses/Duplex Courtyards	44 feet (Architectural focus feature permitted to 55 feet)
Multi-family	44 feet (Architectural focus feature permitted to 55 feet)
2 over 2 Multi-family	55 feet
Live/Work Units	44 feet (Architectural focus feature permitted to 50 feet)
Retail/Commercial	44 feet (Architectural elements permitted to 55 feet)
Grocery	35 feet (Architectural focus features permitted to 55 feet)
Civic Building	45-65 feet
Parking Structure	2-level (35 feet)



**3. Live/Work Units**

Live/Work units will be recorded as fee-simple. The first story must be built to commercial standards. Although the first floor may be used as residential space by the fee simple owner, it may not be leased as a second residential unit.

**4. Moderately Priced Dwelling Units (MPDUs)**

The Applicant must provide 12.5 percent MPDUs on-site, consistent with the requirements of Chapter 25A.

**5. Civic Space (Library Site)**

- a. The Applicant must comply with the letter dated October 7, 2008 from Montgomery County Department of General Services. Access to the library parking parcel (“Public Parking Parcel ‘C’ ”) shall be as shown on the “Block ‘CC’ Public Street” plan attached as Exhibit “A”. Final square footage/acreage to be dedicated must be determined by Certified Site Plan and shown on the record plat.
- b. Dedicate the area originally associated with the library site, plus the area of the adjacent 5 live/work units (one of the five units will be relocated to the adjacent stick of live/work units) and the area shown as “future parking structure by others”. This concept, which was provided by the Applicant would satisfy many of the concerns voiced by the Department of General Services and should be implemented, although a study of the entire block for building layout, orientation, parking, access, design, function and operations is still needed. A shareholders group consisting of MCPL, representatives of M-NCPPC, the Applicant and community members should be organized by the Department of Libraries to determine the best way to address the location, operational needs and design of the future library site.

**6. Clarksburg Square Road/Route 355 Connection**

- a. The Applicant must enter into a Subdivision Roads participation Agreement with MCDOT to provide for the future connection of Clarksburg Square Road to MD 355 in order to align with Redgrave Place and to provide a vehicular connection through the Clarksburg Historic District, when the right-of-way becomes available.
- b. The Applicant must enter into a Subdivision Roads Participation Agreement with MCDOT to relocate the entire Horace Willson house in order to accommodate the vehicular connection when the right-of-way connection becomes available. The Applicant will be required to obtain a Historic Area Work Permit (HAWP) for the infrastructure and relocation of the house.
- c. The Applicant’s total cost to make the Clarksburg Square Road/Route 355 Connection shall not exceed \$500,000.
- d. If the right-of-way for the road connection has not been obtained within one year after the date of this Resolution, the Applicant must place in an escrow account the \$500,000

referred to in “c” above less those costs incurred by the Applicant that have been credited by MCDOT to the road connection project. The Applicant must provide Planning Staff with written confirmation of the establishment of the escrow account.

## **7. Parking**

- a. The Applicant shall provide a minimum of 1,241 parking spaces in the retail core by providing multi-level parking structures in Block KK (presently indicating 156 surface parking spaces); in Block LL (grocery) and in the surface parking lots and on-street within the retail core area (and including 45 spaces in the library surface lot).
- b. The following ratios are provided to account for the uses in the retail core:
  - 180 spaces for 10,000 square feet of restaurant space, which equates to 18 spaces per thousand square feet.
  - 188 spaces for the 47 live/work units, which equates to 2 spaces for the residential portion and 2 spaces for the commercial portion.
  - 592 spaces for the remaining 137,720 square feet of retail space, which equates to 4.3 per 1,000 square feet.
  - 100 spaces for the library site.
  - 147 spaces for the 98 multi-family, which equates to 1.5 spaces per unit.
  - 34 spaces for the 17 liner townhomes, which equates to 2 spaces per unit.
- c. The Applicant shall provide one dedicated parking space for each live/work, multi-family and in-line (one-family attached) unit within the retail core to be signed and marked for use solely by the resident of the space.

## **8. Staging of Amenity Features**

- a. The proposed project shall be developed in accordance with the phasing plan outlined in the Site Plan section under Development Program-Phasing.
- b. A detailed development program shall be developed with the Site Plan to include installation of landscaping, lighting, recreation facilities and amenities.

## **9. Maintenance and Management Organization**

The Applicant shall form a retail maintenance organization, separate from the residential Homeowner’s Association, but under the same umbrella, to provide for maintenance and operations of the retail core area, non-standard elements in the street right-of-way and on the private streets and amenities.

**STAFF RECOMMENDATION FOR FINAL WATER QUALITY PLAN:** Approval of Final Water Quality Plan for Site Plan 820070220 as described in the letter dated October 6, 2008 [Attachment D], unless amended and approved by DPS and DEP, with the following conditions:

1. Provide easements around all stormwater management structures with clear access from a public right-of-way.
2. A geotechnical report is required to verify recharge feasibility and infiltration rates at any proposed infiltration and recharge structure locations.
3. Planting/Landscaping shall not be shown in areas intended for stormwater management structures on the site plan. Proposed planting/landscaping will be reviewed during the DPS detailed plan review process. Additionally, all non-stormwater management structures, and or auxiliary structures to be constructed, placed, or otherwise located within any stormwater management maintenance easement, must be reviewed and approved by the County Departments of Permitting Services and Environmental Protection prior to construction or placement.
4. A detailed plan review of the stormwater management computations will occur at the time of DPS's detailed plan review.
5. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.

Note that all of the previous conditions and requirements for other portions of Clarksburg Town Center and related development still apply.

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**STAFF RECOMMENDATION AND CONDITIONS FOR PRELIMINARY PLAN:**

Approval of the proposed amendment to Preliminary Plan 11995042A, 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) Overlook Park Drive from Stringtown Road to Clarksburg Square Drive and (2) Clarksburg Square Drive connection to the residential area north of stream valley must be complete and open to traffic prior to release of 901st 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 Overlook Park Drive to Snowden Farm Parkway must be complete and open to traffic prior to release of the 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 open to traffic prior to release of the 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 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 completed and 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 completed in participation with MCDOT.
  - g. Construction of an eastbound and westbound left-turn lanes along Clarksburg Road at MD 355 must be completed and 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 approval regarding the requirements of the forest conservation law. Applicant must meet all conditions prior to recording of all 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 interdependent 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 Plans.
- 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 previous conditions of approval for Preliminary Plan 119950420 as 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 previous 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.

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## RECOMMENDATION AND CONDITIONS

Staff recommends approval of Site Plan 820070220, Clarksburg Town Center, for 194,720 square feet of commercial, which includes up to 69,720 square feet of specialty retail; and 1, 213 residential dwelling units, including 152 MPDUs, and a waiver to permit a reduction in the number of parking spaces, and reconfirmation of the previously approved reduction in setbacks from adjacent residentially-zoned properties, on approximately 270 acres. All site development elements shown on the site and landscape plans stamped "Received" by the M-NCPPC on September 15, 2008, are required except as modified by the following conditions:

1. Project Plan Conformance

The proposed development must comply with the conditions of approval for Project Plan 91994004B included herein.

2. Preliminary Plan Conformance

The proposed development must comply with the conditions of approval for Preliminary Plan 11995042A, or as amended by the Planning Board during the November 6, 2008 hearing.

3. Retail Center

- a. The Applicant shall construct the proposed retail center as shown on the approved plans submitted to the Planning Board, or as amended by the Planning Board during the hearing.
- b. The cost of the parking structures associated with the retail center shall be incurred by the Applicant.
- c. A minimum of one parking space must be dedicated and signed for all live-work and multi-family units within the mixed-use core area, which includes Blocks KK, LL and MM. The dedicated spaces shall be signed and posted restricting parking to the retail tenants, unless the tenant and owner of the live/work and multi-family units are the same. These dedicated spaces must not include the on-street parking.
- d. In addition to the combined pedestrian and vehicular entrance on Public Road A, the Applicant must provide a second pedestrian entrance to the grocery store from Public Road A, as shown on the most recent plans dated November 26, 2008.

- e. Provide dedicated parking spaces for the one-family attached units, including the MPDUs in Block GG.
- f. Provide a disclosure statement to future residents/retailers that will be provided dedicated/reserved parking spaces. A copy of the disclosure statement must be provided to the M-NCPPC prior to the release of the building permits for those uses.
- g. The depth of the retail stores must be at least 60 feet in depth, exclusive of the leasable area and service area.
- h. The Applicant must provide Staff a revised plan addressing the parking and depth of stores to be incorporated into the Certified Site Plan.

4. Recreation Facilities

- a. The Applicant must meet the square footage requirements for all of the applicable proposed new recreational elements, exclusive of the Sports Court for the Resident's Club, and demonstrate that each element is in conformance with the approved M-NCPPC Recreation Guidelines.
- b. The Applicant shall provide the recreation facilities shown on the Overall Recreational Facilities Plan Exhibit dated September 15, 2008 as finalized by the Planning Board at the December 11, 2008 hearing.
- c. The Applicant shall ensure that the Resident's Club/Community Building meets the health and safety requirements of the Health Department and space requirements of the M-NCPPC Recreation Guidelines for adequate deck area. Detailed of the plans for the Community Center must be included on the Certified Site Plan.
- d. The Applicant must provide the smaller sport court, referenced as "Plan B" in the November 20, 2008 exhibit provided by the Applicant

5. Parking

- a. The Applicant shall provide a minimum of 1,241 parking spaces in the retail core by providing multi-level parking structures in Block KK (presently indicating 156 surface parking spaces); in Block LL (grocery) and in the surface parking lots and on-street within the retail core area (and including 45 spaces in the library surface lot).
- b. The following ratios are provided to account for the uses in the retail core:
  - 180 spaces for 10,000 square feet of restaurant space, which equates to 18 spaces per thousand square feet.
  - 188 spaces for the 47 live/work units, which equates to 2 spaces for the residential portion and 2 spaces for the commercial portion.
  - 592 spaces for the remaining 137,720 square feet of retail space, which equates to 4.3 per 1,000 square feet.
  - 100 spaces for the library site.



- 147 spaces for the 98 multi-family, which equates to 1.5 spaces per unit.
  - 34 spaces for the 17 liner townhomes, which equates to 2 spaces per unit.
- c. The Applicant shall provide one dedicated parking space for each live/work, multi-family and in-line (one-family attached) unit within the retail core to be signed and marked for use solely by the resident of the space.

## 6. Environmental

The proposed development shall comply with the staff recommended conditions of approval for the final forest conservation plan, as per the letter dated October 6, 2008 and the conditions of approval from the Final Water Quality Plan dated October 8, 2006:

- a. Compliance with the conditions of approval of the Final Forest Conservation Plan dated December 27, 2004 and amended July 24, 2006, as amended to reflect the appropriate afforestation/reforestation calculations based on the final approved site plan design.
- b. A five-year maintenance period shall be required for all planted areas credited toward meeting the requirements of the forest conservation plan.
- c. All afforestation plantings on the Piedmont Woods Park are to begin in the first planting season after the issuance of the first sediment control permit by the Montgomery County Department of Permitting Services for any work to be conducted on Piedmont Park.
- d. Reforestation/afforestation plantings other than in Piedmont Woods Park that are located outside the limits of disturbance on the Clarksburg Town Center development must occur in the first planting season following approval of the Certified Site Plan. Plantings within areas of future disturbance must occur in the first planting season following the stabilization of the applicable disturbed area.
- e. Applicant must replace all financial security instruments submitted by Terrabrook Clarksburg, L.L.C. with new financial security instruments from Newland Communities, L.L.C... The financial security instruments must be based at a rate of \$0.90 per square foot or on a landscape estimate approved by the Planning Department. The new financial security to be reviewed and approved by Environmental Planning staff prior to Certified Site Plan approval.
- f. Applicant must submit a revised final forest conservation plan and obtain approval from Environmental Planning prior to approval of the certified site plan.
- g. All revised plans must be sealed and signed by a qualified professional.
- h. Applicant must remove the "Certified Site Plan" stamp from the final forest conservation plan (FFCP).
- i. Applicant must clearly delineate which trees are being taken for the landscape credit claimed in the FCP Worksheets. Any trees not claimed for landscape credit must not be shown on the FFCP.
- j. Applicant must remove the designation "Off-Site" planting that is proposed for Piedmont Park since this area has been part of the project since preliminary plan approval.

- k. Applicant must change all of the 5-ft natural surface trails from the Kings Pond area south through the Greenway and in the Piedmont Park to 4-ft trails as per the approved FFCP dated July 24, 2006.
- l. Applicant must provide a detail of the natural surface trail that matches the detail on the Land Design, Inc. plan.
- m. There should be no changes in the size of any afforestation or reforestation planting area from what was approved in 2004 and revised in 2006. If changes are necessary, the applicant must provide a written explanation and justification for the area size changes and compensate for the loss of that planting area.
- n. The Applicant must provide afforestation plantings, landscape credit plantings and Greenway credit plantings, either on-site or at Piedmont Woods Park totaling the afforestation/reforestation requirements per the approved forest conservation worksheets.
- o. The applicant must provide a planting schedule for the Greenway area since the applicant is requesting reforestation credit in the FFCP. In turn, call this area out on the Certified Site Plan as part of the FFCP.
- p. Applicant must: combine afforestation areas Q and S on Sheet 8 to one planting area; combine afforestation areas A-1, A-3 and B-1 on Sheet 11; and combine afforestation areas C-1 and K on Sheet 13.
- q. Applicant must clearly delineate Category I forest conservation easement lines or forest conservation areas as dedicated to the Parks Department, whichever is appropriate on the final forest conservation plan.
- r. Applicant must correct the size of afforestation area G. In one location on the submitted plan it is listed as 2.15 acres and in a second it is listed as 1.78 acres.
- s. Applicant must correct the size of afforestation area H. On page 21 it is listed as 0.40 acres in size but in the data table states it is 0.31 acres.
- t. Applicant must include a note on Sheet 21 stating that planting must occur within the sewer line area but not within 5 feet off the pipe centerline.
- u. Applicant must afforest all stream valley buffers (SVB) on Sheet 22 as shown on the approved final forest conservation plan and final water quality plans.
- v. Applicant must correct the spelling of "afforestation" and "area" on Sheet 24.
- w. Applicant must show the SVB on Sheets 33, 34, and 35.
- x. Applicant must clarify why the LOD extends out into afforestation area Z on Sheet 36.
- y. Applicant must clarify why the LOD extends out into afforestation areas Z and HH on Sheet 37.
- z. Applicant must use the correct updated FCP worksheet available on the MNCPPC website at <http://www.mcparkandplanning.org/Environment/forest/index.shtm>.
- aa. Applicant must include the data table as required by Section 109-A(2) of the Forest Conservation Regulations.
- bb. Applicant must replace all Norway Maple (*Acer platanoides*) trees requested for landscape credit with native canopy trees.
- cc. Applicant must correct typographic errors in the table for Afforestation Area CC on Sheet 39.
- dd. Applicant must correct all applicable notes throughout the document to identify that all reforestation/afforestation plantings have a 5-year maintenance period from the date the forest conservation inspector inspects the planted materials...

7. Site Design

- a. Revise the site plans to provide brick pavers within all sections of the retail core in lieu-of asphalt.
- b. Eliminate the angled parking on the private street in the retail core and provide parallel parking.
- c. Private Street #4 shall be revised to become Public Street 'A' with a 60-foot right-way, as approved by the Department of Transportation.
- d. Provide amended soil treatment a minimum of 10 feet back from the curb continuously along the public and private streets for the entire retail core, civic building and town green. The depth of the soil treatment shall be a minimum of 3 feet.

8. Landscape and Lighting

- a. Provide additional landscaping in the following alleys within planting islands in the common areas:  
East Side-Snow Hill, Block F;  
West Side-Dowden Mews, Block EE; Clarksridge Hideaway, Block FF  
At a minimum, the landscaping shall include ornamental/flowering trees, evergreen shrubs and grasses or groundcover in the islands to be installed by the Applicant. Existing green areas or panels shall be planted with shade or ornamental/flowering trees, where space permits. The Applicant shall provide, in writing, a letter to the affected homeowners of the additional landscaping to be installed no later than 15 days prior to installation of the landscaping. A copy of the letter shall be provided to the M-NCPPC.
- b. Eliminate the shrubs on the edge of the porous pavement in Basil Park Square Circle and group similar shrubs around the proposed ornamental/flowering trees on the east side of the park. Remove the elliptical area on the east side of the park.
- c. Revise the concrete wall in Sinequa Square with a stone wall similar in material to the material used on the Resident's Club/Community Center. The wall should be extended along with the grading to frame the view from Clarksburg Square Road. The proposed street trees shall be aligned to promote this visual viewshed.
- d. Provide additional flowering/ornamental and shade trees to serve as the focal feature to enhance the view from Clarksburg Square Road.
- e. Expand the base of the Grand Staircase to include a seating area with additional planting.

9. Enhancement Planting/Streetscaping and Amenities

Consistent with the provisions of the approved Plan of Compliance, the community has identified additional enhancements and amenities to be provided by the Applicant, and at the Applicant's expense. The cost of the amenities shall be applied against the landscape enhancement fund established by the Compliance Program. The list shall be provided on the certified site plan.

10. MPDUs

The proposed development shall comply with the following conditions of approval from the Department of Housing and Community Affairs in their letter dated September 29, 2008:

- a. The Applicant must provide a minimum of 12.5 percent MPDUs (of the total number of units), in accordance with the requirements of Chapter 25A.
- b. The Applicant must comply with all conditions of the DHCA Memorandum dated September 29, 2008, regarding this plan.
- c. The Applicant must enter into an "Agreement to Build" with the Department of Housing and Community Affairs prior to approval of the Certified Site Plans.

11. Maintenance Responsibility

The developer for the Retail Core shall be responsible for the future maintenance associated with the improvements to the Retail Center, including, but not limited to non-standard elements within the right-of-way, benches, lighting, landscaping, retaining walls and parking areas.

12. Retaining Walls

- a. The Applicant shall provide for an independent inspector to monitor the review, installation and maintenance needs of any retaining walls over 5 feet. The inspector shall be chosen by the M-NPPC from at least three qualified professional engineering firms not currently performing work in Clarksburg Town Center.
- b. The retaining walls facing Stringtown Road shall be decorative to include a stone or brick veneer with a suitable continuous decorative cap.

13. Park Development

The Applicant shall comply with the memorandum dated October 20, 2008 from Park Planning and Stewardship as outlined in the following conditions:

**Piedmont Woods Recreational Park:**

- a. Applicant to dedicate and convey to M-NCPPC in fee simple the approximately 65 acre parcel of land located on the northeast side of Snowden Farm Parkway to be used as a recreational park facility. Land to be conveyed at time of record plat.
- b. Applicant to construct at its expense within the park area the following recreational amenities:

Multi-age Playground - A multi-age playground within an approximately 10,000 square foot area. Playground equipment to include enough equipment, including challenging equipment, so that the play equipment use zones fill the entire playground boundary. Overlap the play equipment use zones as much as is allowable by ASTM guidelines to maximize the amount of equipment and provide varied play activities for all ages. Play equipment shall be acceptable to Department of Parks staff and certified by the International Play Equipment

Manufacturers Association (IPEMA), meet all ASTM requirements for public playgrounds and shall meet M-NCPPC park standards.

Dog Exercise Area - A fenced dog exercise area of approximately the size and configuration shown on the proposed site plan. Fencing around the dog exercise area to include park standard concrete mow strip and to be located entirely outside the utility right of way. No stormwater management facilities to be located within the fenced areas. Include a maintenance vehicle access gate and a drinking water source for dogs within each section of the dog exercise area.

Hard Surface Courts - Two full sized tennis courts and a full sized basketball court approximately as shown on the site plan. Provide fencing at tennis courts and on the backside of the basketball courts (at least 4' high) with park standard concrete mow strips.

Picnic Shelters - Three picnic shelters sufficiently sized to contain at least 3 picnic tables in each shelter. Each shelter to include a grill and at least 3 picnic tables.

Restroom and Water Fountain – Centrally located restroom facility and frost free water fountain.

Parking Lot - Parking for a minimum of 55 cars approximately as shown on the site plan.

Trails - Hard surface and natural surface trails to connect facilities and provide recreational benefits approximately as set forth on the site plan, to be located and sized as acceptable to M-NCPPC Department of Parks staff.

Landscaping, Benches and Signage – Landscaping and signage acceptable to M-NCPPC Department of Parks staff, and adequate benches for needed seating.

- c. A park permit is required before construction of all park amenities. All facilities to be constructed by Applicant must be acceptable to M-NCPPC Department of Parks staff and meet the Parks Design Standards and Specifications. Minor changes may be made to location and construction details of amenities in the park during the park permit process without the need to amend the site plan.
- d. Applicant to execute a Public Use Easement and Public Improvements Easement (PIE) for the purpose of access to and maintenance of the trail. Easements to allow the full right of public trail use and allow M-NCPPC- Department of Parks the full right to maintain and make any improvements to the trail. Said easements to be acceptable to M-NCPPC legal staff as well as the Department of Parks staff.

- e. Applicant to address in its initial design the following comments to the satisfaction of M-NCPPC Department of Parks staff prior to the approval of the Certified Site Plan with the final design occurring prior to issuance of park construction permit:
- i. The style of the picnic shelters and proposed restroom building should fit with the character of the Clarksburg Town Center. The proposed structures are constructed of heavy timber, laminated wood, have a rustic appearance and are inappropriate in character for use in this park. Per previous comments, provide shelters and restroom building equal to Classic Recreation Systems, Inc. "Campion" style steel frame shelter with custom ornamentation, cupola, 10:12 pitch metal roof with 2"x6" tongue and groove sub-roof, stone veneer piers and base.
  - ii. The landscape plan does not include enough trees. There should be many more trees in clustered, informal groupings, particularly along the main path on Snowden Farm Parkway, along all other walkways, near the picnic shelters, at the edges of the parking lot, within parking lot planting islands, near the basketball court, around the playground, near all seating areas, and on open slopes within the park. Trees should be set back a minimum of 10 feet from paths and 15 feet from structures and fencing. The general quantities and locations of plants shall be determined prior to approval of the certified site plan. The exact types, sizes, spacing, locations and quantities of plants shall be reviewed and may be adjusted during the park permit approval process.
  - iii. Provide additional paths or relocate paths at the tennis courts to meet ADA guidelines for accessible sports facilities. The guidelines require an accessible route to be connected to each court. The paving around the restrooms and tennis courts could be simplified.
  - iv. The minimum paved path width shall be five feet to meet ADA requirements. The minimum paved path width for multi-use trails and paths that require maintenance vehicle access is eight feet wide. The path from the parking lot to the dog park shall be ten feet wide and fully paved with ample vehicle turn-around room, as the dog park requires frequent maintenance access. The path around the playground area with its connections to the parking lot shall be widened to 8 feet to allow vehicle access to replenish playground surfacing. The paths around the edges of the parking lot may be narrowed in width if necessary to balance the amount of impervious surface in the park. The approximate alignments of trails and paths in the park shall be shown on the certified site plan

however they may be adjusted some during the park permit review process.

- v. Provide additional missing elements from the park program of requirements, including the following: a kiosk near the park entrance or restroom building (equal to Classic Recreation Systems, Inc. "Campion" style), a shade structure with seating in the dog park that could be shared by both areas, four nature interpretation signs with durable colored graphics along the natural surface trails, wild bird boxes in natural areas, and three seating areas with benches along the natural surface trail including a story-telling circle.
- vi. Remove the bio-retention area from the interior of the dog park, so that plantings are not trampled. Relocate the area outside of the fence.
- vii. If possible, reduce the number of bio-retention areas in the park, as these beds have high maintenance requirements and herbicides are not allowed to be used in these areas.
- viii. Provide a safe pedestrian crossing of Snowden Farm Parkway, in order to provide pedestrian access to the park from the surrounding neighborhood.
- ix. The park entrance pier and sign are too small to be effective. Provide a larger entrance sign for the park constructed of masonry and wood, designed to fit with the character of the Clarksburg Town Center as well as provide identity for the park.
- x. The plan does not provide enough seating in the park. Provide at least one additional bench on each side of the dog park, at least 3 additional benches or a seat wall in or near the playground area, at least 3 additional benches along the trail on Snowden Farm Parkway, and benches along the natural surface trail system as described previously. The two benches in the lawn area adjacent to the playground should be moved into the playground surfacing for ease of maintenance/mowing. Provide occasional groupings of two benches, rather than just single benches near the playground. The exact locations and selection of bench type shall be reviewed and approved prior to park permit, however there will likely be two types: a decorative type within the park, and a simpler version in the playground mulch areas and along natural surface trails. The catalog cut included in the drawings is an example of a simple bench, rather than a decorative bench.
- xi. Provide a hose bib on the exterior of the restroom and quick coupler connections on each side of the dog park for watering and maintenance.

- xii. The general quality of the park and all elements within the park (such as site furnishings, structures, pedestrian paving, fencing, walls and landscaping) shall be equal to or better than those provided at Arora Hills Local Park and Dowden's Ordinary Historic Park, which are other developer-built parks in Clarksburg.
  - xiii. Department of Parks staff would prefer to have no lighting in the park, since the park is closed at dark. However, parking lot lighting was indicated as a requirement in the plan of compliance. If lighting is provided within the park, all park facilities should be lighted, including the courts, dog park and restroom so that the park may be used after dark. Lighting the parking lot on its own could encourage illicit use of the park at night. Any decision regarding lighting should be reviewed and confirmed that it would be acceptable to the community.
  - xiv. The lighting footcandle levels in the parking lot were reduced to 0.5 footcandles. If lighting is to be provided within the park, confirm that the lighting levels are appropriate, based on applicable standards (IESNA) and confirm that Park Police concurs with these recommendations. If Park Police recommends higher levels of lighting, additional fixtures may be required.
- f. Applicant to address the comments in the memorandum dated October 20, 2008 to the satisfaction of M-NCPPC Department of Park staff at the time of park permitting.

### **Kings Local Park**

Applicant to construct at its expense within the Local Park area the following recreational amenities:

Playground/Seating Area-A playground and seating area comparable to similar facilities in Aurora Hills Local Park (as shown on construction documents dated May 2007. The required facilities in King's Local Park shall be comparable in size and design quality, including, but not limited to the quantity and quality of play equipment, surfacing, colored concrete edging and site furnishings. The facilities shall be shown on the certified site plan. Complete construction details and specifications shall be included and approved as part of the Park Permit for construction.

Fishing Pier-A minimum 8 foot wide, handicap accessible pier terminating in a 12' x 24' fishing pier platform shall be provided. The structure shall be constructed of recycled, engineered marine plastic such as Trelleborg or equal quality, and to include railings if determined by M-NCPPC Department of Park staff to be needed.



Handicap Accessible, Asphalt Trail-An eight-foot-wide, handicap accessible asphalt trail shall be provided from the corner of Overlook Park Drive and Clarksburg Road to the pond area and shall access the picnic shelters and playground area. The approximate alignment of the trail shall be shown on the certified site plan and may be adjusted during the park permit process.

Site Furnishings- Approximately 6 benches and a bike rack capable of holding 6 bikes shall be provided. Location and type shall be approved at the time of park permit.

Landscaping-A landscape plan shall be approved as part of the certified site plan. The exact species, size and number of plants may be adjusted during the park permit approval process.

Park entrance signage- Two (2) wood and stone park entrance signs shall be provided near (1) the parking area, and (2) at the corner of Clarksburg Road and Overlook Park Drive. Concept drawings shall be approved and included with the certified site plan. Construction details shall be approved as part of the park permit.

Retaining Walls-Any needed retaining walls on park property shall be constructed of concrete block, similar to the existing walls at the corner of the school. Location, design, and height of the walls shall be shown on the certified site plan and may be modified at the time of park permit. Construction details and specifications shall be provided with the park permit.

A park permit is required before construction of all park amenities. All facilities to be constructed by Applicant must be acceptable to M-NCPPC Department of Parks staff and meet the Parks Design Standards and Specifications. Minor changes may be made to location and construction details of amenities in the park during the park permit process without the need to amend the site plan.

### **Clarksburg Greenway and Greenway Trail**

Applicant to dedicate and convey to M-NCPPC in fee simple, the land east of Overlook Park Drive along the stream valley from Stringtown Road to Clarksburg Road, approximately as set forth in the site plan. Land to be conveyed is not to include any stormwater control facilities or stormwater access roads and to be conveyed free of trash and unnatural debris. Final detailed park property boundaries to be finalized and clearly set forth on the certified site plan. Land to be conveyed at time of record plat.

Applicant to construct, at its expense, an 8' wide, hard surface trail along the southwest side of the Overlook Park Drive alignment, within publicly owned or controlled land. Trail to be constructed to park standards and specifications and construction to be coordinated with M-NCPPC Department of Parks and Montgomery County Department of Transportation staff.

Applicant to construct a 5' wide, natural surface trail system within the dedicated Clarksburg Greenway from Kings Local Park lake area to Stringtown Road. Trail to include a safe road crossing at Clarksburg Square Road, and a safe, adequate and well lighted alignment under Clarksburg Square Road. Alignment to be substantially as set forth on the site plan with final details of the alignment and construction details to be set forth on the certified site plan.

All trails to include bridges and boardwalk where determined by M-NCPPC Department of Parks staff to be needed. Adequate number of benches to be located along trails.

Provide a safe hard surface trail crossing of Stringtown Road and natural surface trail crossing of Clarksburg Square Road. Provide details of Greenway Trail connection to Clarksburg Village section of trail, including crossing of Stringtown Road and crossing of road bridge. Details to be provided by Applicant on certified site plan.

All plantings and landscaping in the Clarksburg Greenway, Kings Local Park and Piedmont Woods Recreational Park to be approved by M-NCPPC Department of Parks staff. All plantings and landscaping to be consistent with the guidance set forth in the letters dated 6/20/08 and 6/23/08 to Doug Powell from Holly Thomas, County-wide Horticulturist and with the Standards and Specifications set forth in the document titled "Planting Requirements for Land-Disturbing Activities and Related Mitigation on M-NCPPC Montgomery County Parkland Revised January, 2008.

All hard surface and natural surface trail alignments and construction details for trails, bridges, boardwalk, and other trail amenities to be specified on the certified site plan and be acceptable to M-NCPPC Department of Parks staff. Minor adjustments or modifications to the trail alignments, and construction and amenities details may be made at time of park permitting without the need to amend the site plan.

#### 14. Landscape Surety

The Applicant shall provide a surety (letter of credit, performance bond) in accordance with Section 59-D-3.5(d) of the Montgomery County Zoning Ordinance with the following provisions:

- a. The amount of the surety shall include plant material, on-site lighting, recreational facilities, and site furniture within the relevant block of development. Surety to be posted prior to issuance of first building permit within each relevant block of development and shall be tied to the development program.
- b. Provide a cost estimate of the materials and facilities, which will establish the initial bond amount.
- c. Completion of plantings by block, to be followed by inspection and bond reduction. Inspection approval starts the 1 year maintenance period and bond release occurs at the expiration of the one year maintenance period.
- d. Provide a screening/landscape amenities agreement that outlines the responsibilities of the respective parties and incorporates the cost estimate. Agreement to be executed prior to issuance of the first building permit.

## 15. Development Program

The Applicant must construct the proposed development in accordance with a development program that will be reviewed and approved by staff prior to the approval of the Certified Site Plan. The development program replaces the approved Site Plan Enforcement agreement, with the exception of the MPDU phasing outlined by DHCA, and institutes timing mechanisms related to building permit release. The development program must include the following items in its phasing schedule:

- a. Street tree planting shall progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
- b. Local Recreational Facilities
  - i. All remaining Local Recreational Facilities on the East Side of the Greenway must be completed prior to the issuance of the building permit for the 901<sup>st</sup> residential dwelling unit in the project. The remaining local recreation facilities on the East Side, which have not been constructed, include sitting areas and an open play area associated with Basil Square Park, which shall be installed within 6 months of the completion of Basil Square Park Road. Landscaping and lighting associated with the Recreational Facilities shall be installed no later than 6 months after the completion of those facilities.
  - ii. The Local Recreational Facilities on the West Side must be completed prior to the issuance of the following building permits for the units in the respective blocks. (This number represents 70 percent of the number of units located in each block). The recreation facilities to be constructed on the West Side include the tot lot and sitting areas associated with Harness Point. Landscaping and lighting associated with the Recreational Facilities shall be installed no later than 6 months after the completion of those facilities.
- c. Community-Wide Recreational Facilities
  - i. The improvements to Murphy's Grove Pond must be completed prior to the issuance of the building permit for the 950<sup>th</sup> residential dwelling unit in the project.
  - ii. Landscaping and lighting associated with the community-wide facilities shall be installed no later than 6 months after the completion of those facilities.
  - iii. The expansion of the existing swimming pool shall be completed prior to the second Memorial Day weekend after approval of the Certified Site Plan.

- iv. The sport court building, expansion of the Resident's Club fitness room, and the adjacent Sinequa Square and tree bosque open space improvements shall be completed prior to the issuance of the building permit for the 1,000 residential dwelling unit.
- v. The sport court building shall consist of a facility for typical gym type functions, such as basketball, volleyball, aerobics, Pilates, pre-schooler tumbling, martial arts and yoga, and a multi-purpose room for community activities and shall be in the general configuration shown on the plan attached as Exhibit B. Interior fit out of the sport court building shall be comparable to the interior fit out of the existing community center, with details to be provided prior to approval of the Certified Site Plan.
- vi. Community-wide facilities on the West Side include the natural surface connections within the Greenway and necessary bridges or boardwalks, Town Green and Market shall be completed as follows: 1) the improvements within the Greenway shall be constructed/installed within 6 months of the completion of Overlook Park Drive; and 2) the Town Green and Market shall be completed upon the completion of the Live/Work units adjacent to the Town Green and Market. Landscaping and lighting associated with the community-wide facilities shall be installed no later than 6 months after the completion of those facilities.
- vii. The 8-foot-wide bike path connection on the east side of Overlook Park Drive shall be constructed in conjunction with the road connection.

d. Kings Local Park

The recreation facilities, landscaping and trails/paths shall be constructed prior to the release of the building permit for the 901<sup>st</sup> residential building unit in the entire development.

e. Piedmont Woods Park

The recreation facilities, landscaping, roads, and trails/paths shall be constructed prior to the release of the building permit for the 1,101 residential dwelling unit in the entire development.

f. Clearing and grading shall correspond to the construction phasing, to minimize soil erosion.

g. On-site landscaping and lighting associated with the construction of the private roads and common areas shall be installed no later than 6 months after the completion of those roads and common areas, with the exception of the additional landscaping required for the existing areas, which shall be installed within 6 months of the approval of the Certified Site Plan.

- h. The grocery store, parking garage, streetscape, retail stores in Block LL must be under construction prior to the release of the building permit for the 901<sup>st</sup> residential dwelling unit ~~the entire development~~.
- i. Provide each section of the development with necessary roads.
- j. Phasing of dedications, stormwater management, sediment/erosion control, recreation, forestation, community paths, trip mitigation or other features.

## 16. Penalties

The Applicant must submit the Certified Site Plan no later than 90 days after the issuance of mailing of the resolution, or, if a timely administrative appeal is filed by any party authorized to take an appeal, 90 days after the date upon which the court having final jurisdiction acts, including the running of any further applicable appeal periods. If the Certified Site Plan is not timely submitted, the Applicant must pay a \$500/day fine for each day the Certified Site Plan is late. If the Planning Board determines that the Certified Site Plan does not conform to all conditions of site plan approval, the Planning Board may assess the Applicant a fine of up to \$500/day for each day after the later of the Certified Site Plan due date or the submittal date until such time as plans have been submitted that conform to all conditions of approval. The timeframe set forth above may be reasonably extended by action of the Planning Board for any delay caused by events that are beyond the control of the Applicant (such as, by way of example and limitation, any delay caused by extended reviews by reviewing agencies of plans submitted by the Applicant).

## 17. Certified Site Plan

Prior to approval of the Certified Site Plan the following revisions must be made and/or information provided subject to Staff review and approval:

- a. Include the final forest conservation approval, stormwater management concept approval, development program, inspection schedule, and site plan resolution on the approval or cover sheet.
- b. Add a note to the site plan stating that “M-NCPPC staff must inspect all tree-save areas and protection devices prior to clearing and grading”.
- c. Revised parking calculations.
- d. Modify notes to include M-NCPPC Staff approval required for planting plan substitutions.
- e. Ensure consistency off all details and layout between site plan and landscape plan.
- f. Graphically delineate the Limits of Disturbance.

- g. Revised parking exhibit showing the dedicated residential spaces in the retail core and the updated permitted on-street parking spaces as determined by the Fire Marshall and the Montgomery County Department of Permitting Services.
- h. Show the locations of the MPDUs on all Site Plans.
- i. Detail of the amended soil treatment.
- j. Heights of the proposed units in Blocks GG, H, A and R.
- k. Provide the additional landscaping in the common areas as specified in the conditions of approval.
- l. Details of the upgraded mailboxes, notice boards and flagpoles.
- m. Provide internal green area computations for the parking facilities.
- n. Provide details of the signs and locations of signs for the reserved/dedicated parking spaces.
- o. Letter from the Clarksburg United Methodist Church agreeing to details of the pedestrian connection and provision of parking.

18. Staging (Status Report)

The Applicant shall present in person, updates to the Planning Board every 3 months at a Planning Board roundtable, commencing three months after the date the Planning Board mails its Resolution.