

Item 9 - Correspondence

From: [Titman, Dorothy R.](#) on behalf of [Harris, Robert R.](#)
To: [MCP-Chair](#)
Cc: [Estes, Phillip](#); [Pereira, Sandra](#); [Butler, Patrick](#); [Kronenberg, Robert](#); [Vaias, Emily](#); kkubit@elmstreetdev.com; [Harris, Robert R.](#)
Subject: ON BEHALF OF ROBERT HARRIS/ Clarksburg Town Center
Date: Friday, February 23, 2024 12:07:10 PM
Attachments: [Ltr to Planning Board Chair with Resolution - Clarksburg Town Center\(5743663.1\).pdf](#)

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

I am resending the letter from yesterday and including as an attachment to it, the Resolution referenced in the letter.

Robert R. Harris, Attorney

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February 22, 2024

The Honorable Artie Harris
Chairman
Montgomery County Planning Board
2425 Reedie Drive
Wheaton, MD 20902

Re: Clarksburg Town Center (Project Plan Amendment No. 91994004E, Preliminary Plan Amendment No. 11995042E, and Site Plan Amendment No. 820070221)

Dear Chairman Harris:

I am writing to you as counsel for the applicant in these proceedings, in response to information recently submitted for the record. More specifically, I want to comment on and support Staff's conclusions in their Staff Report (dated 2/16/24) with respect to approvability of these applications under an earlier approval regarding the subject property referred to as the "Plan of Compliance" or "Compliance Program". In short, for the reasons discussed below, I agree that the Plan of Compliance allows the Planning Board to approve these applications.

By way of background, back in 2006, after residents alleged violations of previously approved Clarksburg development, the earlier developers and the community entered a "Settlement Agreement" dated April 6, 2006 intended to address the alleged development violations. The Planning Board was not a party to the Agreement. Therefore, the parties to that Agreement sought Planning Board approval of a Plan of Compliance to guide future actions by the Board, and the parties signed a Release with respect to alleged violations. The terms and conditions of the resulting Plan of Compliance were intended as remedial measures to address those prior violations. Those violations included building setbacks, road design, building heights, phasing and location of MPDUs, construction of amenity features and other factors where the resulting development did not conform with the underlying approvals. By Resolution No. 06 – 20, dated August 17, 2006, the Montgomery County Planning Board approved the Plan of Compliance. In that Resolution, the Planning Board noted, however, that "the compliance program is conceptual in nature, and that additional review of more detailed plans may involve modifications." It further stated that "the Board expressly reserves all lawful discretion to consider, approve, approve subject to conditions or disapprove any such future application according to the law and merits presented at the time." Subsequent to the Plan of Compliance, the various Clarksburg builders and developers involved in the project at the time addressed each of the alleged violations and incorporated the corrective measures for those violations according to the terms of the Plan of Compliance.

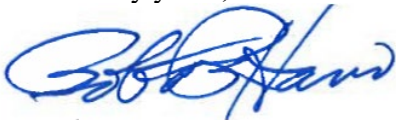
The applicant in this proceeding was not a party to either the Settlement Agreement or the Plan of Compliance, nor was the area of the Clarksburg Town Center development that is the subject of the currently pending applications, the subject of any alleged violations. In fact, there was no

development at all on this portion of the property at that time so there could not have been any violations.

Since approval of the Plan of Compliance, the Planning Board has approved multiple amendments to the Project Plan, Preliminary Plan and Site Plan that were not part of the Plan of Compliance. Among others, over community objections that plans were not consistent with the Settlement Agreement, the Planning Board approved amendments to these plans revising the amount of commercial development and residential units permitted, while reducing the number of parking spaces previously contemplated. As such, it reconfirmed that the Plan of Compliance did not control the future design, timing or uses in the town center retail core area and that, per the terms of the Plan of Compliance, the Planning Board was not precluded from approving changes. This, of course, is basic Maryland law. No private party can preclude a government agency from exercising its duty to act on development applications in a manner deemed appropriate at the time by the government agency having authority over the proposed development. Moreover, a Planning Board sitting as a Board in one year, cannot preclude a future Board from taking actions inconsistent with those of the prior Board.

Nearly 20 years after the Settlement Agreement, many circumstances have changed in terms of County land use policies, market conditions, and development objectives. In making a decision today, to finally facilitate development of the long-awaited retail center, the Planning Board is obligated to consider all of these factors and others and approve development that substantially conforms with the applicable master plan, meets the requirements of the Zoning Ordinance, and satisfies the current criteria for approval of project plans, preliminary plans and site plans as well as amendments to previously approved plans, even if it is not what someone may have contemplated many years ago. Nothing in the Plan of Compliance precludes this and doing so would be contrary to the public interest. As Staff concludes in its Staff Report, the development now proposed for the Clarksburg Town Center meets all applicable requirements and is not precluded by the Plan of Compliance.

Cordially yours,



Robert R. Harris

cc: The Honorable Mitra Pedoeem
The Honorable James Hedrick
The Honorable Shawn Bartley
The Honorable Josh Linden
Mr. Phillip Estes
Ms. Sandra Pereira
Mr. Patrick Butler
Mr. Robert Kronenberg
Ms. Emily Vaias

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

Date of Mailing: AUG 17 2006

MCPB No. 06-20

**RESOLUTION OF
MONTGOMERY COUNTY PLANNING BOARD**

PROJECT: Compliance Program: Clarksburg Town Center

PROJECT PLAN NO: 9-94004

SITE PLAN NO: 8-98001; 8-02014

DATE OF HEARING: June 15, 2006

RESPONDENTS: Newland Communities, LLC and NNPII-Clarksburg, LLC
Bozzuto Homes, Inc., BA Clarksburg, LLC and
BA Clarksburg Two, LLC
Craftstar Homes, Inc. and its LLC affiliates
Miller and Smith at Clarksburg, LLC
NVR, Inc., t/a NV Homes
PCI Clarksburg LLC

COMPLAINANT: Clarksburg Town Center Advisory Committee

RESOLUTION OF THE PLANNING BOARD: APPROVAL OF THE STAFF RECOMMENDATIONS WITH MODIFICATIONS. A motion to approve with certain modifications was made by Commissioner Robinson, seconded by Commissioner Wellington, and carried by unanimous vote (4-0) in the affirmative; Chairman Berlage and Commissioners Perdue, Robinson, and Wellington voting in the affirmative, with Commissioner Bryant being absent for the vote.

§1. EFFECTIVE DATE

The effective date of this written resolution (the "Resolution") is the date this document is mailed to all parties of record. Any party entitled by law to make an administrative appeal must initiate the appeal within thirty days of the date of this Resolution according to the procedural rules for judicial review of administrative decisions under applicable law and the Maryland Rules of Court.

§2. PURPOSE AND NATURE OF RESOLUTION: APPROVAL OF COMPLIANCE PROGRAM

The purpose of this Resolution is to memorialize the decision of the Montgomery County Planning Board (the "Board") to approve a certain Plan of Compliance (the "Compliance Program") in the matters heard upon and including those elements, terms and conditions as set forth herein. This Resolution is adopted pursuant to the authority of the Board to enforce the elements, terms and conditions of its previous actions in this matter, in accordance with the enabling provisions of Article 28 of the Annotated Code of Maryland at Section 7-116(h) and the implementing provisions of Section 59-D-3.6 of the Montgomery County Zoning Ordinance.

The terms and conditions of the Compliance Program approved by this Resolution are intended by the Board as *remedial measures* that shall be legally required in order to address certain violations (such violations both found or known to be alleged as of the effective date of this Resolution) (collectively, the "Violations") with respect to the Project Plan, various site plans and certain amendments thereto, whether or not those site plans and amendments were approved under lawful authority to do so.

The elements, terms and conditions of the Compliance Program approved under this Resolution are the result of a voluntary mediation and negotiation process undertaken by and on behalf of the Complainant and Respondents; and, as expressed in this Resolution, such elements, terms and conditions of the Compliance Program shall be deemed and constitute the knowing and voluntary proffer of the Respondents tendered for the purpose of settling and disposing of the Violations in accordance with the lawful authority of the Board.

The Respondents have acknowledged that the Compliance Program set forth in this Resolution shall be given effect in lieu of any proposed amendment previously filed but approval of which remains pending as of the effective date hereof (collectively, the "Pending Amendments"). The Pending Amendments are enumerated as follows:

- That certain proposed amendment to the subject Project Plan filed on May 9, 2005;
- That certain proposed amendment pertaining to Section 1A4 of Site Plan No. 8-98001 filed on June 22, 2004; and
- That certain proposed site plan pertaining to the retail area shown on Site Plan No. 8-04034 filed on June 3, 2004.

Because said pending amendments are inconsistent with certain elements, terms, conditions of the Compliance Program, the Respondents have voluntarily agreed to withdraw each and every of the Pending Amendments and, upon issuance of this Resolution, such withdrawal of those Pending Amendments by Respondents shall be

deemed approved by the Board. Hereafter, the Board shall deem the Pending Amendments withdrawn, a legal nullity and of no further force or effect with respect to the project.

§3. COMPOSITION (ELEMENTS, TERMS AND CONDITIONS) OF THE COMPLIANCE PROGRAM

For the purpose of this Resolution, the Compliance Program consists of the Staff Recommendations, Board Modifications, Certain Deadlines, and Certain Waivers described in this section.

A. Staff Recommendations. As set forth in the staff report issued by memorandum dated June 1, 2006, executed by John Carter and Rose Krasnow (the "Staff Report"), and as presented during the Board's hearing on June 15, 2006, the Compliance Program consists of and expressly incorporates by reference each of the elements, terms, and conditions as contained in the following documents:

1. The following Exhibits:
 - a) Applicant's Exhibit 1 — Units/Lots to be released at the time of Plan of Compliance approval ("Attachment 1" hereto)
 - b) Applicant's Exhibit 2 — Plan of Compliance Parking Exhibit ("Attachment 2" hereto)
 - c) Staff's Exhibit 1 – Units/Lots to be released at time of Plan of Compliance (bluelined) ("Attachment 3" hereto)
2. The staff report, without attachments, dated June 1, 2006 (pages 1-16) ("Staff Report") and circle pages 17-91 attached to the Staff Report, but excluding Section "S" on circle pages 29-30 titled "Outcome/Effect of Plan of Compliance" (collectively, "Attachment 4" hereto);
3. Staff's handout at the June 15, 2006 hearing ("Attachment 5" hereto) which consists of a one-page addition of paragraph 4 ("Status of the Plan of Compliance") to the Staff Report ("June 15, 2006 Errata");
4. First Stage Development Standards Clarksburg Town Center ("Attachment 6" hereto), consisting of Table 1: Manor House Building 7 and 9 (Multi-Family Units), and Table 2: Proposed Development Standards from Exhibit R of the Plan of Compliance, June 30, 2006.

B. Board Modifications. The Compliance Program also includes and expressly incorporates by reference each of the following elements, terms, and conditions:

1. **Future Review Process.** - The Compliance Program proposes certain amendments to the approved Project Plan and the certified Site Plans as

indicated in the "Description of Major Elements Making Up the Plan of Compliance," and the "Plan of Compliance Design Concepts" (see attached Staff Report). The future approvals include the interim review of Site Plan amendments for Sections 2D, and GG and for Manor House Buildings 10, 11 and 12, to be followed by the review of the overall modified Project Plan, Preliminary Plan, the existing Site Plans, and a new Site Plan for the retail core, as described in the phasing discussion below.

2. Phasing and Next Steps – As a condition of the Compliance Program, the Board approved the following phasing of development:

- a. First Stage: Begin Construction - Construction** - At the current time, stop work orders imposed voluntarily, by or on behalf of the Planning Board are in place in certain designated areas of the community. The Planning Board declares that said stop work orders shall be dissolved, and does hereby dissolve those orders, so as to authorize Respondents to proceed with the first stage of the development with respect to the 78 Units/Lots enumerated on "Attachment 6" hereto; provided, that Respondents shall proceed and construct each and every such Unit/Lot in strict compliance with any building permit or other governmental approval for their construction as may be issued and applicable thereto. Construction of Stringtown Road between MD 355 and Overlook Park Drive, and Clarksburg Road between MD 355 and Spire Street can also continue in this First Stage.
- b. Second Stage: Approval of a Revised Site Plan for Section 2D and GG** - The Respondents must apply for an amendment to the October 14, 2004 Certified Phase II Site Plan for the remaining portions of Sections 2D and GG, as well as the Site Plan for Manor House Buildings 10, 11 and 12. Construction of these units will only proceed if and when the Planning Board approves these Site Plans amendments. It is understood that the Respondents may apply for these amendments before any other amendment applications to the Project Plan, Preliminary Plan, or Site Plans for the entire development are submitted for approval.
- c. Third Stage: Approval of a Revised Project Plan, Preliminary Plan and Site Plans** - The approved overall Project Plan, Preliminary Plan, and Site Plans will need to be revised, and a new site plan for the retail core will need to be approved before the remaining development in the Clarksburg Town Center will be able to proceed. This step is intended to incorporate all of the elements of the Compliance Program into an amended overall Project Plan, Preliminary Plan, and the newly approved or amended Site Plans. A new phasing plan for the entire development will also be included as part of this third stage review.

C. Certain Deadlines. The Project Plan, Preliminary Plan, Site Plan amendments and new Site Plan to be submitted for approval must reflect the elements of this Compliance Program and must be submitted before October 26, 2006. These plans must also include an amended Phasing Plan for the entire development, including all facilities and amenities. The entire project must be completed by June 15, 2010 unless the Planning Board approves an extension.

D. Certain Waivers. By their attendance and respective proffers expressed in connection with the several Planning Board proceedings convened to consider the matters addressed in this Resolution, and as subsequently confirmed by the written and oral binding representations of their respective legal counsels, Respondents and Complainant consented and conceded to the jurisdiction of the Board for the purpose of the taking of this action. Respondents and Complainant further voluntarily consented and agreed to the various elements, terms and conditions expressed herein for purposes of the Compliance Program, and knowingly waived any and all right to appeal or contest the action taken by the Board hereunder, and thereby agreed to be estopped from contesting any portion of the Compliance Program, or asserting any compensable damage or cost by way of any cause of action against the Board related in any way to the matters resolved herein. It is expressly understood, however, that the aforesaid waiver does not apply to, or in any way impair, waive or otherwise affect (i) any parties' right to defend an appeal of this action filed by persons other than Respondents or Complainant; (ii) any parties' appeal rights and/or cause(s) of action that might accrue with respect to any future action taken by the Board, other governmental agency or individual including, without limitation, any action concerning subsequent Project Plan, Preliminary Plan and/or Site Plan applications, including any amendment(s) thereto, and further including any subsequent permitting and development processes related thereto, which are intended to implement the Compliance Program. The waivers expressed under this Section 3(d) are considered by the Planning Board to be a material predicate and inducement for the issuance of this Resolution.

§4. FORMAL DISPOSITION OF THE VIOLATIONS AND RELATED FINDINGS

FINDING 4.1: The Board finds that the public interest will be served by "grandfathering" (holding harmless) all dwelling units that are already constructed, under contract by, and/or occupied by innocent third-party purchasers, as of June 15, 2006 (the "Grandfathered Units"); provided, however, that the Grandfathered Units do not include any unit for which a contract was entered into after November 23, 2005, the date by which all stop work orders had been issued. The Board finds that the purpose and scope of such grandfathering by the Board is to remediate and resolve all findings of Violations as to the Grandfathered Units.

In accordance with Finding 4.1, the Board hereby orders that each of the Grandfathered Units that was the subject of any Violation shall be, and hereby is, deemed to be constructed and occupied in compliance with the County Zoning Ordinance notwithstanding such Violation, provided that nothing under this order or Resolution shall be construed to cure any violation of the Zoning Ordinance that either (a) is not grounded within the lawful jurisdiction of the Planning Board or (b) is not directly related to the Violations that fall within the scope of this Resolution.

FINDING 4.2: In accordance with the recommendations of staff, the Board finds that the public interest will be served by completion of the Compliance Program according to its terms because it provides substantial enhancements to community amenities and facilities planned for the area designated as the Clarksburg Town Center project and Montgomery County as a whole.

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.

FINDING 4.4: In accordance with the recommendations of staff, the Board finds that the modifications to the street network approved by the Fire Marshal of Montgomery County for purposes of public safety are in the public interest and are, therefore, incorporated into the approved Compliance Program.

In accordance with Findings 4.2, 4.3 and 4.4, the Board hereby orders the Respondents to comply strictly with each of the elements, terms and conditions of the Compliance Program and expressed otherwise under this Resolution. The Board further instructs the Planning Staff to undertake all reasonable measures to detect and report to the Board the Respondents' compliance and non-compliance as the applicable case may be.

§5. PLANNING BOARD AUTHORITY EXPRESSLY RESERVED

Except as expressly provided in this Resolution, nothing provided in this Resolution is intended, nor shall it be construed, to cede, relinquish or otherwise impair the discretion, authority or jurisdiction of the Board to consider any future applications, plans or approvals pertaining to the project according to the terms of this Resolution, law and merits applicable. Without limiting the generality of the foregoing, it is understood that the Respondents shall be required in the future to obtain Board approval for one or more amendments to the Project Plan, Preliminary Plan, and Site Plans relating to the project.

The Planning Board recognizes that the Compliance Program is conceptual in nature, and that additional review of more detailed plans may involve modifications. Except as otherwise required by or relating to physical project conditions unforeseen by the Board, or applicable law (including the requirements of the Montgomery County Zoning Ordinance, Subdivision Regulations, or other legal requirements applicable to any future Board action pertaining to the project), the Planning Board intends to require only such modifications that are reasonably consistent with the Compliance Program. Subject only to such unforeseen project conditions, applicable law and regulations, express terms of this Resolution and the Compliance Program, the Board expressly reserves all lawful discretion to consider, approve, approve subject to conditions or disapprove any such future application according to the law and merits presented at the time. Further, the Board expressly retains jurisdiction to consider and act upon any violation in the future that is unrelated to the Violations resolved according to the terms of this Resolution, alleged on the basis of this Resolution, or any act or omission by the Respondents (their successors or assigns) that accrues after the effective date hereof.


CONCLUSION

The Planning Board accordingly approves this Resolution according to elements, terms, and conditions stated above.


* * * * *

At its regular meeting, held on Thursday, August 3, 2006, in Silver Spring, Maryland, the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, with Motion by Commissioner Robinson, seconded by Commissioner Perdue, by vote of 4 to 1, with Commissioners Berlage, Robinson, Perdue and Bryant voting in favor and Commissioner Wellington opposed, ADOPTED the above Resolution which constitutes the final decision of the Planning Board and memorializes the Board's findings of fact and conclusions of law for this Resolution.

Adopted by the Planning Board this 3rd day of August 2006.


Derick P. Berlage
Chair, Montgomery County Planning Board


Trudye M. Johnson, Executive Director

APPROVED AS TO LEGAL SUFFICIENCY

M-NCPPC LEGAL DEPARTMENT

Attachments

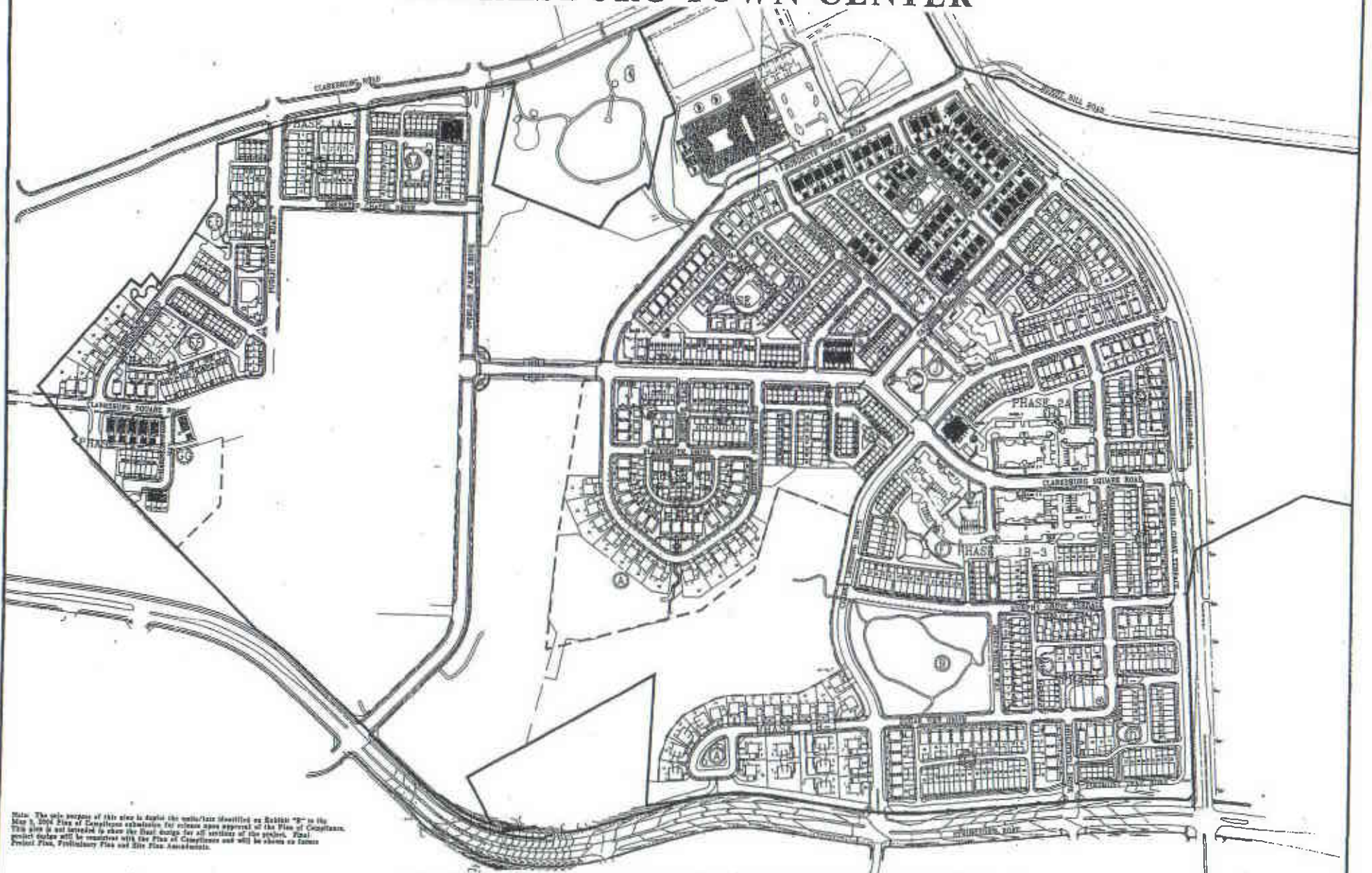
1. Applicant's Exhibit 1: Units/Lots to be Released (see MNCPPC file for large exhibit)
2. Applicant's Exhibit 2: Parking Exhibit (see MNCPPC file for large exhibit)
3. Staff's Exhibit 1: Units/Lots to be Released (bluelined) (see MNCPPC file for large exhibit)
4. Staff Report, dated June 1, 2006 (pages 1-16) and circle pages 17-91, excluding Section "S" on circle pages 29-30
5. June 15, 2006 Errata
6. First Stage: Development Standards (Table 1 and Table 2)

ATTACHMENT 1

**APPLICANT'S EXHIBIT 1: UNITS/LOTS TO BE RELEASED
AT TIME OF PLAN OF COMPLIANCE APPROVAL**

-- SEE MNCPPC FILE FOR LARGE EXHIBIT --

CLARKSBURG TOWN CENTER



Note: The only purpose of this plan is to show the units/lots identified as Exhibit "B" to the May 9, 2006 Plan of Compliance submitted for release upon approval of the Plan of Compliance. This plan is not intended to show the final design for all portions of the project. Final project design will be consistent with the Plan of Compliance and will be shown in future Project Plan, Preliminary Plan and Site Plan Attachments.

UNITS/LOTS TO BE RELEASED AT TIME OF PLAN OF COMPLIANCE APPROVAL

June 8, 2006

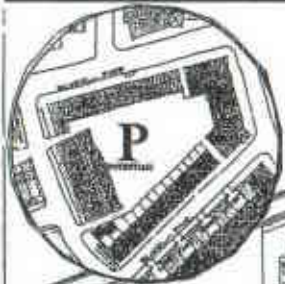
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ATTACHMENT 2

APPLICANT'S EXHIBIT 2: PLAN OF COMPLIANCE PARKING EXHIBIT

-- SEE MNCPPC FILE FOR LARGE EXHIBIT --

CLARKSBURG TOWN CENTER



BLOCK 4 INV. LAYOUT

DEVELOPMENT PROGRAM

1. Compliance with all applicable codes
2. The site shall be provided by the following minimum standards:
 - (A) High density residential
 - (B) Medium density residential

The City of Clarksville is a member of the Metropolitan Council of Governments and is subject to the following standards for development in the City of Clarksville:

3. The City of Clarksville is a member of the Metropolitan Council of Governments and is subject to the following standards for development in the City of Clarksville:
 - (A) High density residential
 - (B) Medium density residential



SEE PLAN OF COMPLIANCE FOR DETAILS

SEE PLAN OF COMPLIANCE FOR DETAILS

BASE PLAN

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BASE PLAN WITH BLOCKS

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PLAN OF COMPLIANCE PARKING EXHIBIT

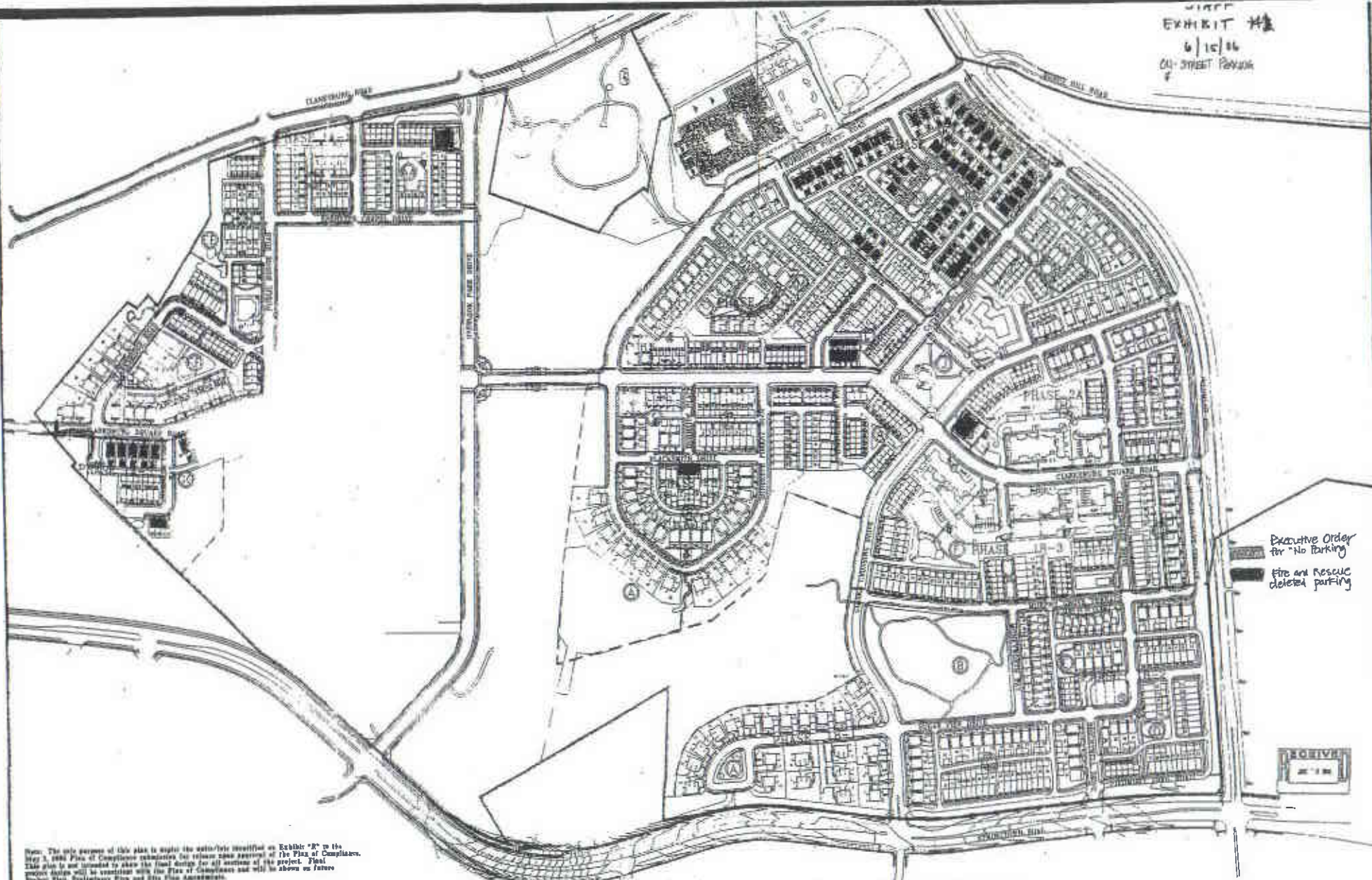
THIS PLAN OF COMPLIANCE PARKING EXHIBIT IS PROVIDED AS A GUIDE ONLY AND DOES NOT CONSTITUTE A GUARANTEE OF ACCURACY OR COMPLETENESS. THE USER OF THIS PLAN OF COMPLIANCE PARKING EXHIBIT SHALL BE RESPONSIBLE FOR VERIFYING THE ACCURACY AND COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.

ATTACHMENT 3

**STAFF'S EXHIBIT 1: UNITS/LOTS TO BE RELEASED
AT TIME OF PLAN OF COMPLIANCE (BLUELINED)**

-- SEE MNCPPC FILE FOR LARGE EXHIBIT --

WMP
EXHIBIT 2
6/10/06
CAL STREET PARKING



Note: The only purpose of this plan is to show the units/lot identified as Exhibit "B" to the May 3, 2006 Plan of Compliance submitted for release upon approval of the Plan of Compliance. This plan is not intended to show the final design for all sections of the project. Final project design will be consistent with the Plan of Compliance and will be shown on future Project Plan, Preliminary Plan and Site Plan Approvals.

UNITS/LOTS TO BE RELEASED AT TIME OF PLAN OF COMPLIANCE APPROVAL

June 8, 2006

ATTACHMENT 4

STAFF REPORT DATED JUNE 1, 2006

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

June 1, 2006

MEMORANDUM

TO: Montgomery County Planning Board

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

SUBJECT: Plan of Compliance
Clarksburg Town Center

RECOMMENDATION

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

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

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

3. **Phasing and Next Steps** - As part of the Plan of Compliance, the staff recommends that the following phasing of development be approved:

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

PURPOSE

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

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

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

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

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

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

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

PROJECT DESCRIPTION

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

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

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

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

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

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

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

ANALYSIS

1. Conformance with the Clarksburg Master Plan

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

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

Table: Mix of Residential Units

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

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

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

2. Conformance with the Development Standards

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

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

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

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

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

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

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

3. Amenities and Facilities

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

Table: Comparison of Amenities

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

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

Table: Comparison of Recreational Facilities

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

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

4. Phasing and Placement of Moderately Priced Dwelling Units

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

5. Design Standards for Streets and Alleys

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

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

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

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

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

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

6. Environmental Plan

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Parking Requirements

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

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

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

9. Street "O" and the Pedestrian Mews near the Adjacent Church

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

10. Additional Landscaping and Streetscaping

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

11. Sequence of Development Including the Amenities and Facilities

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

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

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

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

12. Economics of the Plan of Compliance

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

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

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

Table: Cost of Enhancements

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

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

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

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

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

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

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

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

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

PUBLIC OUTREACH

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

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

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

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

CONCLUSION

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

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

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

Attachments:

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

LINOWES
AND BLOCHER LLP
 ATTORNEYS AT LAW

May 3, 2006

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By Hand Delivery

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



Re: Clarksburg Town Center – Submission of Plan of Compliance

Dear Ms. Krasnow:

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

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

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

Ms. Rose Krasnow
May 3, 2006
Page 2

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

Sincerely,

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman



Todd D. Brown

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

#606039 v1

CLARKSBURG TOWN CENTER

DESCRIPTION OF MAJOR ELEMENTS MAKING UP PLAN OF COMPLIANCE

Retail Core

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

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

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

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

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

Amenities and Landscaping

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

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

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

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

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

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

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

Clarksburg United Methodist Church Connection

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

Master Developer and Builder Coordination

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

County Participation

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

Detailed Plan of Compliance

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

A. Development Program

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

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

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

661 townhouse units (including flex units)

50 live/work residential units

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

B. Retail Center (Blocks 1-5)

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

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

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

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

C. **Parking**

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

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

D. **Block GG**

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

E. **Route 355 Connection**

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

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

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

F. Clarksridge Road

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

G. Clark Family Memorial

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

H. Recreation Center/Pool Complex (Exhibit G)

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

6. An 800 square foot building shall be constructed at the corner of Sugarloaf Chapel Road and Catawba Hill Road with water and sewer connections for future operation and fit-out by the HOA.

I. Sugarloaf Chapel Drive

1. Demolish Sugarloaf Chapel Drive in front of the existing Residents Club Pool complex.
2. Install additional parking plaza with a bosque and paver in this area consistent with Exhibit H. Parking area will be either (i) all pavers; or (ii) part pavers and part asphalt. (See Paragraph J.2. below.)

J. Sinequa Square

1. Demolish existing fountain and infrastructure as necessary.
2. Install amphitheater-style tiered lawn seating above an elliptical plaza consistent with Exhibit I. If the Sugarloaf Chapel parking area identified in Paragraph I.2. above is constructed as all pavers, the elliptical area within the center of Sinequa Square (identified on Exhibit I as "Flat lawn for play (symmetrical on diagonal axis)") shall be an all grass area. If the Sugarloaf Chapel parking area is constructed as part paver/part asphalt, the elliptical area within the center of Sinequa Square (identified on Exhibit I as "Flat lawn area for play (symmetrical on diagonal axis)") shall be all pavers.
3. Install trees surrounding the Square and other landscaping/hardscaping in and around the Square as appropriate, to be determined in Developer/CTCAC design sessions prior to Site Plan submission.

K. Alley Entrances (Exhibits J-1 and J-2)

1. To improve the appearance of terminating alley views, in coordination with CTCAC install landscaping, fencing or both, as appropriate, at select locations to be shown on the Site Plan application(s), subject to owner permission and utility easement restrictions.
2. Total budget of the treatments specified in K.1. above shall not exceed \$270,000.

L. Greenway Trails

1. Construct a separate eight-foot asphalt bike path with landscaped overlook rest areas parallel to Overlook Park Drive.
2. Pathway within Greenway shall be natural surface. Other trails and landscaping to be constructed as shown on baseline plans.

3. At select locations to be shown on the Site Plan application(s), install teak benches and signage along paths and timber bridges over wetlands and stream crossings.
4. Modify (without expanding) existing culvert under Clarksburg Square Road to accommodate pedestrians, if permits can be obtained, including concrete walkway and handrails within culvert.

M. Additional Landscaping/Streetscaping

Additional landscape/streetscape features to be reviewed with and directed by CTCAC prior to submission shall be shown on the Site Plan application(s). The total additional cost for these features, *i.e.*, above baseline features costs, shall not exceed \$1 million.

N. Additional specific Landscaping Features and Piedmont Park improvements that are not included in "M" above

1. Install single row of London Plane Trees (4" caliper, 25' on center) in front of two-over-two units on Catawba Hill Drive fronting Sinequa Square. No modification to sidewalk, curb or paving shall be made in this area.
2. Install interim landscaping at Murphy Grove Pond as shown on Exhibit K as soon as possible after approval of this Plan of Compliance.
3. Install additional landscaping/improvements to Murphy Grove Pond as shown on Exhibit L upon completion of Stringtown Road and Block H.
4. Piedmont Woods Park (located east of Piedmont Road) shall be improved with a parking lot with lighting, picnic area, two tennis courts, one basketball court, dog park with natural features, multi-age play areas, and natural surface paths with three seating areas along the paths as shown on Exhibit M.

O. Bozzuto Buildings

1. Building 5, as shown on the Original Phase II Site Plan, will be constructed with the revisions shown on the "Eastside Building 5 and 6, Block 2 Proposed Plan with Program" (the "Eastside Plan"), attached as Exhibit N, that include elimination of a surface parking area and replacing the parking area with two new townhouse lots. No changes to elevations or building architecture are included.
2. Building 6 will be eliminated as shown in the Original Charrette Plan and Building 6 will be developed with a new park, townhouse lots and tower house lots, as shown on the Eastside Plan. Also, the townhouses are designed to be four (4) stories not to exceed 55 feet in height with the rear of the first story below grade.
3. Building 7, which is substantially complete, will be finished as shown on the Manor Homes Amendment (presented to the Planning Board on February 10,

2005) (the "Manor Homes Amendment"). When the Planning Board executes the Site Plan Signature Set for the Manor Homes Amendment now pending signature approval with the Planning Board, it will be for the limited purpose of allowing the construction of Building 7 and Building 9 to proceed as shown on the Site Plan Signature Set. The amendments to the proposed development on the Bozzuto Parcel for Building 7 are shown on Exhibit O. The Bozzuto Site Plan Amendment as to the Building 7 parcel will include the addition of a curb cut, demolition and reconstruction of the existing parking garage and reconfiguration of surface parking areas and dumpster location.

4. Building 9 will be constructed in accordance with the Manor Homes Amendment. In addition, (a) each building façade will be finished with brick veneer on the front and sides only and a stone water table, (b) the porches will be redesigned, and (c) windows will be adjusted to be consistent with existing floor plans. Building 9 is designed to be three (3) stories not to exceed 45 feet in height.
5. Buildings 10 and 11 will be constructed in accordance with the Manor Homes Amendment. In addition, (a) the elevations for Buildings 10 and 11 will be as shown on Exhibit P-1 and Exhibit P-2, respectively, (b) Buildings 10 and 11 will each be rotated 90 degrees to face the west to improve the view of the buildings approaching from the Town Center, (c) Bozzuto will adjust the elevations of these buildings so the first floor is below grade at the back of the building and at-grade along the street, (d) each building façade will be finished with brick veneer on the front and sides only and a stone water table, (e) the porches will be redesigned, and (f) window patterns will be adjusted to be consistent with existing floor plans. The buildings constructed on Lots 10 and 11 are designed to be up to four (4) stories not to exceed 55 feet in height.
6. Building 12 will be constructed in accordance with the Manor Homes Amendment. In addition, (a) each building façade will be finished with brick veneer on the front and sides only and a stone water table, (b) the porches will be redesigned, and (c) windows will be adjusted to be consistent with existing floor plans. Building 12 is designed to be three (3) stories and not to exceed 45 feet in height.
7. Development and construction with respect to Buildings 7, 9, 10 and 11 shall not be conditioned on the commencement of construction with respect to any other Building or any other amenities or other aspects of CTC, including, without limitation, recreational facilities, streetscape, open space, pedestrian connections that are not proposed for construction as part of Buildings 7, 9, 10 and 11, nor shall Bozzuto Homes, Inc. have any contribution obligations with respect to the Plan of Compliance, except this Paragraph O.

P. Moderately Priced Dwelling Units

1. 12.5% of the total number of units within Clarksburg Town Center shall be MPDUs.

2. Not more than 55 MPDUs shall be located west of Overlook Park Drive. Specific block locations and unit types to be set forth on project and site plan amendment submission.

Q. Development Standards

In connection with amendments to the Project Plan and Site Plan(s) needed to implement this Plan of Compliance, applicant, in coordination with CTCAC shall propose a comprehensive overall set of development standards for building height, setbacks and lot sizes which shall govern various sections of the project and which development standards shall be consistent with, and allow for, development in accordance with the Plan of Compliance as modified herein. However, different standards may apply to different sections of the development depending on the character of the area to be created and the status of construction within each area.

R. Emergency Access Requirements

Existing infrastructure shall be retrofitted to comply with Montgomery County Fire Rescue Services approval dated March 29, 2006 and as shown on Exhibit Q.

S. Outcome/Effect of Plan of Compliance

If approved by the Planning Board, this Plan of Compliance will:

1. State that the Plan of Compliance remediates and resolves all interim findings of violations by the Planning Board, all findings of violations recommended by Staff of M-NCPPC, and all allegations of violations that have been made or could have been made as of the date of the Planning Board's approval of the Plan of Compliance.
2. State that the Plan of Compliance shall govern all future approvals of project and site plans and the Board will not impose additional monetary or in-kind exactions as conditions of approval; provided, however, that in the event the Plan of Compliance is not implemented in accordance therewith, the Planning Board reserves the right to take enforcement action authorized by law.
3. State that because the Plan of Compliance is sufficient to remediate and resolve all categories of alleged violations, further proceedings to reach final determination on alleged violations are moot and will not be undertaken by the Board.
4. Establish that the Adequate Public Facilities validity period for development shall be valid and in full force and effect until completion of the development contemplated thereby.
5. Be the equivalent of a binding pre-application as to the anticipated Project Plan, Site Plan and, if necessary, Preliminary Plan amendments.

6. State that all dwelling units built and/or occupied that were the subject of alleged violations or determined to be violations by the Planning Board are "grandfathered". *In keeping with what they did do before*
7. State that neither a default by any other party under the Plan of Compliance or any other approved plan or permit with respect to the CTC nor any failure of any party to comply with any such approval, plan or permit shall be deemed to be a default or failure to comply by any other party.

The Plan of Compliance is submitted without prejudice to or waiver of the parties existing rights or defenses and if the terms and conditions of approval of the Plan of Compliance are not acceptable to an impacted party, then the Plan of Compliance shall (unless otherwise agreed by the impacted party or parties) be withdrawn as to the impacted party or parties and, in such event, shall be ineffective as to those parties.

T. Lift of Stop Work Orders dated September 20, 2005 and November 23, 2005

If approved by the Planning Board, the Plan of Compliance shall also constitute the Planning Board's determination that the Stop Work Orders dated September 20, 2005 and November 23, 2005 shall be lifted with respect to the lots/units so identified on Exhibit R and construction of such lots/units may proceed immediately. The Site Landscaping Plans - Phase II (cover sheet and sheets L-1 through L-39) comprising a part of Exhibit A hereto shall become a part of the site plan drawings for Phase II, subject to potential modification pursuant to Paragraph M above, as a part of the anticipated project plan, site plan, and/or preliminary plan amendments. The lifting of the Stop Work Order as to the remaining lots/units identified on Exhibit R shall occur contemporaneously with an approval by the Planning Board of a site plan amendment consistent with the recorded subdivision plats for such lots/units.

- U. This Description of the Major Elements Making Up the Plan of Compliance is incorporated into, and made a substantive part of, the plans included in Exhibits A - R as modified herein (collectively the "Exhibits") as if fully set forth on the Exhibits.

Index of Exhibits

- Exhibit A: Baseline Plans - Index (4 sheets) and Plans (148 sheets)
- Exhibit B: Blocks 1-5, Retail Core Plan and Program (2 sheets)
- Exhibit C-1: Town Center Green Plan (Alternative 1 – 1 sheet)
- Exhibit C-2: Town Center Green Plan (Alternative 2- 1 sheet)
- Exhibit D: Grand Staircase at Clarksburg United Methodist Church Plan (1 sheet)
- Exhibit E-1: Greenway Bridge Plan (Alternative 1 – 1 sheet)
- Exhibit E-2: Greenway Bridge Plan (Alternative 2 – 1 sheet)
- Exhibit F: Clark Memorial Plan (1 sheet)
- Exhibit G: Residents Club Pool Plan (1 sheet)
- Exhibit H: Sinequa Square Amphitheater Parking Plan (1 sheet)
- Exhibit I: Sinequa Square Plan (1 sheet)
- Exhibit J-1: Alley Entrance I Plan (1 sheet)
- Exhibit J-2: Alley Entrance II Plan (1 sheet)
- Exhibit K: Murphy Grove Pond Interim Plan (1 sheet)
- Exhibit L: Murphy Grove Pond Ultimate Plans and Pier Sketch (2 sheets)
- Exhibit M: Piedmont Woods Park Plan (1 sheet)
- Exhibit N: Eastside Building #5 and #6, Block 2 Proposed Plan with Program (1 sheet)
- Exhibit O: Bozzuto Building #7 Enlarged Charette Site Plan (1 sheet)
- Exhibit P-1: Bozzuto Building #10 Elevations Plan (1 sheet)
- Exhibit P-2: Bozzuto Building #11 Elevations Plan (1 sheet)
- Exhibit Q: Montgomery County Fire Rescue Services Modification Plans Index (1 sheet) and Plans (12 sheets)
- Exhibit R: Identification of Lots/Units subject to Lifting of Stop Work Order (3 sheets)

Exhibit A

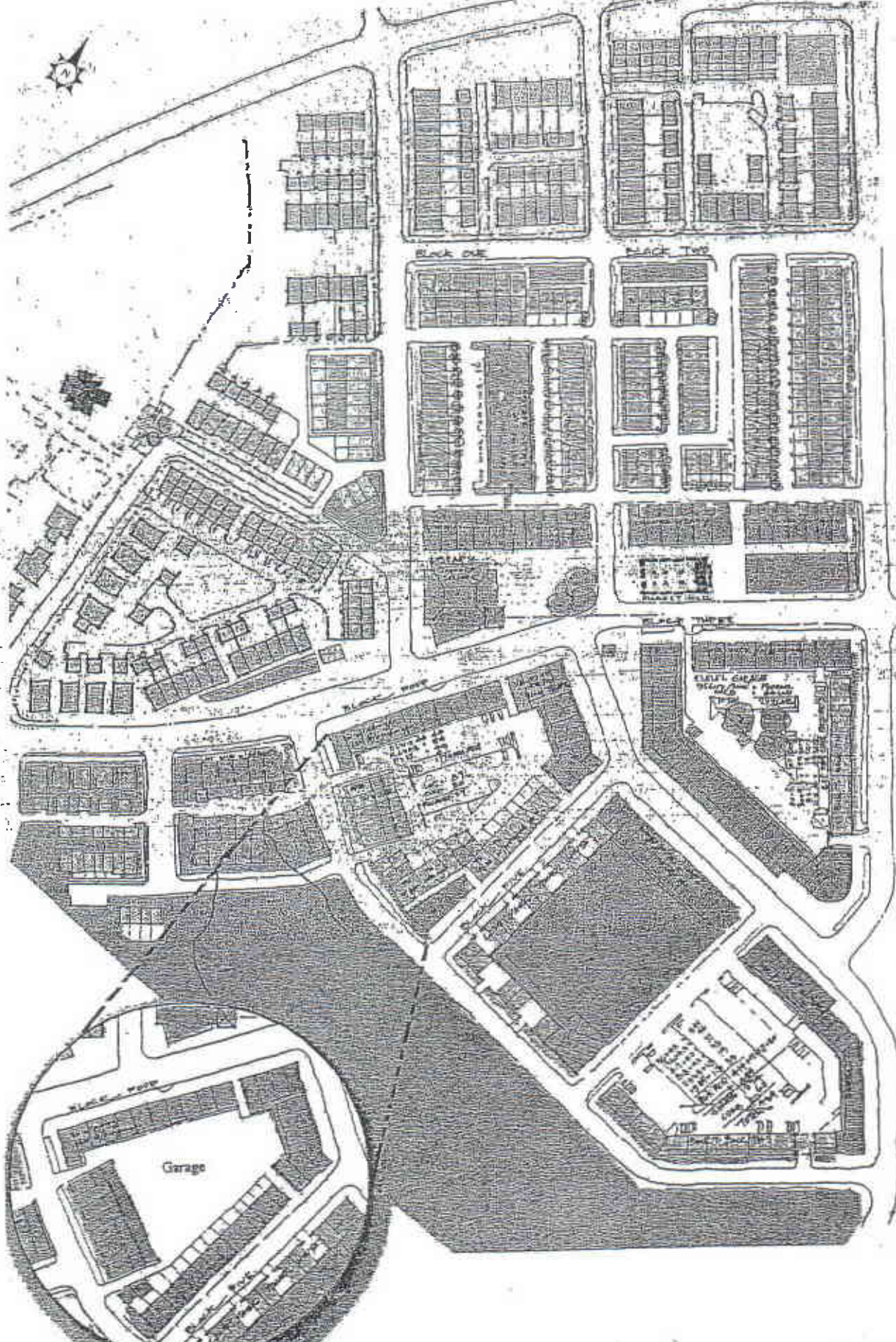
(BASELINE PLANS)

| Title of Plan | Sheet Nos. | MNCPPC/DPS Approval Date or Most Recent Revision Date |
|---|---|--|
| Phase IA Site Landscaping Plan Note: Coversheet also included, but list of plans on Coversheet does not include Sheet L-11A. | L-1 L-2 L-3 L-4A L-4B L-4C L-4D L-4E L-4F L-4G L-5A L-5B L-6 L-7A L-7B L-08 L-09 L-10 L-11 L-11A | 05/30/03 |
| Public Storm Drain, Paving & Street Lighting Plan | 1 2 3 | 11/20/02 (Revs. 1, 2 - 09/09/03) 11/20/02 (Revs. 1, 2 - 09/09/03) 11/20/02 (Revs. 1, 2 - 09/09/03) |
| Storm Drain & Paving Plan – N Contract | 1 2 2A 3 4 5 6 7 8 9 10 | 09/23/03 03/11/05 03/11/05 09/23/03 (Rev. 5, 02/03/04; Rev 6, 08/09/05) 09/23/03 09/23/03 (Rev. 4, 01/07/04) 09/23/03 09/23/03 09/23/03 (Rev. 4, 01/07/04; Rev. 5, 02/23/04) 09/23/03 (Rev. 4, 01/07/04) 09/23/03 |

| | | |
|---|----------------|--|
| Site Landscape Plan Phase IB, Part 3 | Coversheet | 10/31/02 |
| | L-1 | 10/31/02 |
| | L-2 | 10/31/02 |
| | L-3 | 10/31/02 |
| | L-4 | 10/31/02 |
| | L-5 | 10/31/02 |
| | L-6 | 10/31/02 |
| | L-7 | 10/31/02 |
| | L-8 | 10/31/02 |
| | L-9 | 10/31/02 |
| | L-11A L-11B | 10/31/02 10/31/02 |
| Storm Drain and Paving Plan Phase IB, Part 3, Lots/Blocks: 1-53/F, 9-24/O, Parcels A, B & C | 1 | 11/28/01 (Rev. 1, 01/14/02) |
| | 2 | 11/28/01 |
| | 3 | 11/28/01 |
| | 4 | 11/28/01 |
| Final Landscape/Hardscape Plan Phase IB-1 | Coversheet | 04/26/02 (CD Set) |
| | L-1 | 05/06/02 (Permit Set as revised 10/31/02) |
| | L-2 | 05/06/02 (Permit Set as revised 10/31/02) |
| | L-3 | 04/26/02 (CD Set) |
| | L-4 L-5 | 05/06/02 (Permit Set) 05/06/02 (Permit Set) |
| Phase IB Storm Drain & Paving Plan | 1 | 06/05/00 |
| | 2 | Unsigned drainage area map |
| | 3 | 06/05/00, 09/29/00 |
| | 4 | 06/05/00 |
| | 5 | 06/05/00 |
| | 6 | 06/05/00 |
| | 7 | 06/05/00 |
| | 8 | 09/29/00 |
| | 9 | 09/29/00 |
| | 10 | 09/29/00 |
| Site Landscaping Plan-Phase IB, Part 2 | Coversheet | 12/04/01 |
| | L-1 | 12/04/01 |
| | L-2 | 12/04/01 |
| | L-3 | 06/10/02 |
| | L-4 | 12/04/01 |
| | L-5 | 06/10/02 |
| | L-6 | 12/04/01 |
| | L-7 | 12/04/01 |
| | L-8 | 12/04/01 |
| L-9 | 12/04/01 | |

| | | | |
|------------------------------|--|---------------------------|---|
| Site Landscape Plan-Phase II | Coversheet | 8/10/04 (latest revision) | |
| | L-2 | 7/21/04 (latest revision) | |
| | L-3 | 7/21/04 (latest revision) | |
| | L-4 | 7/21/04 (latest revision) | |
| | L-5 | 7/21/04 (latest revision) | |
| | L-6 | 7/21/04 (latest revision) | |
| | L-7 | 7/21/04 (latest revision) | |
| | L-8 | 7/21/04 (latest revision) | |
| | L-9 | 7/21/04 (latest revision) | |
| | L-10 | 7/21/04 (latest revision) | |
| | L-11 | 7/21/04 (latest revision) | |
| | L-15 | 7/21/04 (latest revision) | |
| | L-16 | 7/21/04 (latest revision) | |
| | L-17 | 7/21/04 (latest revision) | |
| | L-18 | 7/21/04 (latest revision) | |
| | L-19 | 7/21/04 (latest revision) | |
| | L-19A | 7/21/04 (latest revision) | |
| | L-20 | 7/21/04 (latest revision) | |
| | L-21 | 8/10/04 (latest revision) | |
| | L-22 | 7/21/04 (latest revision) | |
| | L-23 | 7/21/04 (latest revision) | |
| | L-24 | 7/21/04 (latest revision) | |
| | L-25 | 7/21/04 (latest revision) | |
| | L-26 | 7/21/04 (latest revision) | |
| | L-27 | 7/21/04 (latest revision) | |
| | L-28 | 7/21/04 (latest revision) | |
| | L-29 | 7/21/04 (latest revision) | |
| | L-30 | 7/21/04 (latest revision) | |
| | L-31 | 7/21/04 (latest revision) | |
| | L-32 | 7/21/04 (latest revision) | |
| | L-33 | 7/21/04 (latest revision) | |
| | L-34 | 7/21/04 (latest revision) | |
| | L-35 | 7/21/04 (latest revision) | |
| | L-36 | 7/21/04 (latest revision) | |
| | L-37 | 7/21/04 (latest revision) | |
| | L-38 | 7/21/04 (latest revision) | |
| | L-39 | 7/21/04 (latest revision) | |
| | Storm Drain & Paving Plan Phase 2A, Lots/Blocks: 1-13, 19-27/G, 1-23/H, 1-39/J, 1-5/K, 7-14/L, 1-8/N, 1-8/O, Parcel A | 1 2 3 4 5 | 12/04/02 12/04/02 (Rev. 1, 11/10/03) 12/04/02 12/04/02 (Rev. 1, 11/10/03) 12/04/02 (Rev. 1, 11/10/03) |
| | | | |

| | | |
|---|---|--|
| Storm Drain and Paving Plan Phase 2B, Lots/Blocks: 44-53, 75-82/A, 15-19/L, 50-68/M, 1-5, 13-18, 29-34/R, 1-6/S, 1-18/T | 1 | 03/04/03 (Rev. 1, 11/04/03; Rev. 3, 12/18/03) |
| | 2 | 03/04/03 (Rev. 1, 11/04/03; Rev. 3, 12/18/03; Rev. 4, 03/08/04) |
| | 3 | 03/04/03 (Rev. 1, 11/04/03; Rev. 3, 12/18/03; Rev. 4, 03/08/04) |
| | 4 | 03/04/03 (Rev. 1, 11/04/03; Rev. 3, 12/18/03; Rev. 4, 03/08/04) |
| | 5 | 03/04/03 (Rev. 1, 11/04/03; Rev. 3, 12/18/03) |
| Storm Drain and Paving Plan Phase-2C, Lots/Blocks: 1-6/L, 1-49/M, 9-24/N | 1 | 05/22/03 (Rev. 1, 07/29/03) |
| | 2 | 05/22/03 |
| | 3 | 05/22/03 |
| | 4 | 05/22/03 (Rev. 1, 07/29/03) |
| | 5 | 05/22/03 (Rev. 1, 07/29/03) |
| | 6 | 05/22/03 (Rev. 1, 07/29/03) |
| Storm Drain and Paving Plan Phase 2D, Lots/Blocks: 6-21/K, 25-49/N | 1 | 11/14/03 |
| | 2 | 11/14/03 |
| | 3 | 11/14/03 |
| | 4 | 11/14/03 |
| Storm Drain & Paving Plan, Lots/Blocks: 33-72/C, 1-46/D, 1-29/E | 1 | 09/05/01 |
| | 2 | 09/05/01 |
| | 3 | 09/05/01 |
| | 4 | 09/05/01 |
| | 5 | 09/05/01 |
| The above Baseline Plans include (i) an 8' asphalt-paved combination bike path/sidewalk along the northwesterly side of the Stringtown Road right-of-way from MD Route 355 to Snowden Farm Parkway (Piedmont Road); and (ii) an 8' asphalt-paved bike path along the easterly side of the Clarksburg Road right-of-way, from Spire Street to Snowden Farm Parkway (Piedmont Road), excluding the frontage of the now or formerly St. Clair and Shrader property (Parcel 612). | | |



Block 4 Retail Option


 Exhibit B
 (Sheet 1)

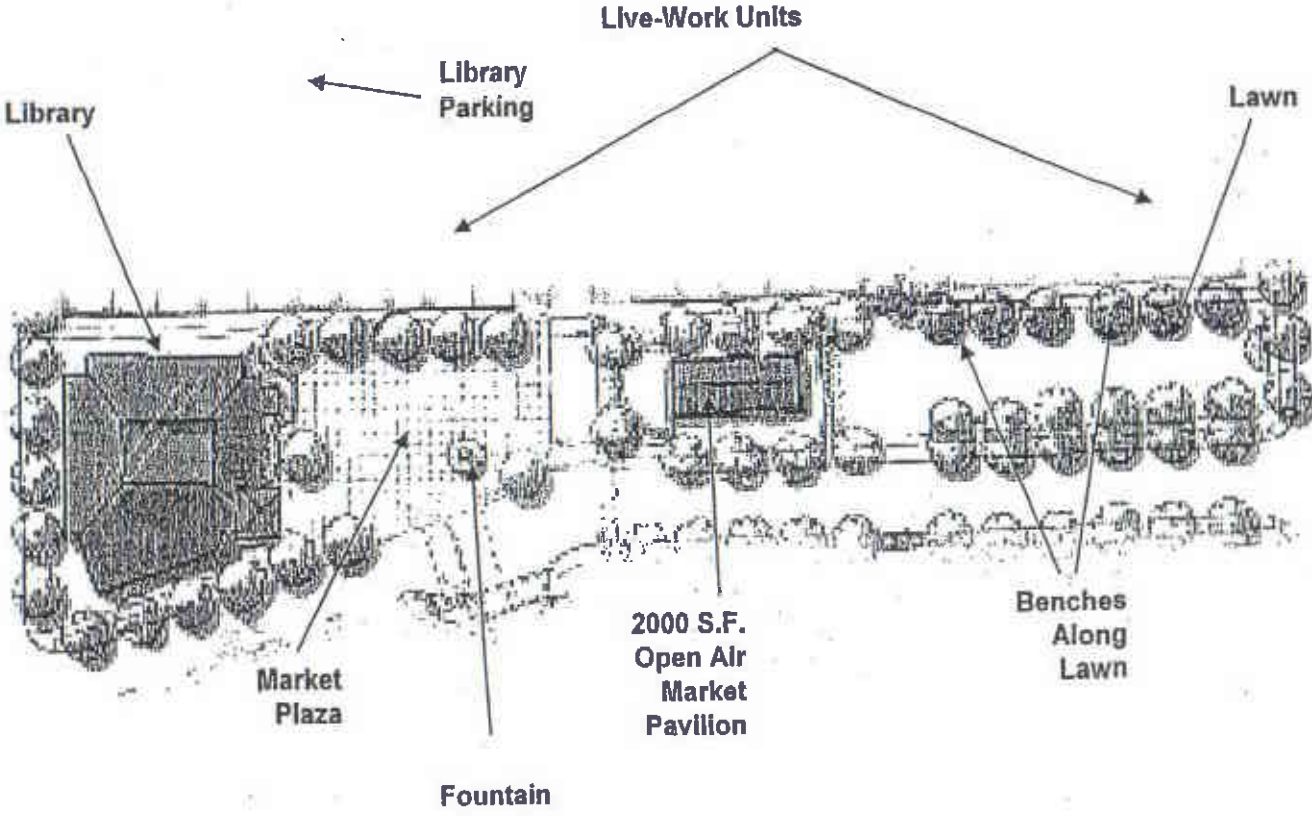
West Side Plan
 April 3, 2006
 not to scale

4/03/06 Plan

| Location | Units | Retail | L/W Retail |
|---------------------------------|------------|----------------|---------------|
| Block 1 | 45 | | 9,600 |
| Block 2 | 75 | | 12,480 |
| Block 3 | 48 | 30,000 | 9,600 |
| Block 4 | 41 | 12,600 | 10,560 |
| Block 5 | 54 | 84,100 | |
| GG west | 16 | | |
| GG east | 6 | | 5,760 |
| pool site + | 13 | | |
| Bozz. #9 | 12 | | |
| Total Units (Incl. MPDU) | 310 | 126,700 | 48,000 |
| GG possible pending approval | 8 | | |
| Block 4 Alternate plan | 44 | 23,800 | 18,240 |

CLARKSBURG

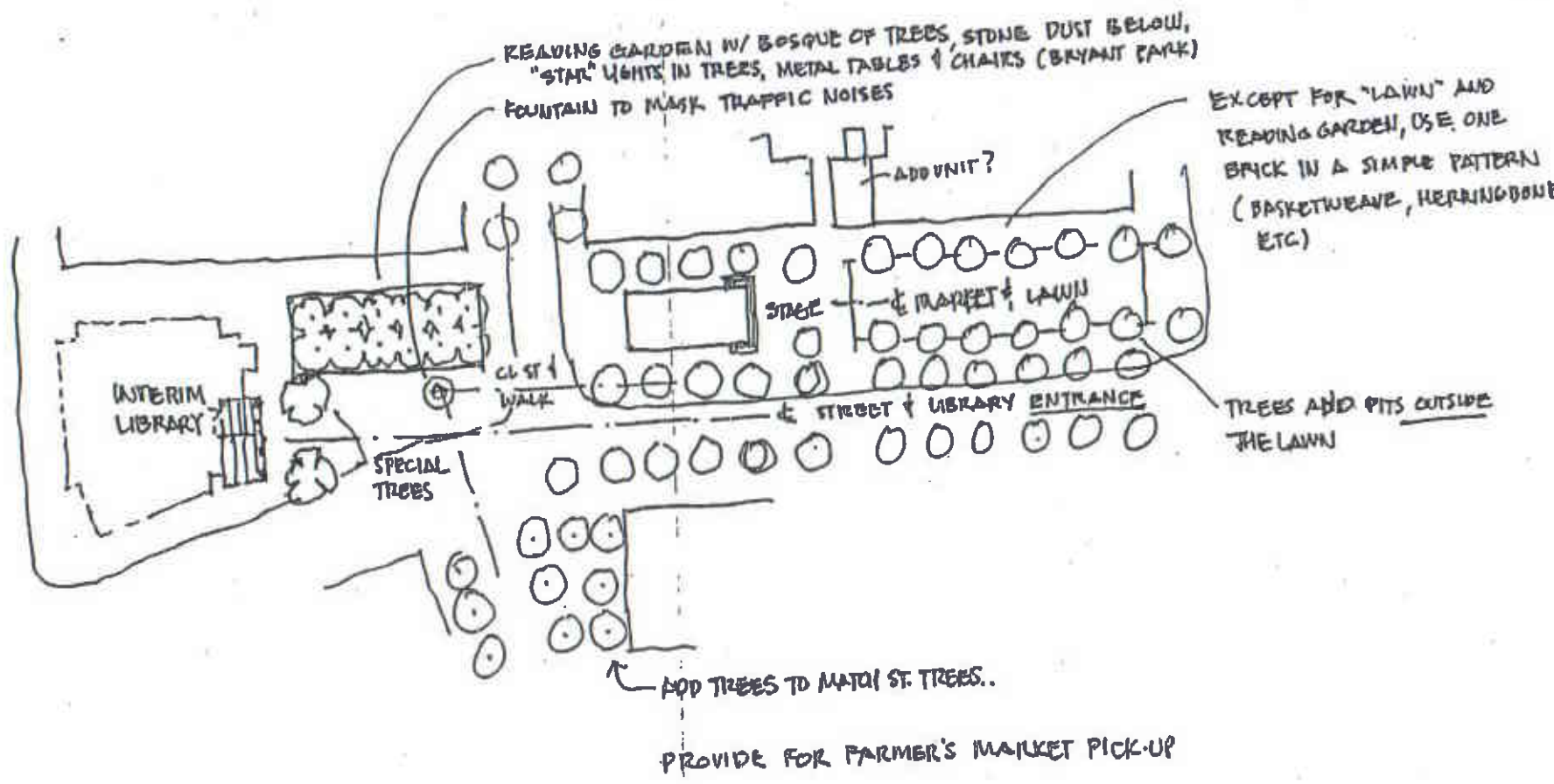
38



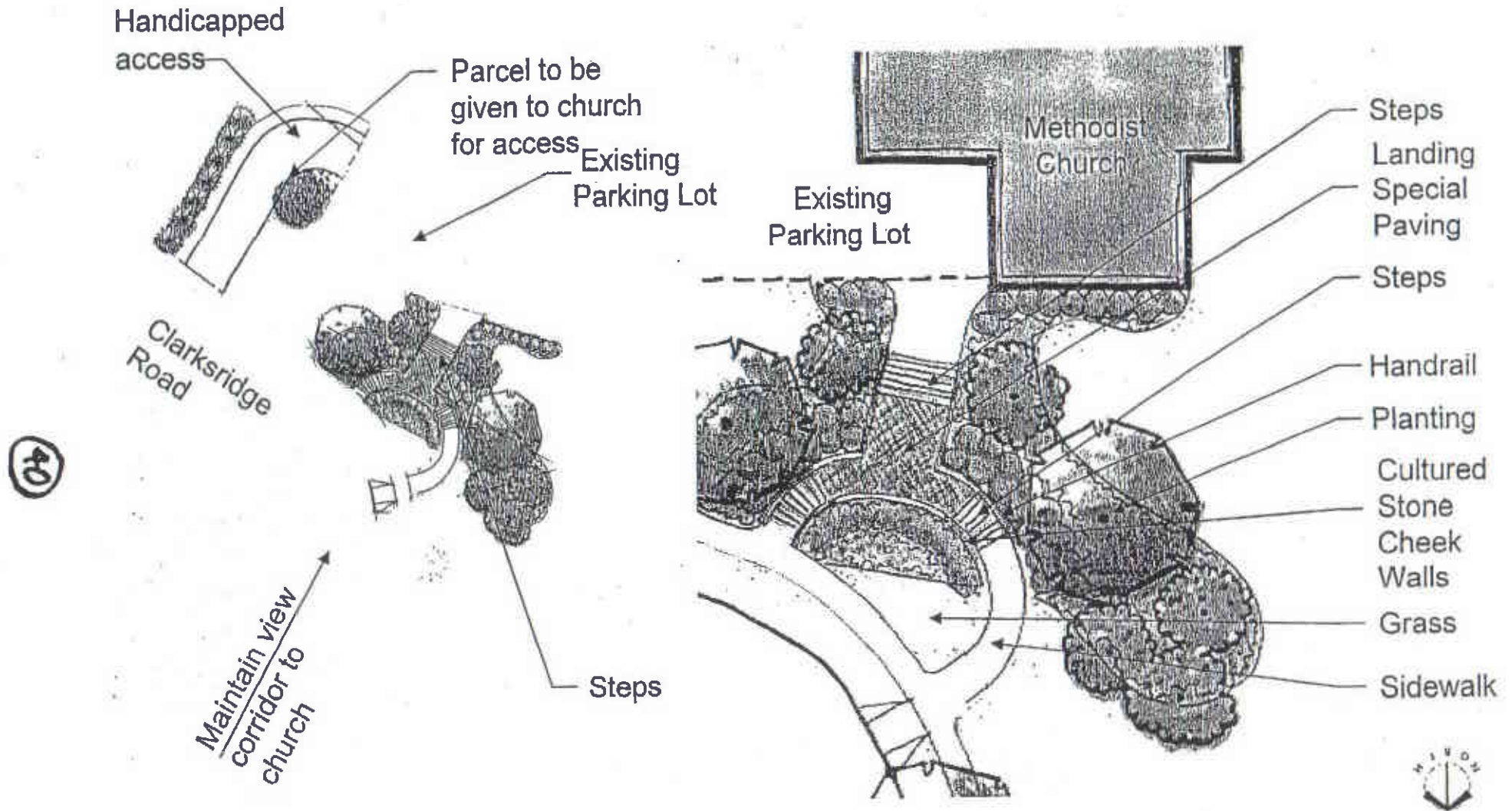
Conceptual Town Center Green

39

2

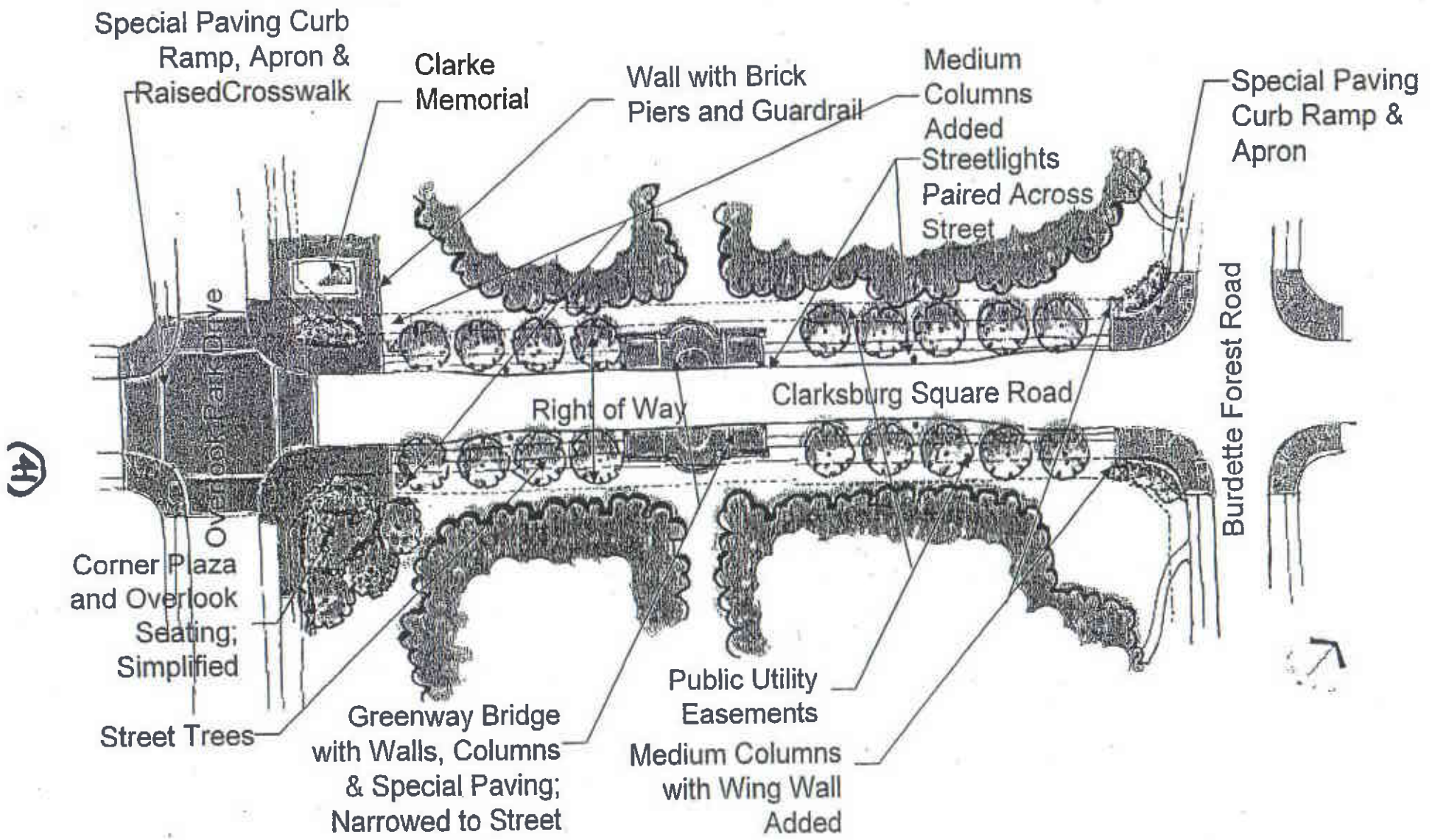


CLARKSBURG



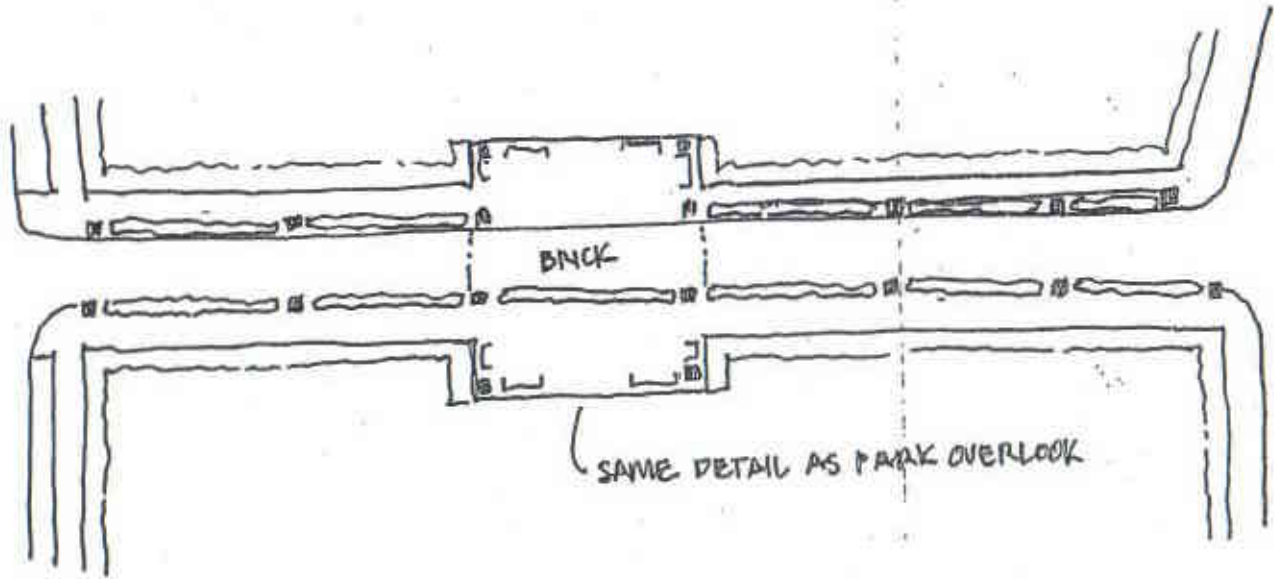
Concept for the Grand Staircase at Clarksburg United Methodist Church

CLARKSBURG



Concept for the Greenway Bridge

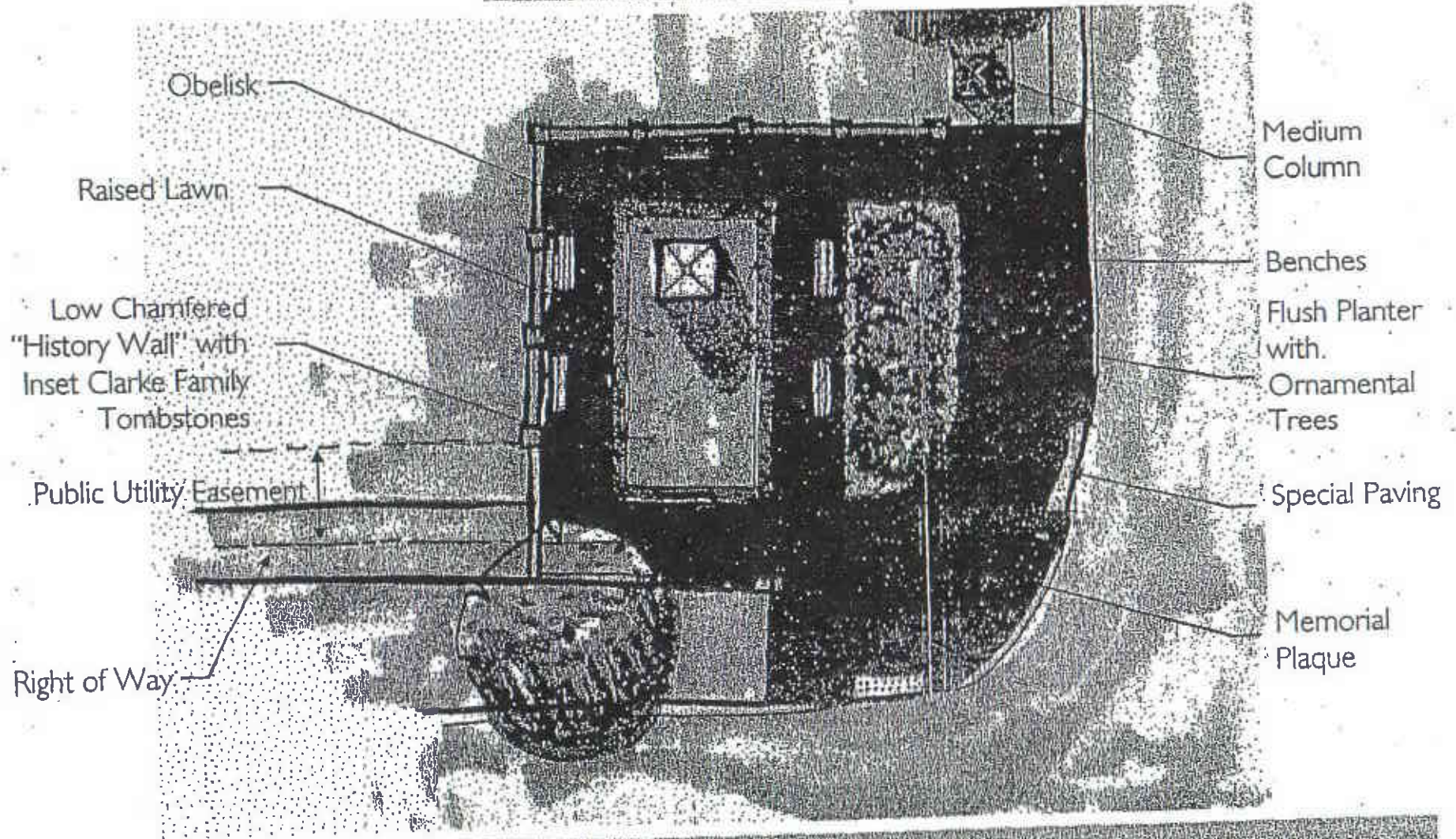
42



SIMPLY, SIMPLY

Clarke Memorial

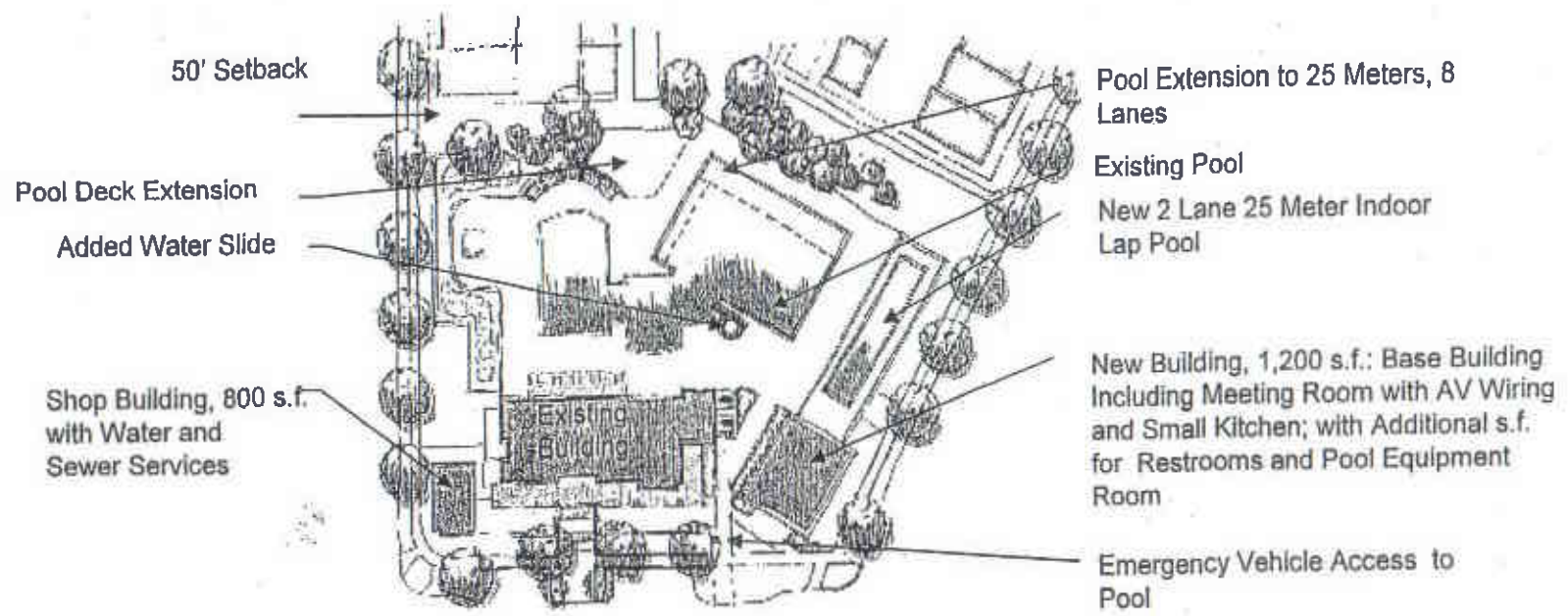
43



CLARKSBURG TOWN CENTER

Landscaping Design

CLARKSBURG

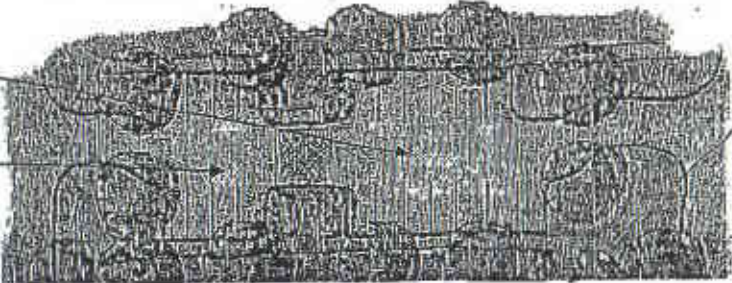




Expanded Parking

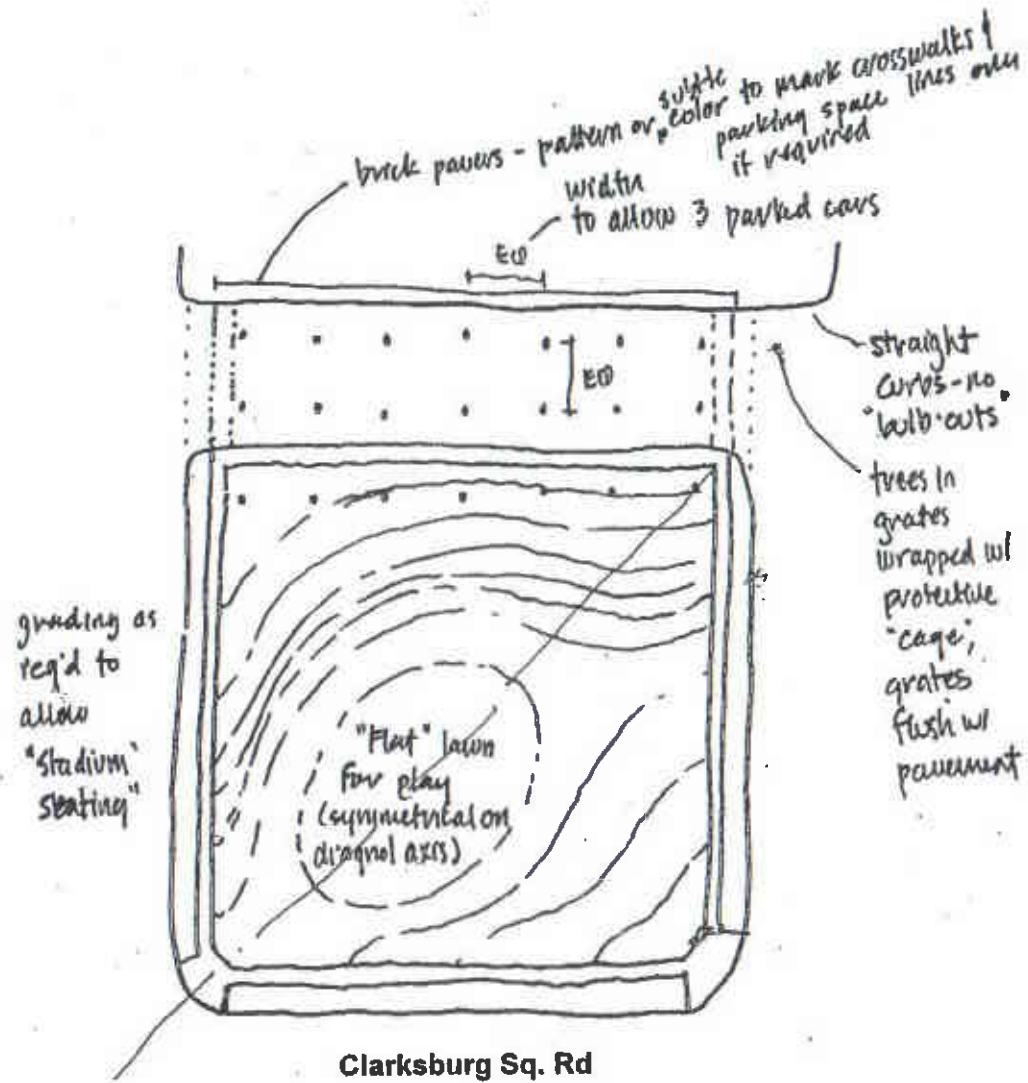
Special Paving
Crosswalk

Sign Wall
and Planting



CLARKSBURG

46

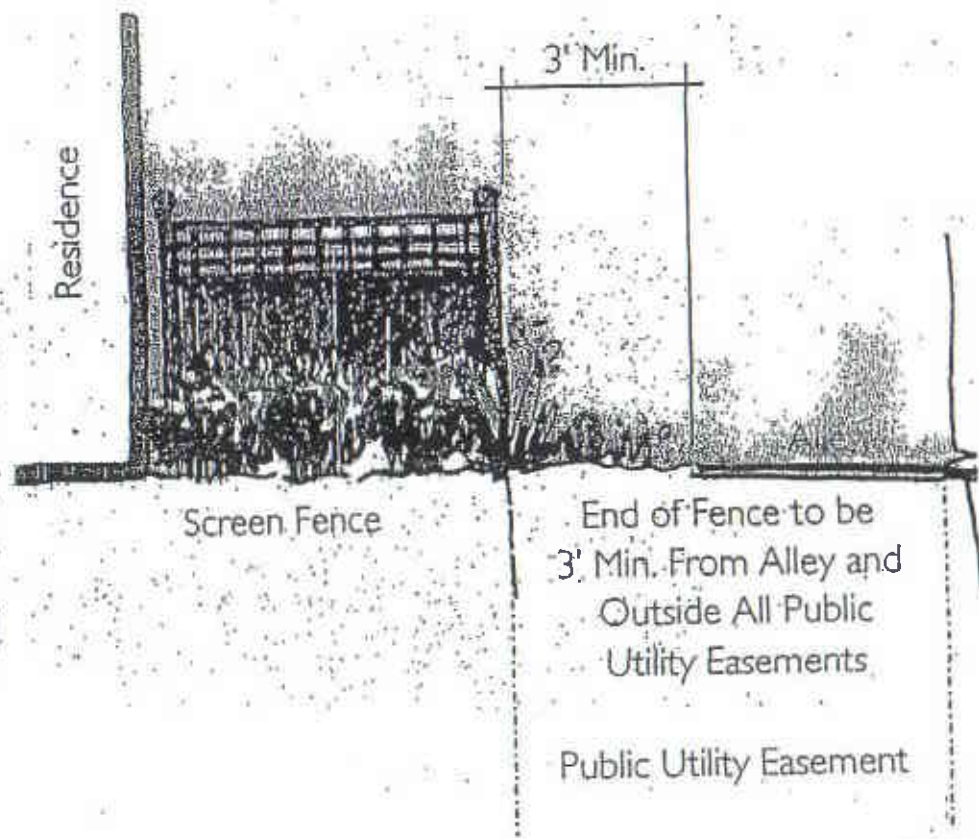
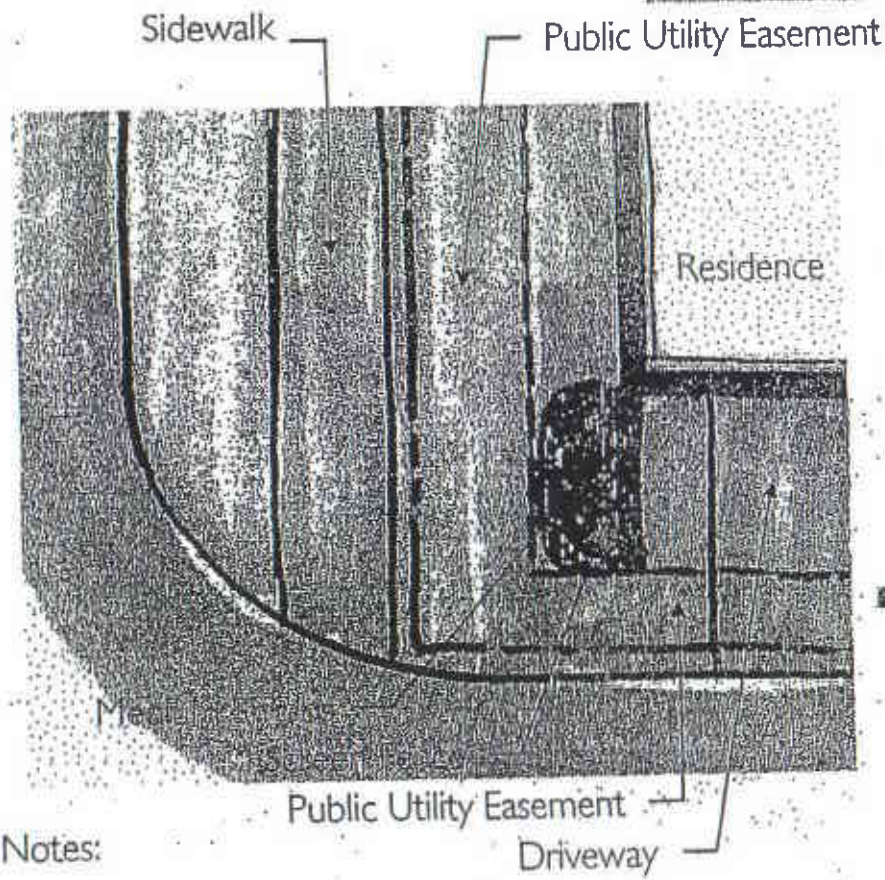


Sinequa Square Concept



Alley Entrance / Townhomes With Integral Garages

47



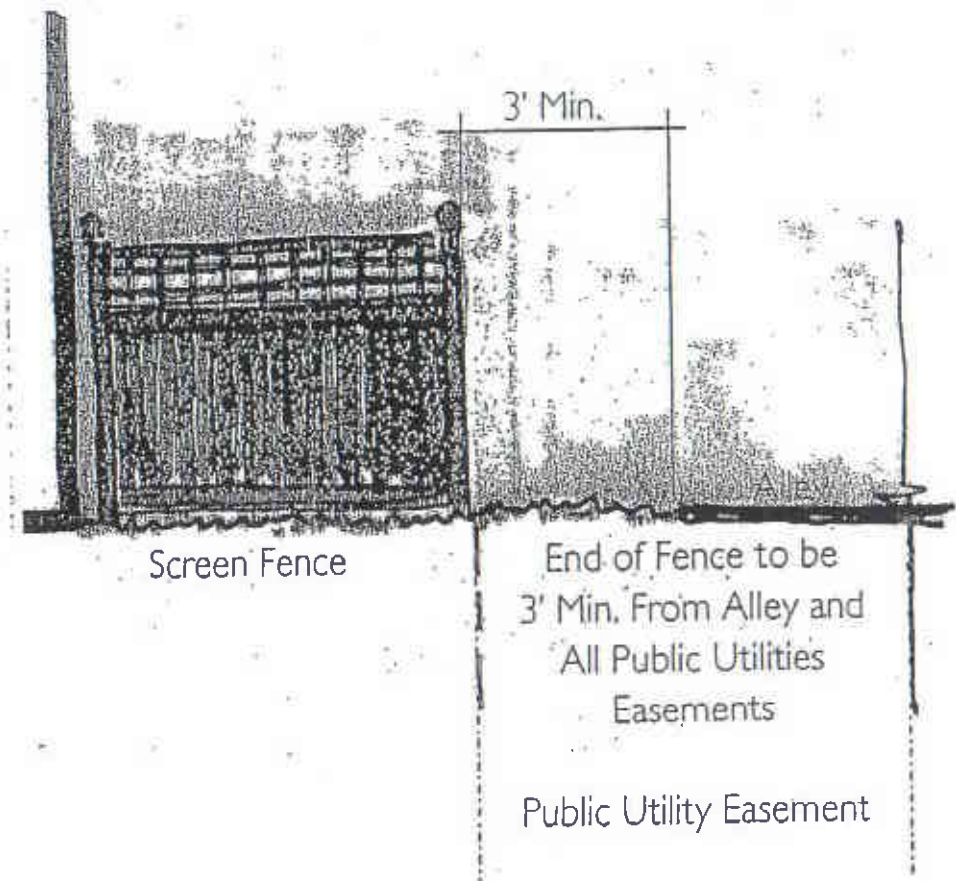
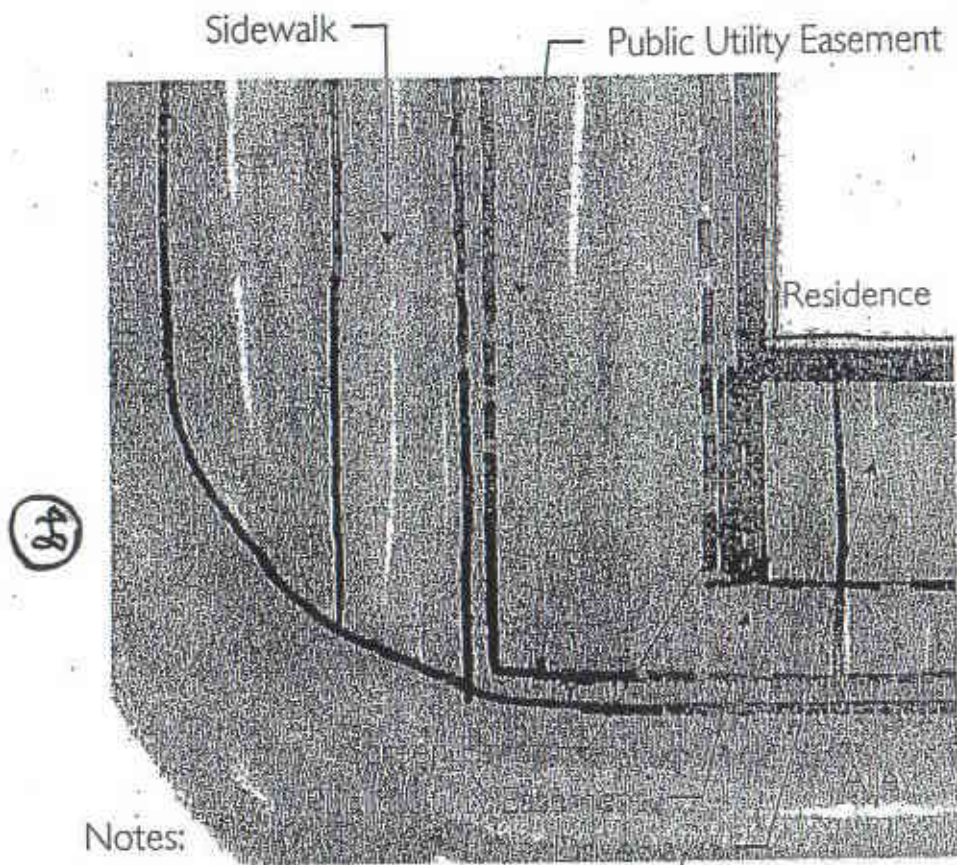
Notes:

- Use where integral garages are back to back
- Installation subject to property owner approval
- Installation subject to public utility easement requirements; use where distance between side of House and Public Utility Easement is 30" or greater

CLARKSBURG TOWN CENTER

Landscape Design

Alley Entrance II Townhomes With Integral Garages



Notes:

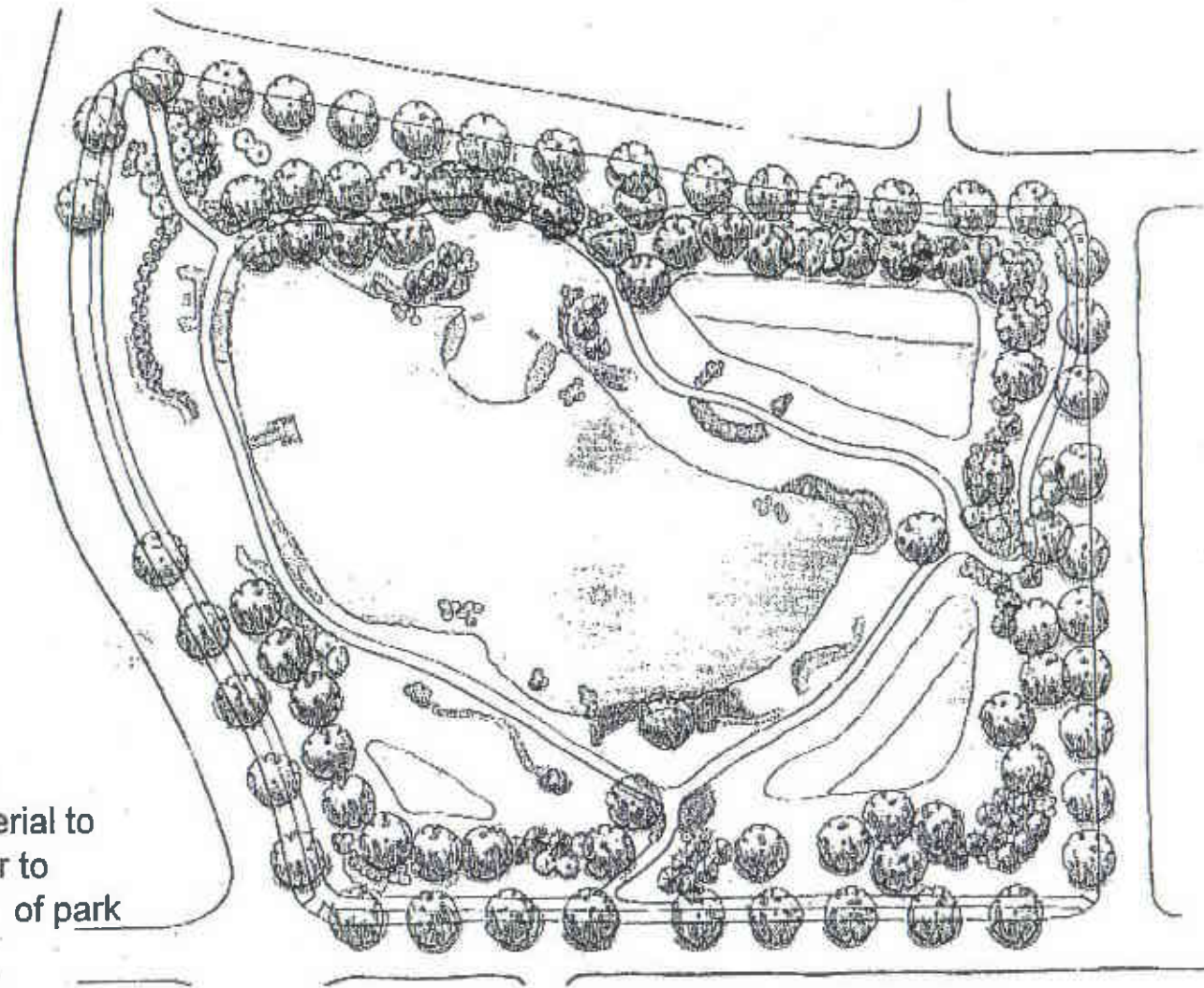
- Use where integral garages are back to back
- Installation subject to property owner approval
- Installation subject to public utility easement requirements; use where distance between side of House and Public Utility Easement is less than 30"

CLARKSBURG

49

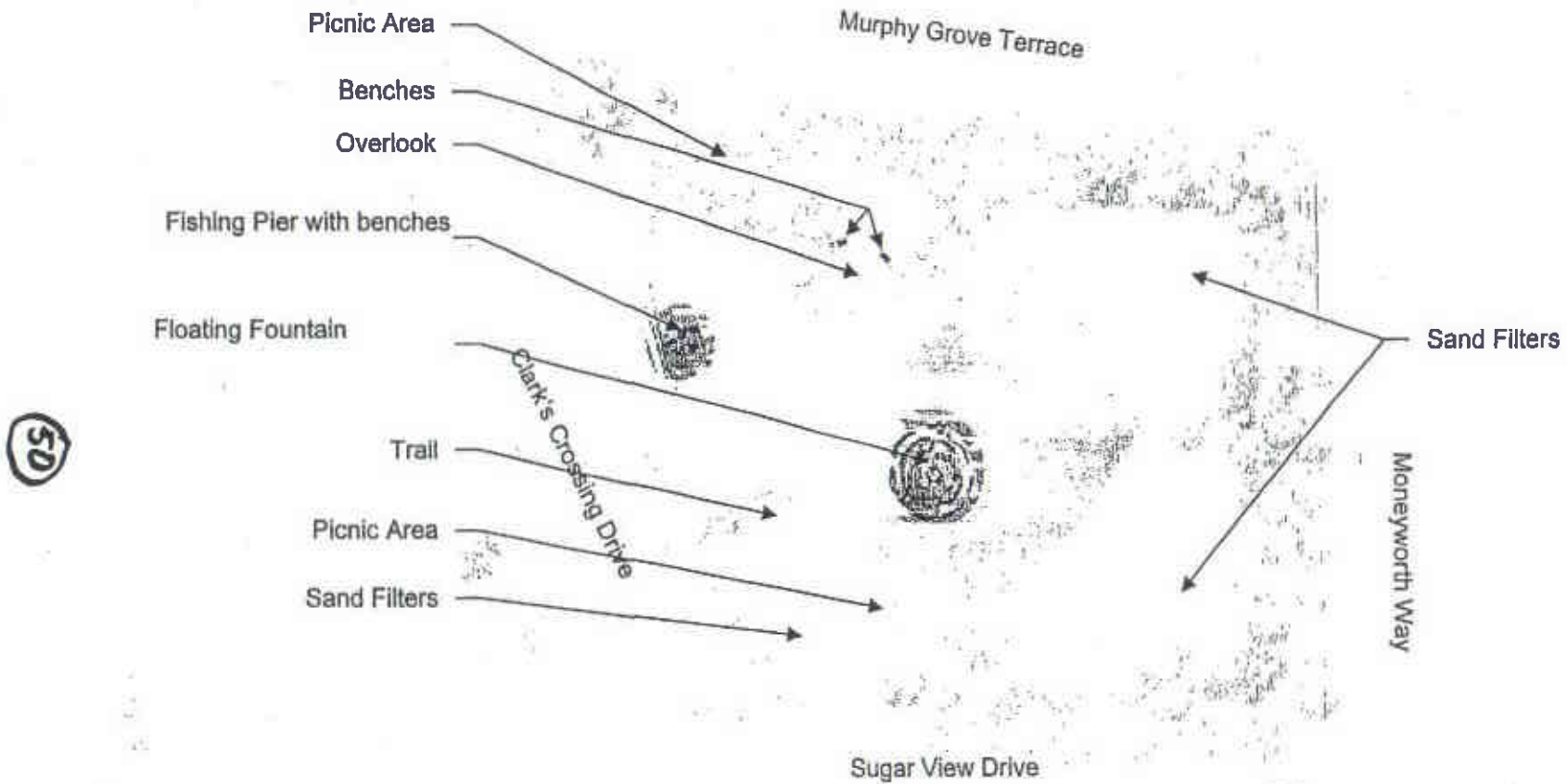
Note:

Color Indicates
Landscape Material to
be Installed prior to
final conversion of park



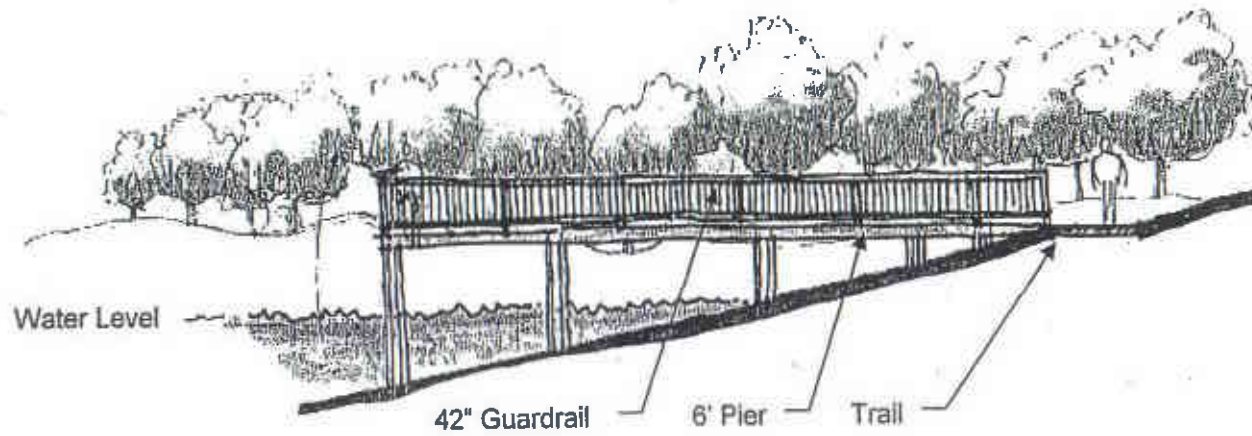
Interim Concept for Murphy's Grove Pond

CLARKSBURG

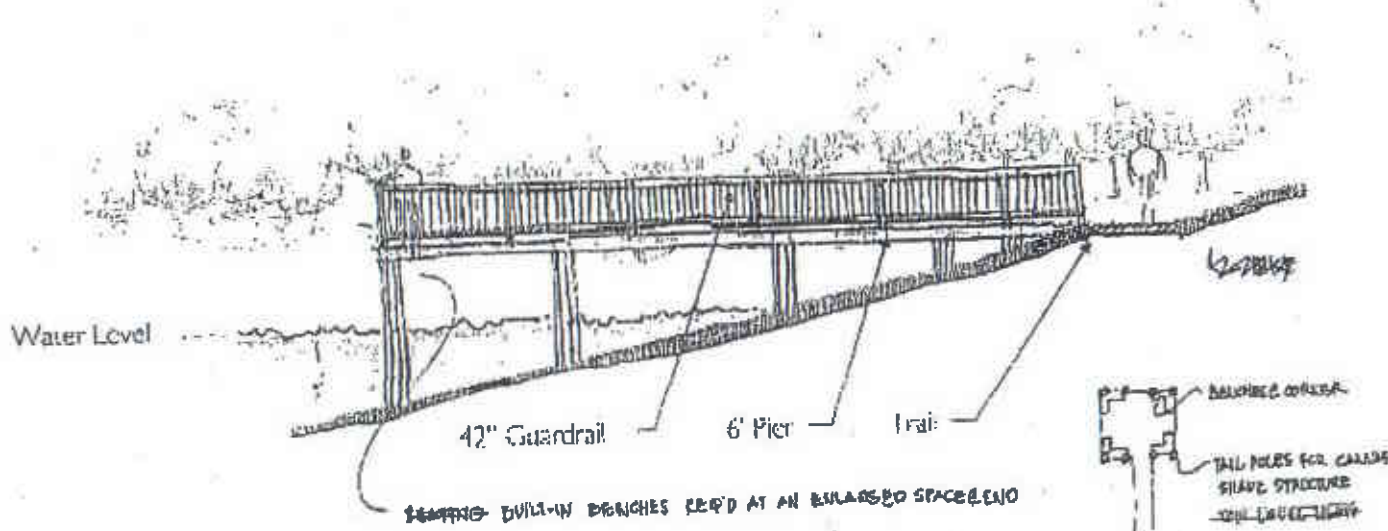


Ultimate Concept for Murphy's Grove Pond

CLARKSBURG



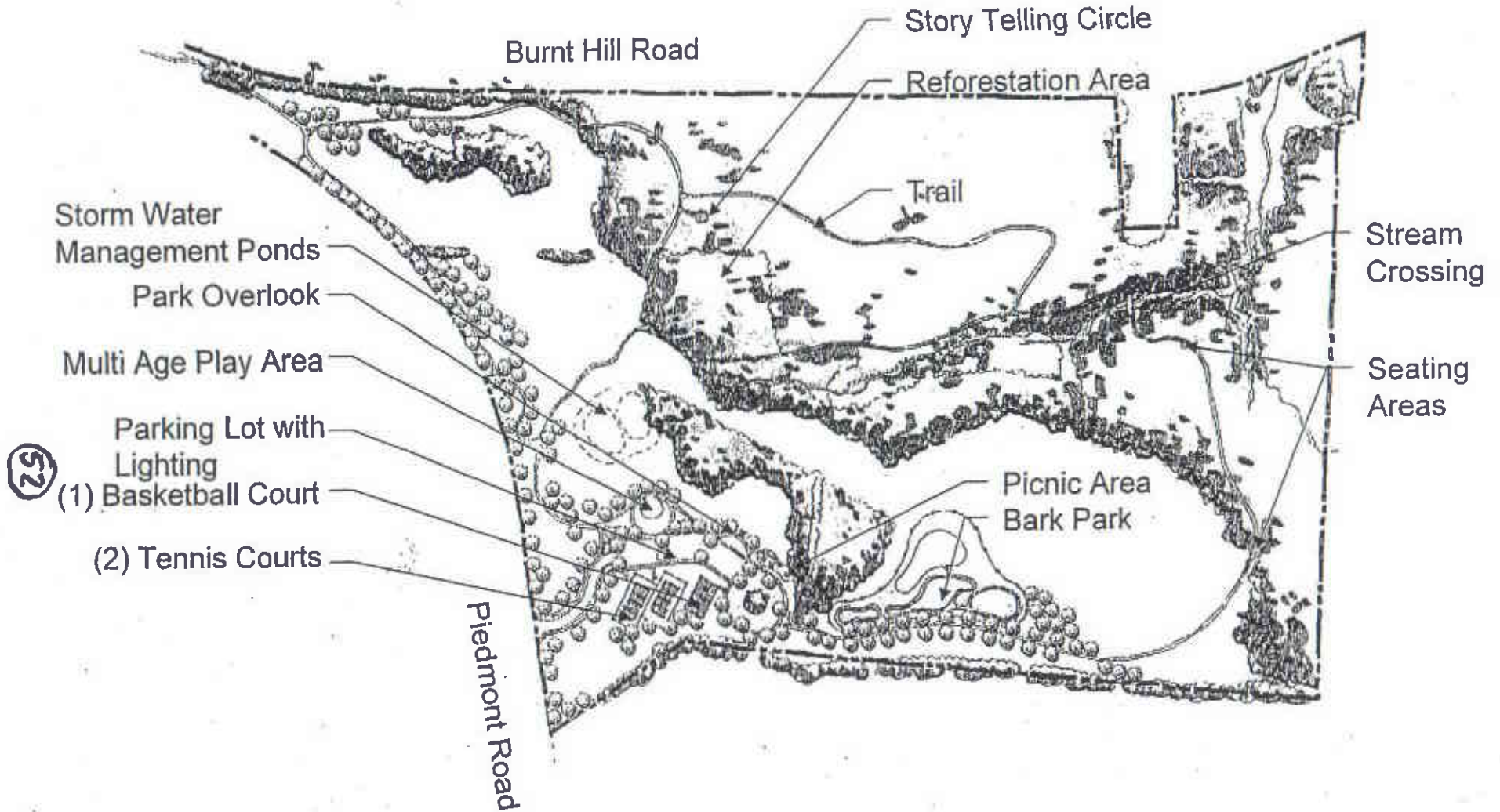
51



Concept for Murphy's Grove Pond Pier

TORTI GALLAS AND PARTNERS • DUANY PLATER-ZYBERK & COMPANY • Michael Vergason Landscape Architects

CLARKSBURG



Concept for Piedmont Woods





CLARKSBURG TOWN CENTER

BOZZUTO HOMES, INC.

CLARKSBURG TOWN CENTER

EASTSIDE BUILDINGS 1 & 6, BLOCK 2 PROPOSED PLAN WITH PROGRAM



PROPOSED PROGRAM

Building 1, no change

- 15 (1) One House with 2 car garage
 - 1 Three House with 2 car garage
 - 1 Three House with slightly reduced pricing
- off-site

1. Delete hot lot - unnecessary due to existing hot lot nearby.
2. CHECK TO MAKE SURE SANDS WORK - IT LOOKS TOO STEEP - DELETE CONNECTION.
3. PROVIDE DIMENSIONS OF ALL CHANGES TO FOOTPRINTS & # OF STAIRS
4. I.D. ALL RET. WALLS & SHOW HEIGHT

Will Dallas & Partners
 Danny Flynn/Zybeck & Company
 - Mixed Virginia Landscape Architects

53

Building #5 and #6 Enlarged Charrette Site Plan



CLARKSBURG TOWN CENTER
BOZZUTO HOMES, INC.

54

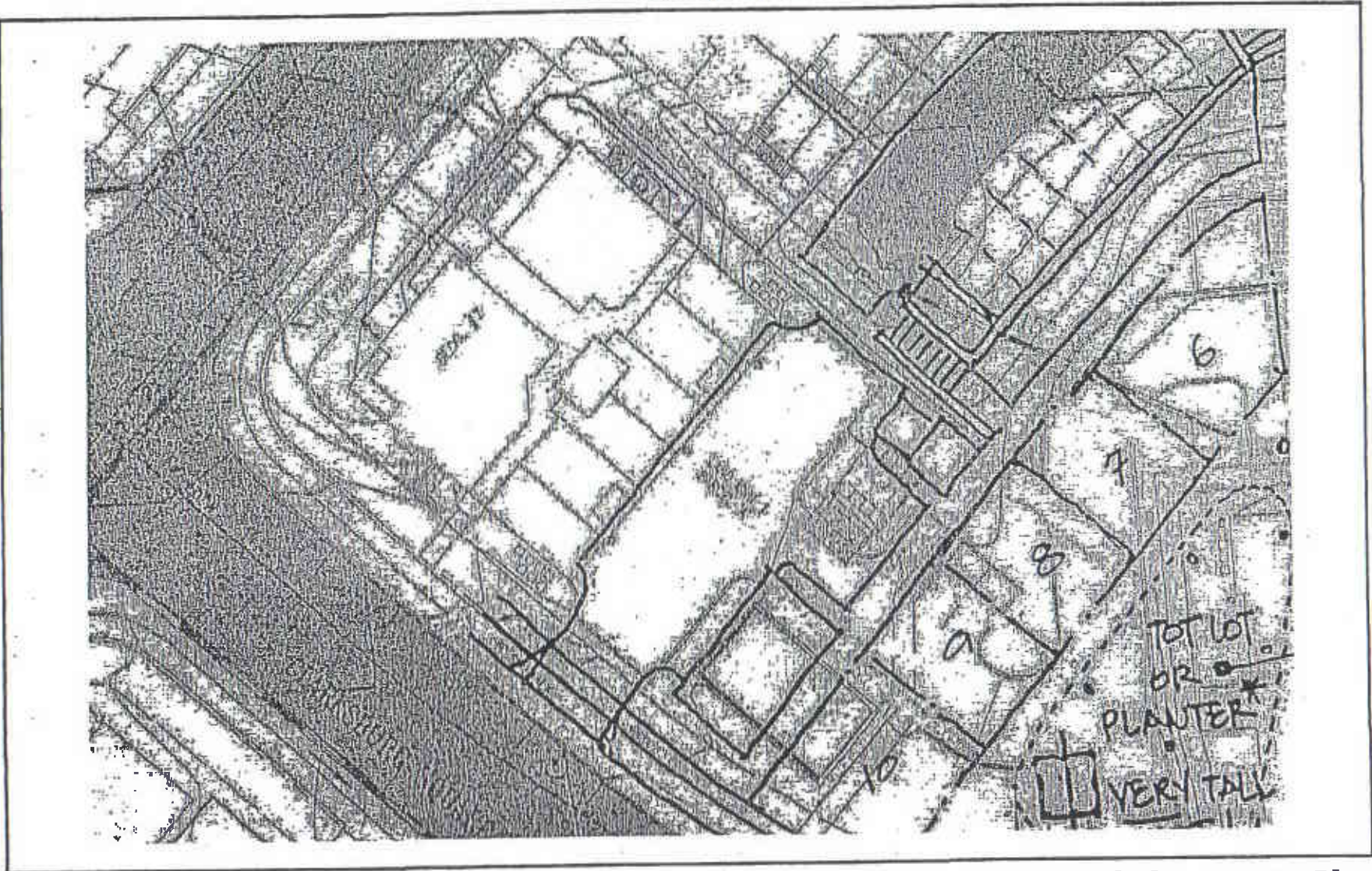
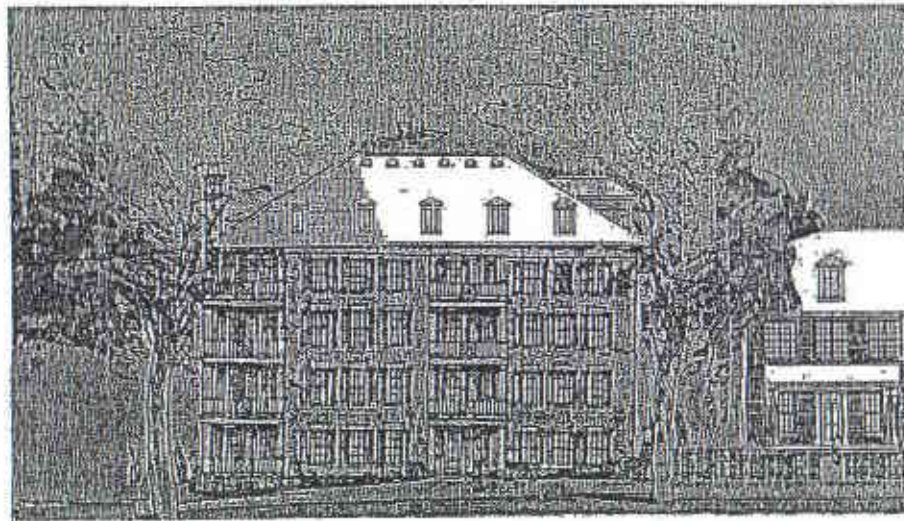
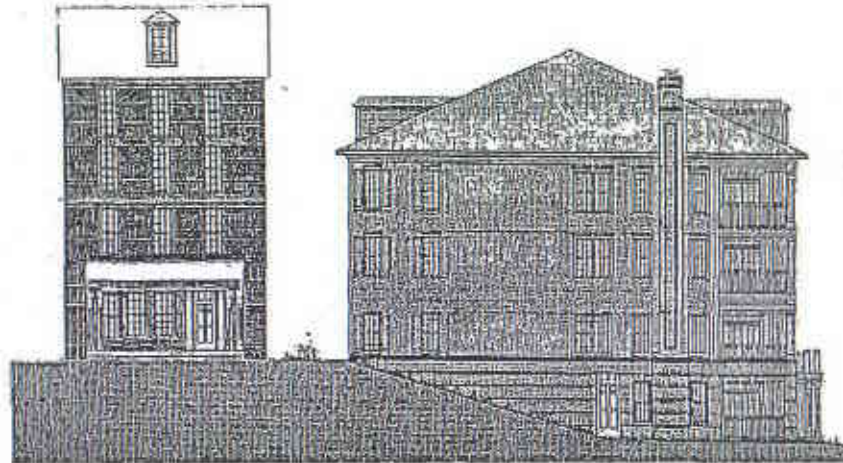


Exhibit "0"

Building #7 Enlarged Charrette Site Plan



CLARKSBURG TOWN CENTER.
BOZZUTO HOMES, INC.



Building #10 w/ 4/3 Split

Building #10 Elevations

Page 11

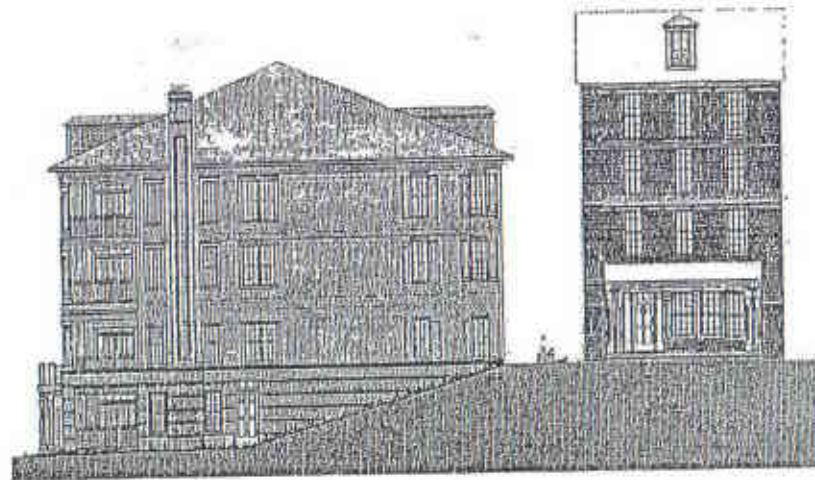
55

Exhibit "P-1"

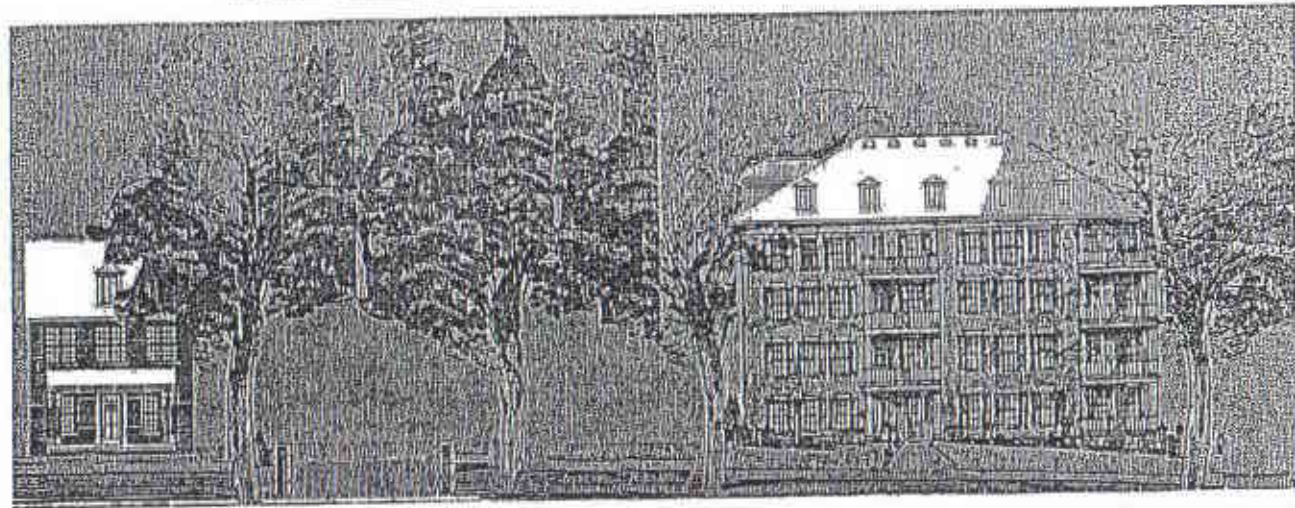


CLARKSBURG TOWN CENTER

BOZZUTO HOMES, INC.



95



11 11 11 11 11 11 11

Building #11 w/ 4/3 Split

Building #11 Elevations

Page 12

Exhibit Q

MONTGOMERY COUNTY FIRE RESCUE SERVICES PLANS

Access Options (1/26/06) Sheet 1 of 12 (Site Development Plan)

Access Options (1/26/06) Sheet 2 of 12 (Phase 1B – Part One & Two)

Access Options (1/26/06) Sheet 3 of 12 (Phase 1B – Part Two)

Access Options (1/26/06) Sheet 4 of 12 (Phase 1B – Part Two)

Access Options (1/26/06) Sheet 5 of 12 (Phase 1B – Part Three)

Access Options (1/26/06) Sheet 6 of 12 (Phase II – Section 2A)

Access Options (1/26/06) Sheet 7 of 12 (Phase II – Section 2A)

Access Options (1/26/06) Sheet 8 of 12 (Phase II – Section 2D)

Access Options (1/26/06) Sheet 9 of 12 (Phase II – Section 2B)

Access Options (1/26/06) Sheet 10 of 12 (Phase II – Section 2C)

Access Options (1/26/06) Sheet 11 of 12 (Phase 1A)

Access Options (1/26/06) Sheet 12 of 12 (Phase 1A)

Exhibit R

CLARKSBURG TOWN CENTER

SCHEDULE FOR RELEASE OF
SEPTEMBER 20, 2005 AND NOVEMBER 23, 2005 STOP WORK ORDERS

SECTION 2D

Units/Lots to be Released at Time of Plan of Compliance Approval:

| <u>Lot</u> | <u>/</u> | <u>Block</u> | <u>Plat No.</u> |
|------------|----------|--------------|-----------------|
| 1, 6-21 | / | K | 23046 |
| 2-5 | / | K | 22533 |
| 1-8 | / | N | 22533 |
| 15-17 | / | N | 23049 |
| 26-30 | / | N | 23049 |
| 31-38 | / | N | 23048 |
| 48-51 | / | N | 23047 |
| 52-55 | / | N | 23047 |

Units/Lots to be Released at Time of Site Plan Amendment Approval:

| <u>Lot</u> | <u>/</u> | <u>Block</u> | <u>Plat No.</u> |
|------------|----------|--------------|---------------------|
| 9-14 | / | N | 23047 |
| 18-25 | / | N | 23049 |
| 39-47 | / | N | 23048 |
| Parcel A | / | N | 23047 (Building 12) |

SECTION GG

Units/Lots to be Released at Time of Plan of Compliance Approval:

| <u>Lot</u> | <u>/</u> | <u>Block</u> | <u>Plat No.</u> |
|------------|----------|----------------------|-----------------|
| 10-14 | / | GG | 22766 |
| 22-25 | / | GG | 22766 |
| 32 | / | GG[becomes L/W unit] | 23038 |

Units/Lots to be Released at Time of Site Plan Amendment Approval:

| <u>Lot</u> | <u>/</u> | <u>Block</u> | <u>Plat No.</u> |
|------------|----------|----------------------|--------------------------|
| 2-3 | / | GG | 22766 [become L/W units] |
| 15-21 | / | GG | 22766 |
| 26-31 | / | GG[become L/W units] | 23038 |

SECTION 2A

Units/Lots to be Released at Time of Plan of Compliance Approval:

| <u>Lot</u> | <u>/</u> | <u>Block</u> | <u>Plat No.</u> |
|------------|----------|--------------|--------------------|
| Parcel A | / | H | 22535 (Building 7) |

SECTION 1A1

Units/Lots to be Released at Time of Plan of Compliance Approval:

| <u>Lot</u> | <u>/</u> | <u>Block</u> | <u>Plat No.</u> |
|------------|----------|--------------|--------------------|
| Parcel C | / | AA | 22365 (Building 9) |

SECTION 2B

Units/Lots to be Released at Time of Site Plan Amendment Approval:

| <u>Lot</u> | <u>/</u> | <u>Block</u> | <u>Plat No.</u> |
|------------|----------|--------------|---------------------|
| Parcel C | / | S | 22631 (Building 10) |

SECTION 2G

Units/Lots to be Released at Time of Site Plan Amendment Approval:

| <u>Lot</u> | <u>/</u> | <u>Block</u> | <u>Plat No.</u> |
|------------|----------|--------------|---------------------|
| Parcel A | / | M | 22783 (Building 11) |

SECTION 2C

Units/Lots to be Released at Time of Plan of Compliance Approval:

| <u>Lot</u> | <u>/</u> | <u>Block</u> | <u>Plat No.</u> |
|------------|----------|--------------|-----------------|
| 7-11 | / | L | 22786 |

Clarksburg Town Center

Plan of Compliance Design Concepts

April 20, 2006

(12)

CLARKSBURG

Charrette Mediator – Judge Barbara Howe

Stakeholders

- Clarksburg Town Center Advisory Committee
- Land Developer – Newland Communities
- Builders – Bozzuto, Craftstar, Miller & Smith, NV, Porten Homes

Design Team

Architects and Town Planners

- Torti Gallas and Partners
- Duany Plater-Zyberk & Company

Landscape Architect

- Michael Verguson Landscape Architects
- Land Design

CLARKSBURG

The Clarksburg Mediation began with a three-day Charette, a process where the existing Town Center and the plans for future construction were examined and redesigned through the eyes of world-renown design professionals, based on the vision of the Master Plan. The focus was on reaffirming the connection between old and new Clarksburg, incorporating a pedestrian-oriented retail core; expanding recreational opportunities; and establishing a strong Civic core for the town. The heart of the resulting plan addresses many of the issues that have been identified over the past year. All the parties to the Clarksburg Mediation (CTCAC, Newland Communities, and the CTC builders) are proud of the mediation results and endorse the resulting plan.

A brief tour of the redesigned Clarksburg Town Center, A New American Classic Town:



Turn off of the Great Road (MD 355) in the historic core of Clarksburg toward the new Town Center, past the historic Horace Willson house and the Clarksburg Grille and Grocery. The small-town environment is immediately apparent as a drive down Clarksburg Square Road leads past small shops and businesses in live/work units to the Library and town plaza, where civic gathering places serve as the heart of the Town Square.

The new library, a 20,000 square-foot building, sits at one end of the town plaza, nestled among a bosque of trees with seating for reading or enjoying the adjacent shops and cafes. A fountain with a seating wall anchors the opposite end of the plaza. Across General Store Drive sits the open-air Market building (2,000 square feet), which will shelter farmers' markets, craft shows, and other civic events.

CLARKSBURG

Situated among shops, live/work units, and restaurant space are two parking garages and a 51,000 square foot grocery store, lined by additional core retail and residences to maintain the pedestrian scale and orientation of the Town Square area. Through the creative use of architecture, ample parking space is easily accessible yet concealed from direct view.

The historic Clarksburg United Methodist Church is integrated with the community via an elaborate stairway with landscaping features to create an attractive vista. Handicapped access and a vehicular driveway are also provided, along with the dedication of a parcel of land to the south of the Church.

Just beyond the retail area, at the head of the land bridge across the Greenway, is the Clarke family memorial. Clarksburg Town Center sits on land that was established by this founding family of Clarksburg. Family artifacts will be placed in the wall along the greenway, to frame a sitting area and small plaza.

Continuing along Clarksburg Square Road, the foot of the land bridge marks the transition to the heart of the community space for the Town Center neighborhood. Up the hill is the Sinequa Square recreational area, which features an outdoor amphitheater; bosque of trees sheltering a new plaza area with parking; supplemental, 1200 square foot community building with multimedia space; and expanded community pool complex with a slide, an indoor, heated lap pool and small concessions shop.

At the end of Clarksburg Square Road is Piedmont Woods, a 60-plus acre park that will be developed by Newland Communities and deeded over to The Maryland National Capital Park and Planning Commission for future maintenance. The park will feature two tennis courts, a basketball court, picnic areas, hiking trails, a "bark park," and convenient parking. It will provide recreational and gathering space for the entire Clarksburg community.

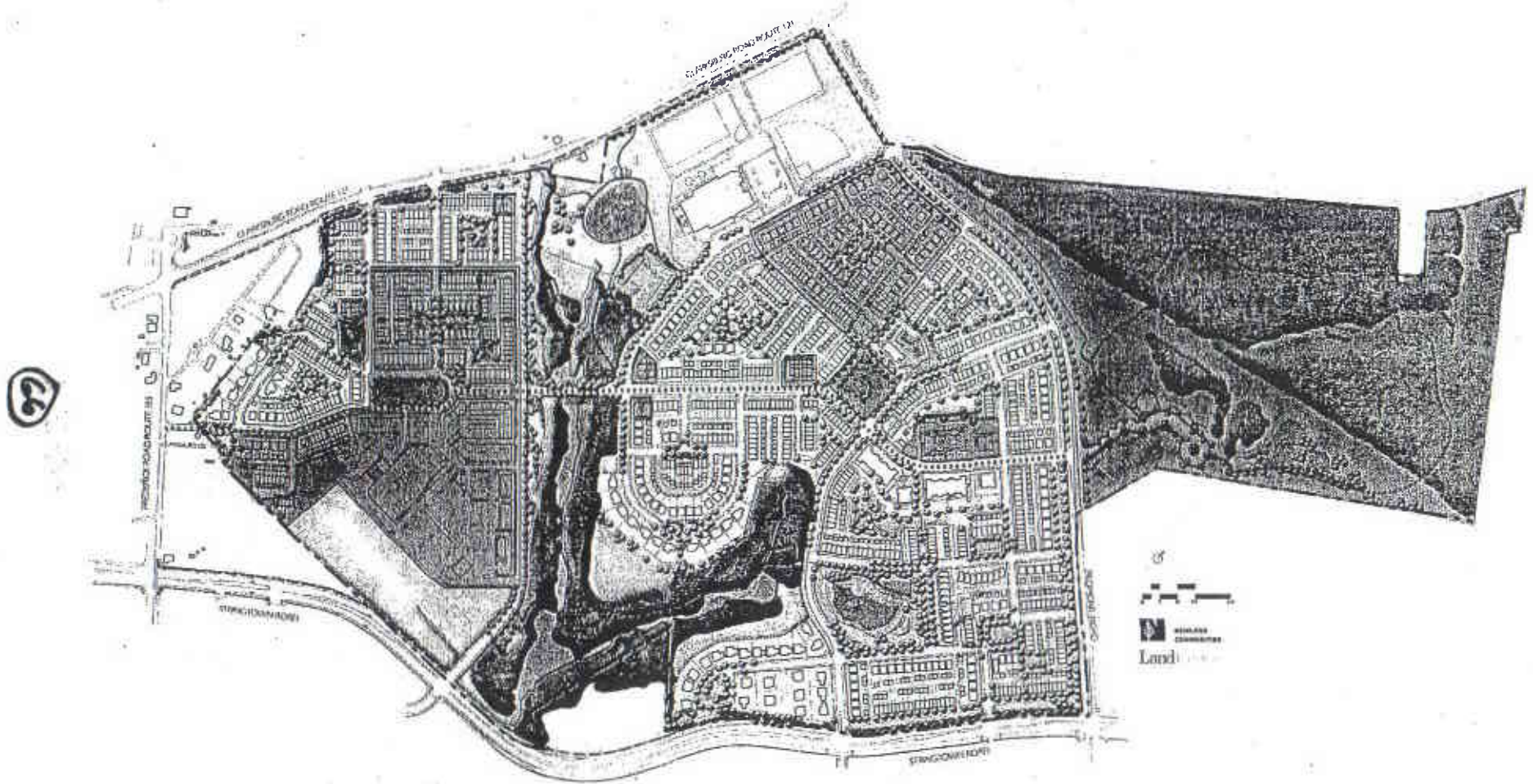
CLARKSBURG

The charette also focused on enhancing existing landscape-based amenities. Murphy's Grove Pond, in an area located near Stringtown Road at Clarks Crossing Drive, will be developed in stages, with the initial improvements bringing enhanced landscaping and the removal of the white picket fence that currently borders the parcel. The final plan calls for a fishing pier, walking trails and picnic areas. Storm Water Pond # 3, located behind Burdette Forest Road, will feature seating areas and a trail connecting to the Town Square. An additional new park where a large condominium building was scheduled to be built will now feature a lawn expanse, a grove of trees, and a seating wall along Clarksburg Square Road.

57

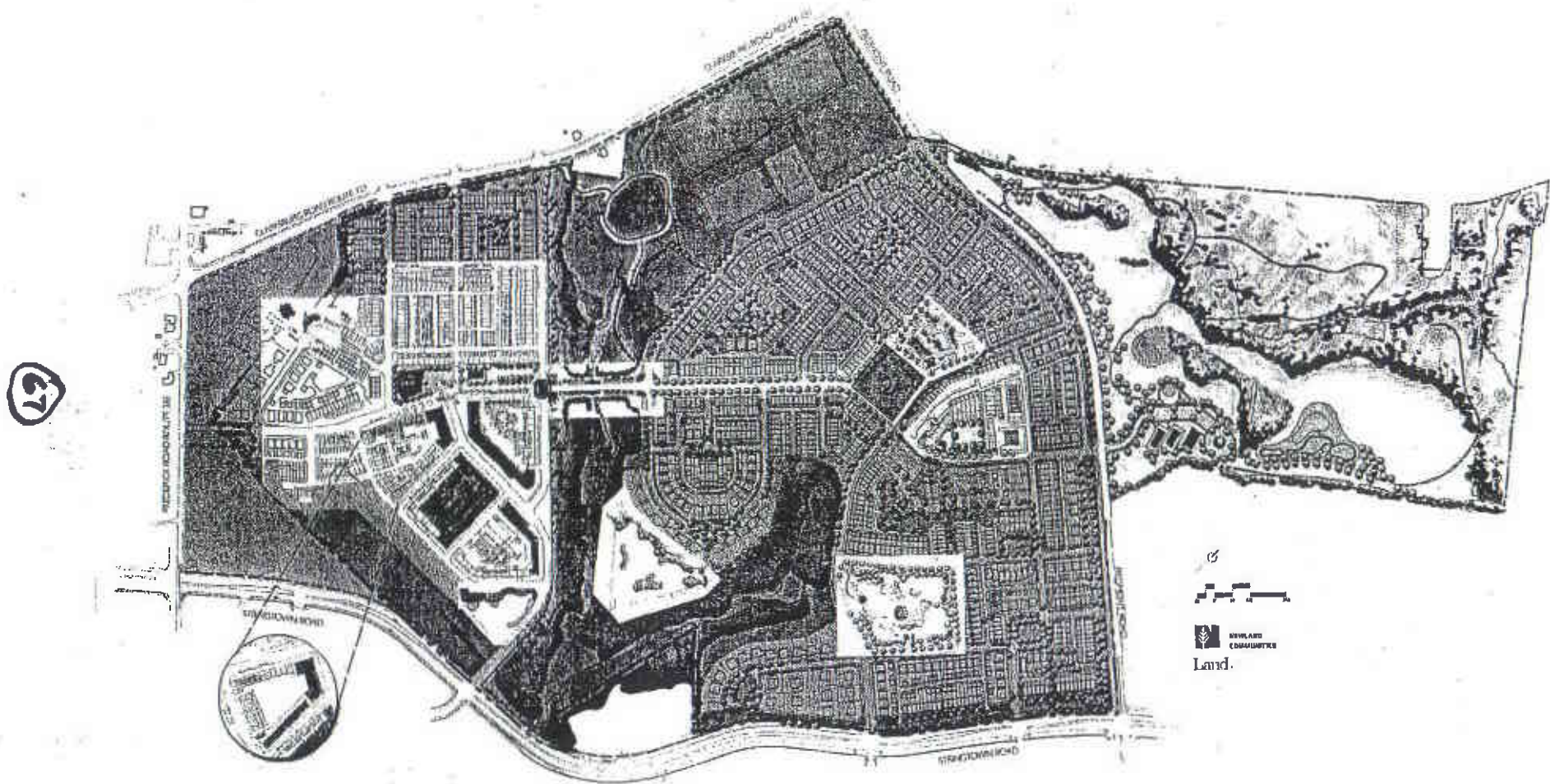


CLARKSBURG



Existing Plan showing Un-built Areas

CLARKSBURG

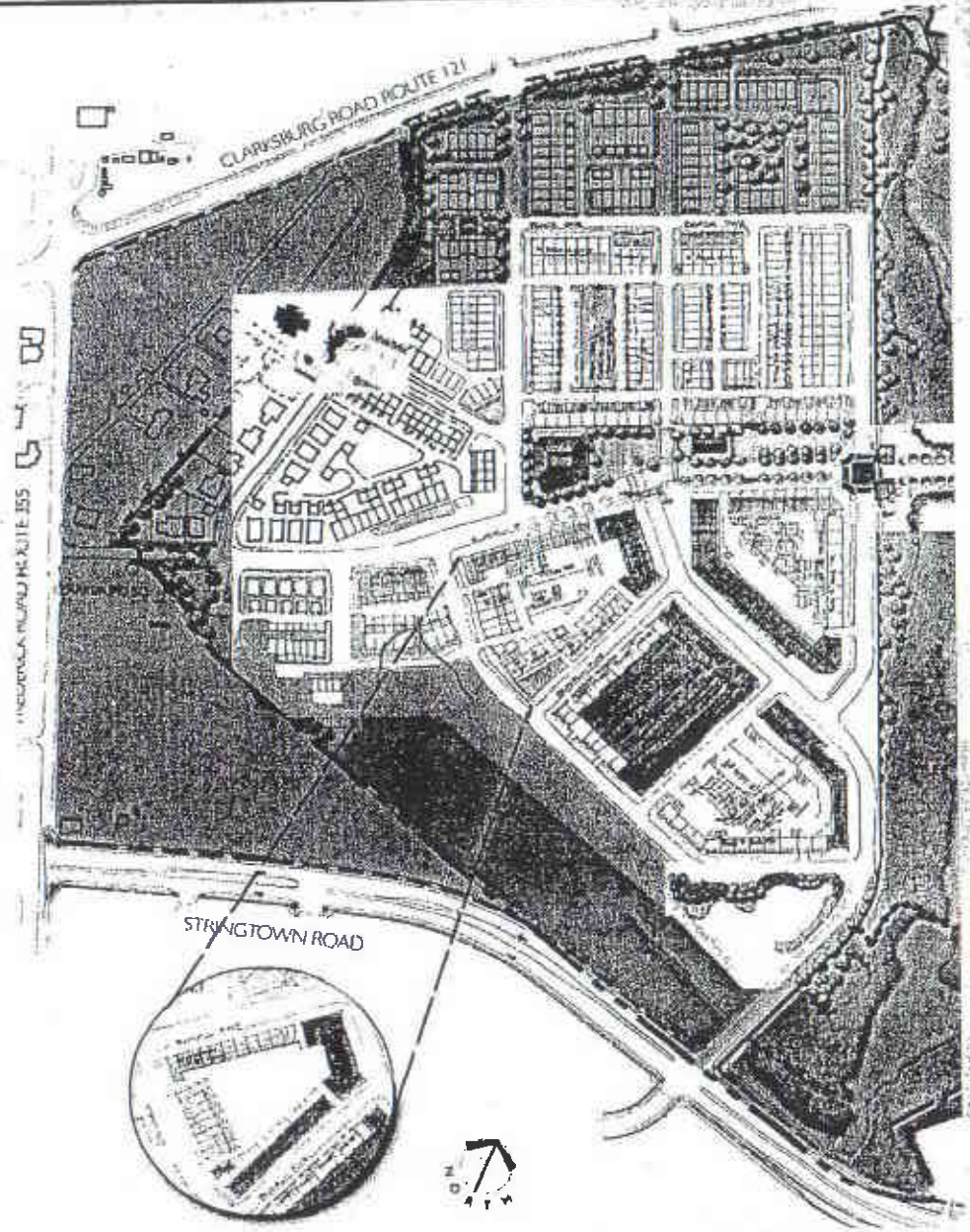


Concept for Plan of Compliance

TORTI GALLAS AND PARTNERS • DUANY PLATER-ZYBERK & COMPANY • Michael Vergason Landscape Architects

CLARKSBURG

89



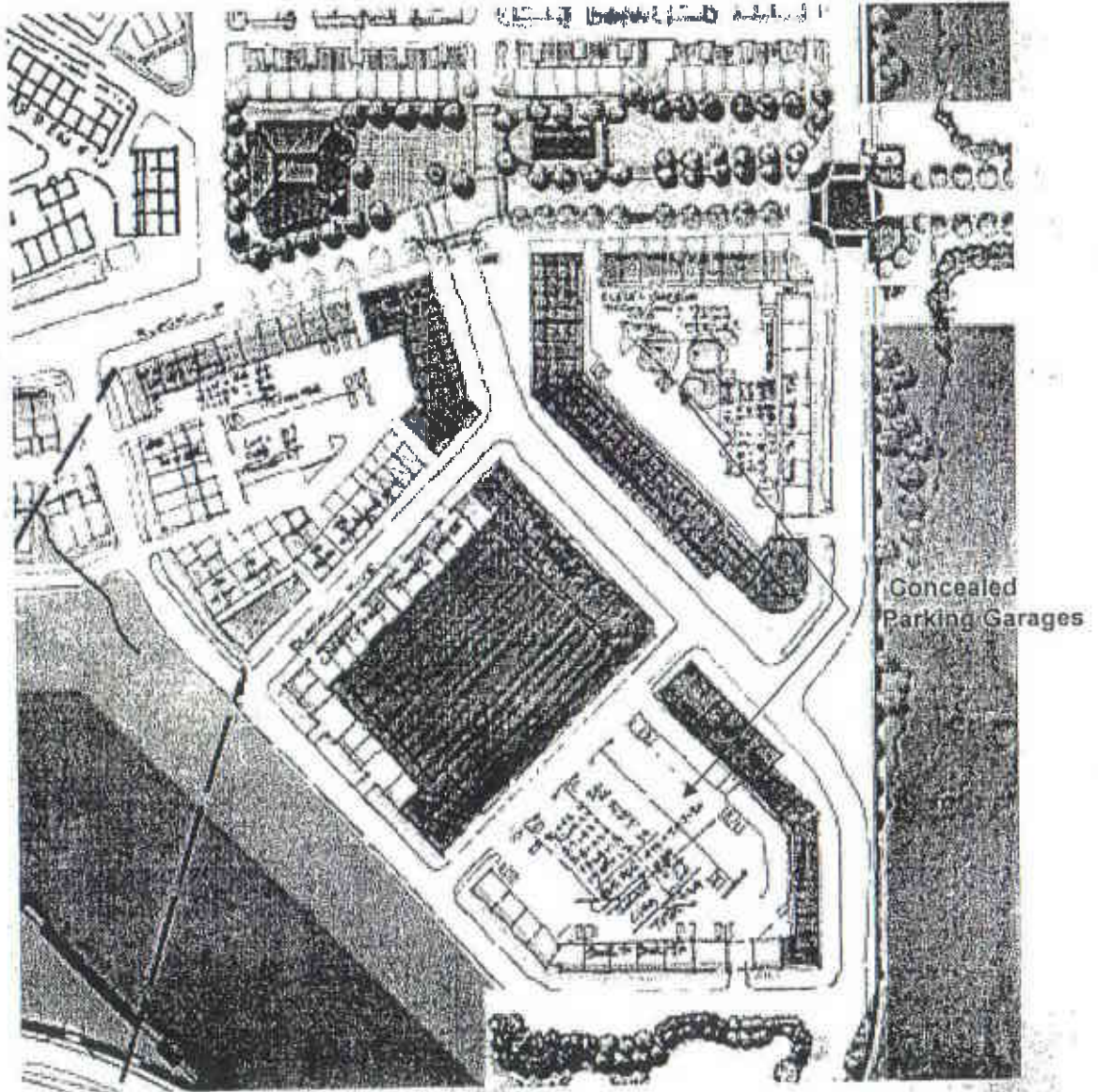
West Side Conceptual Plan

TORTI GALLAS AND PARTNERS • DUANY PLATER-ZYBERK & COMPANY • Michael Vergason Landscape Architects



69

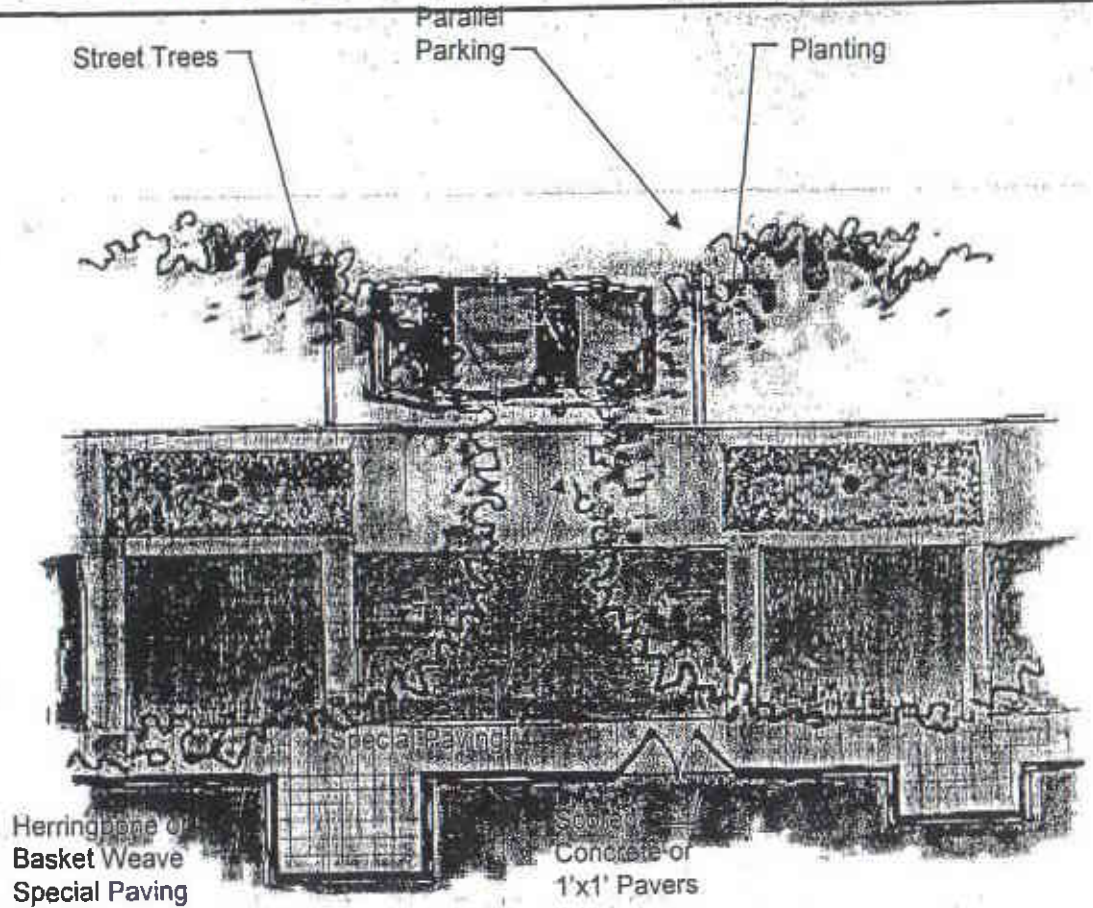
Depicts the option for one block within the Town Center to allow either residential or retail buildout. (Determination to be made at Site Plan based on market drivers and optimal solution for the Town Center.)



Concept for Blocks 3, 4 & 5

CLARKSBURG

70

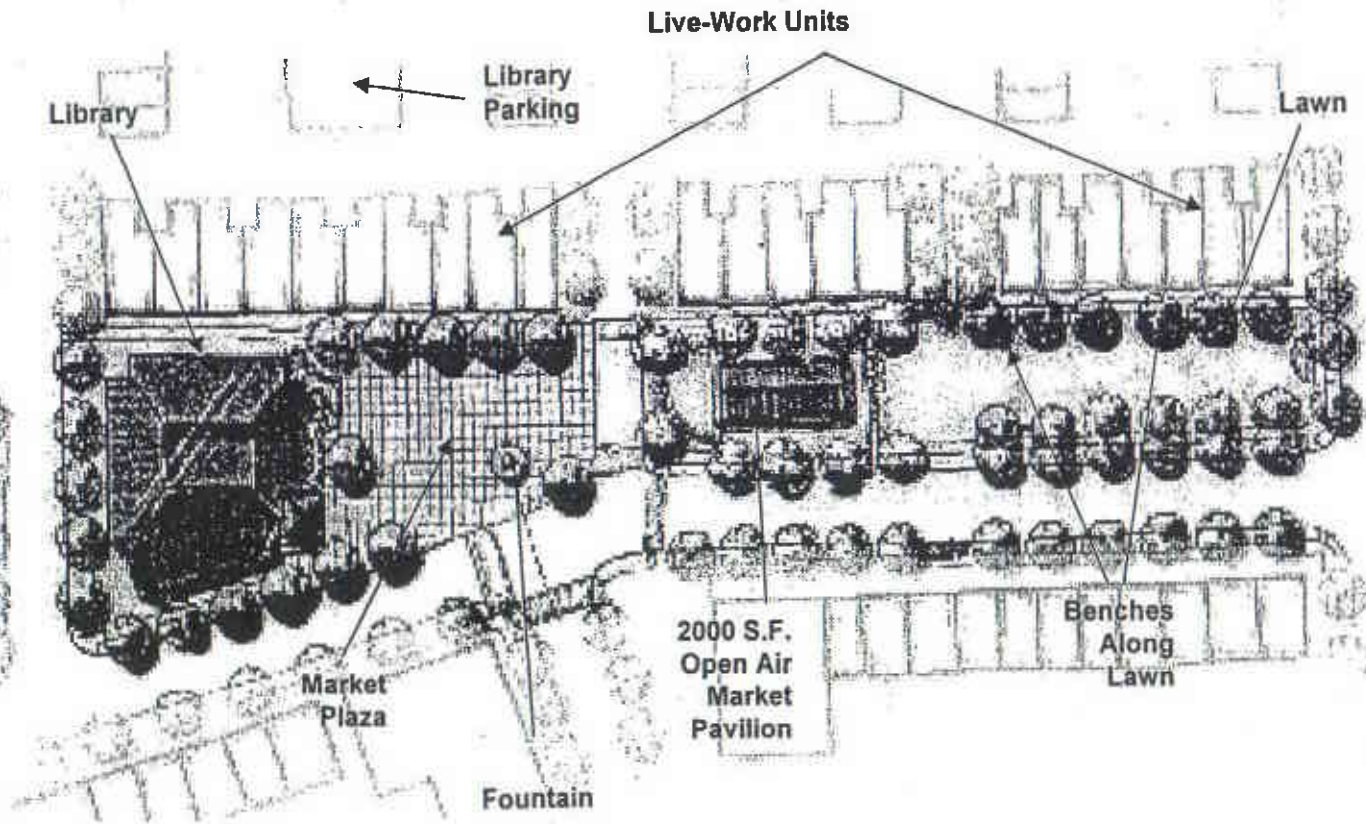


Concept for Special Pavement Sidewalks



CLARKSBURG

(12)



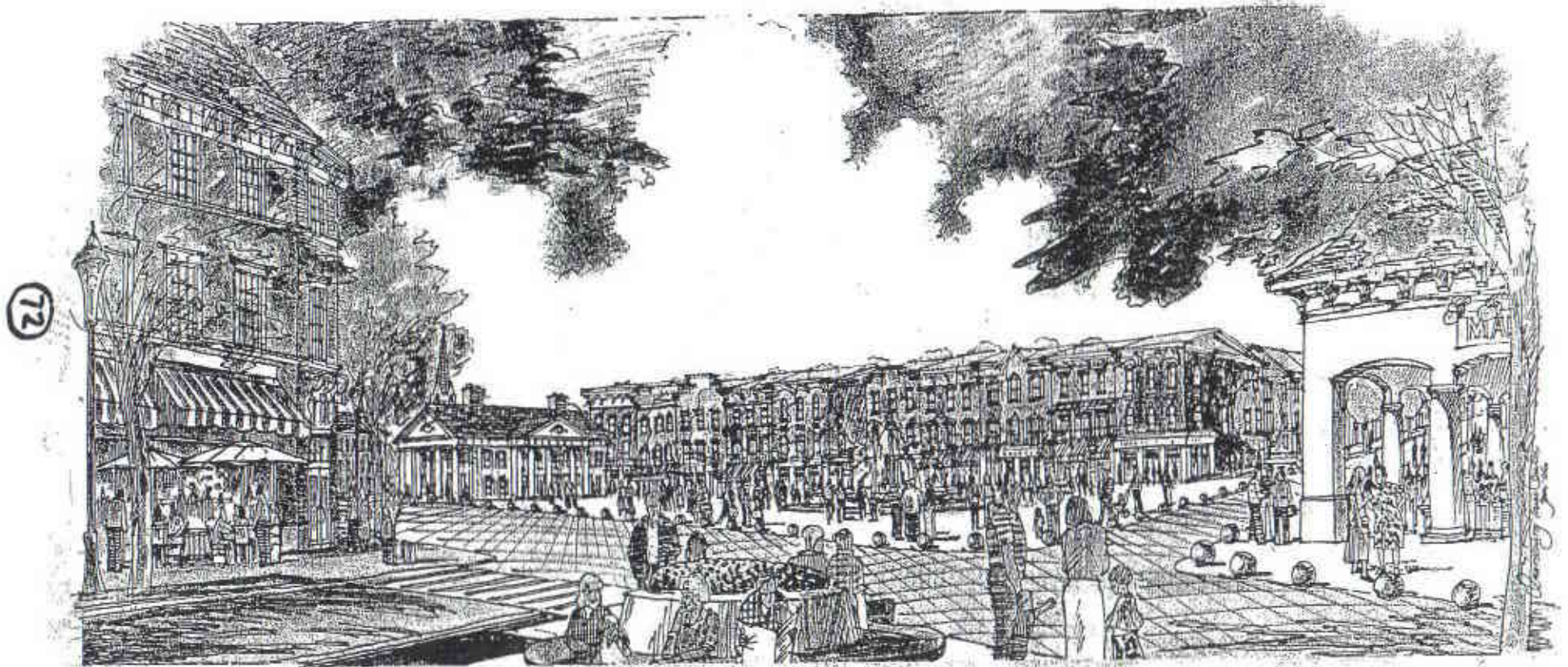
Conceptual Town Center Green

TORTI GALLAS AND PARTNERS • DUANY PLATER-ZYBERK & COMPANY • Michael Vergason Landscape Architects

CLARKSBURG

Town Square

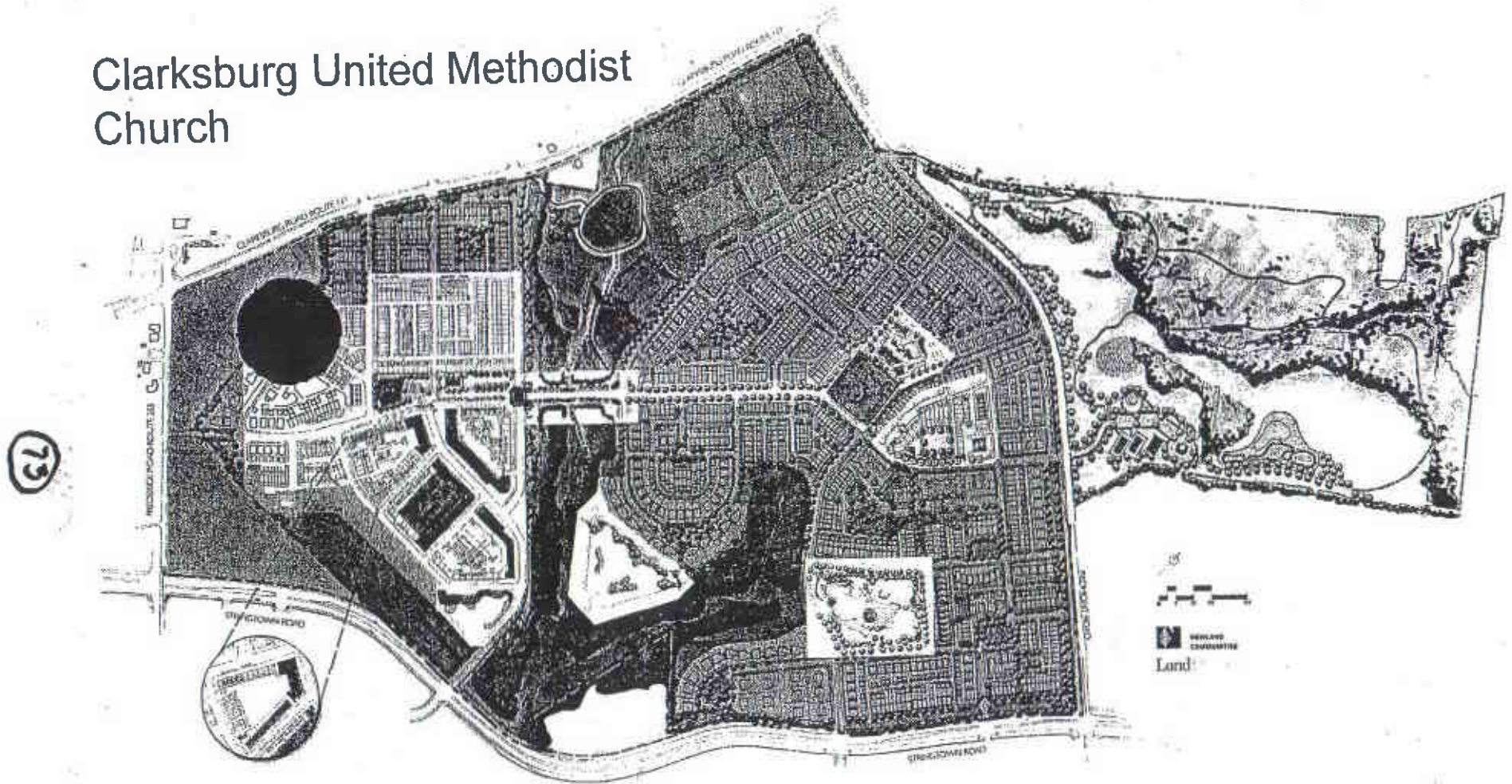
Conceptual Depiction



TORTI GALLAS AND PARTNERS • DUANY PLATER-ZYBERK & COMPANY • Michael Vergason Landscape Architects

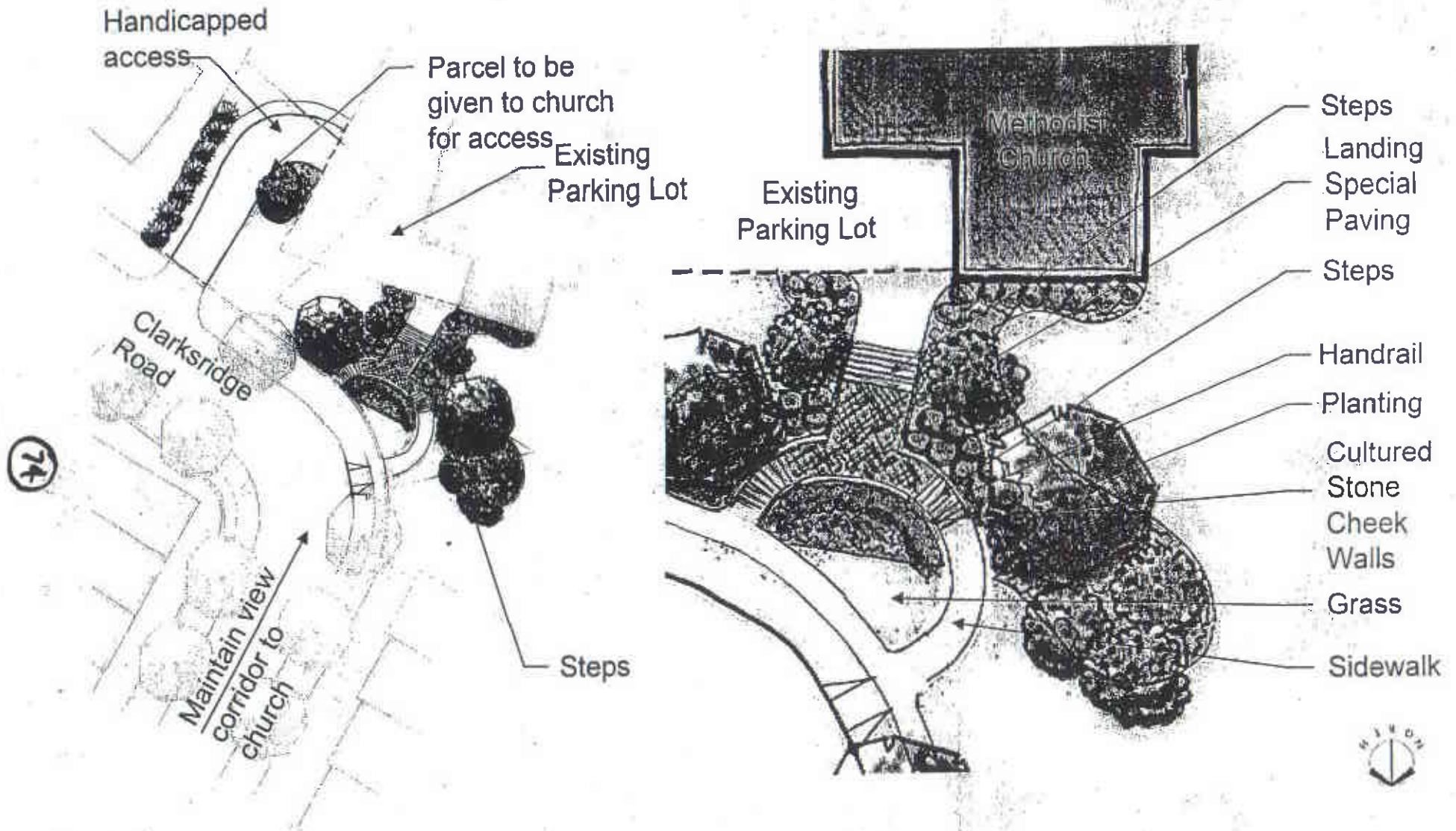
CLARKSBURG

Clarksburg United Methodist Church



TORTI GALLAS AND PARTNERS • DUANY PLATER-ZYBERK & COMPANY • Michael Vergason Landscape Architects

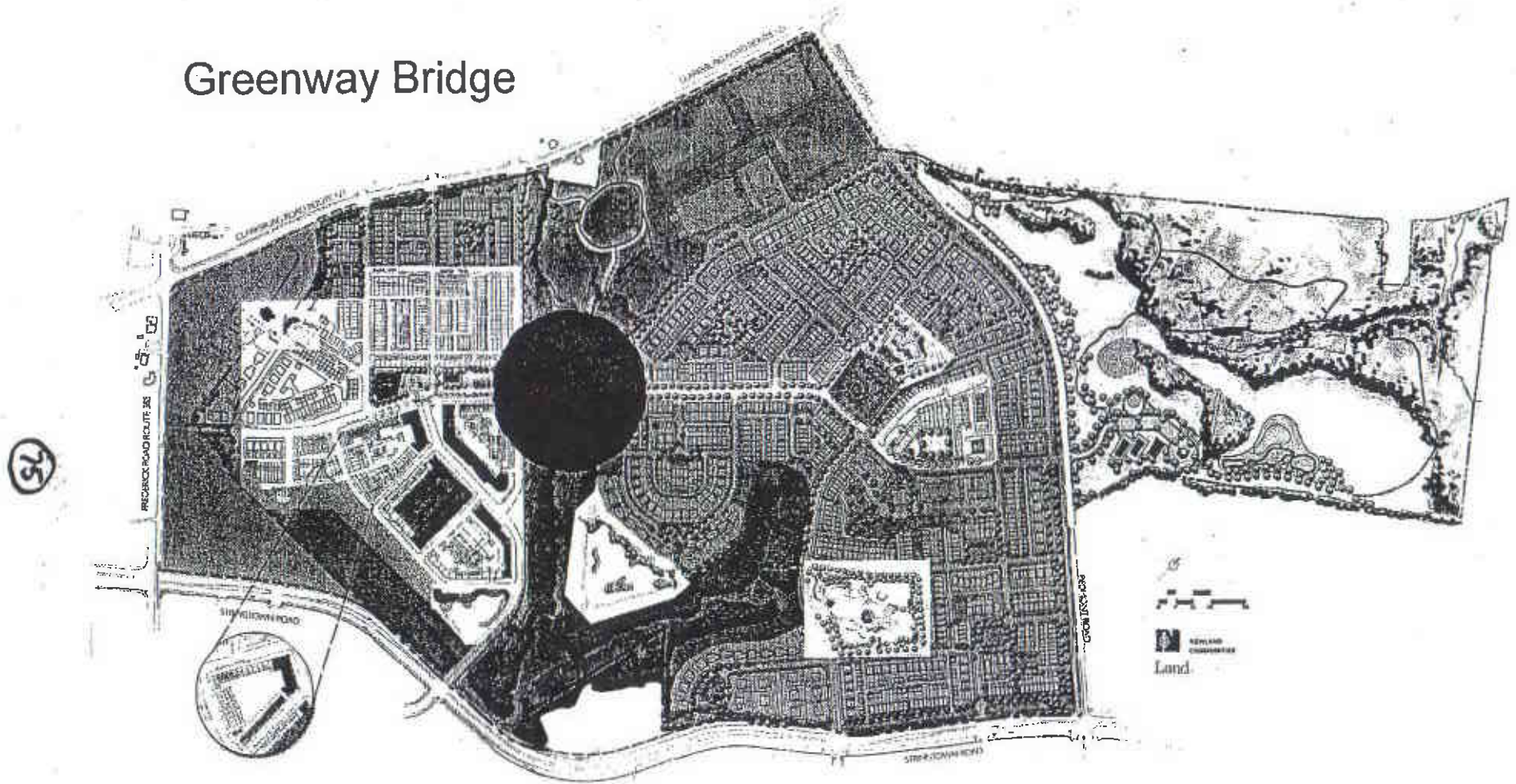
CLARKSBURG



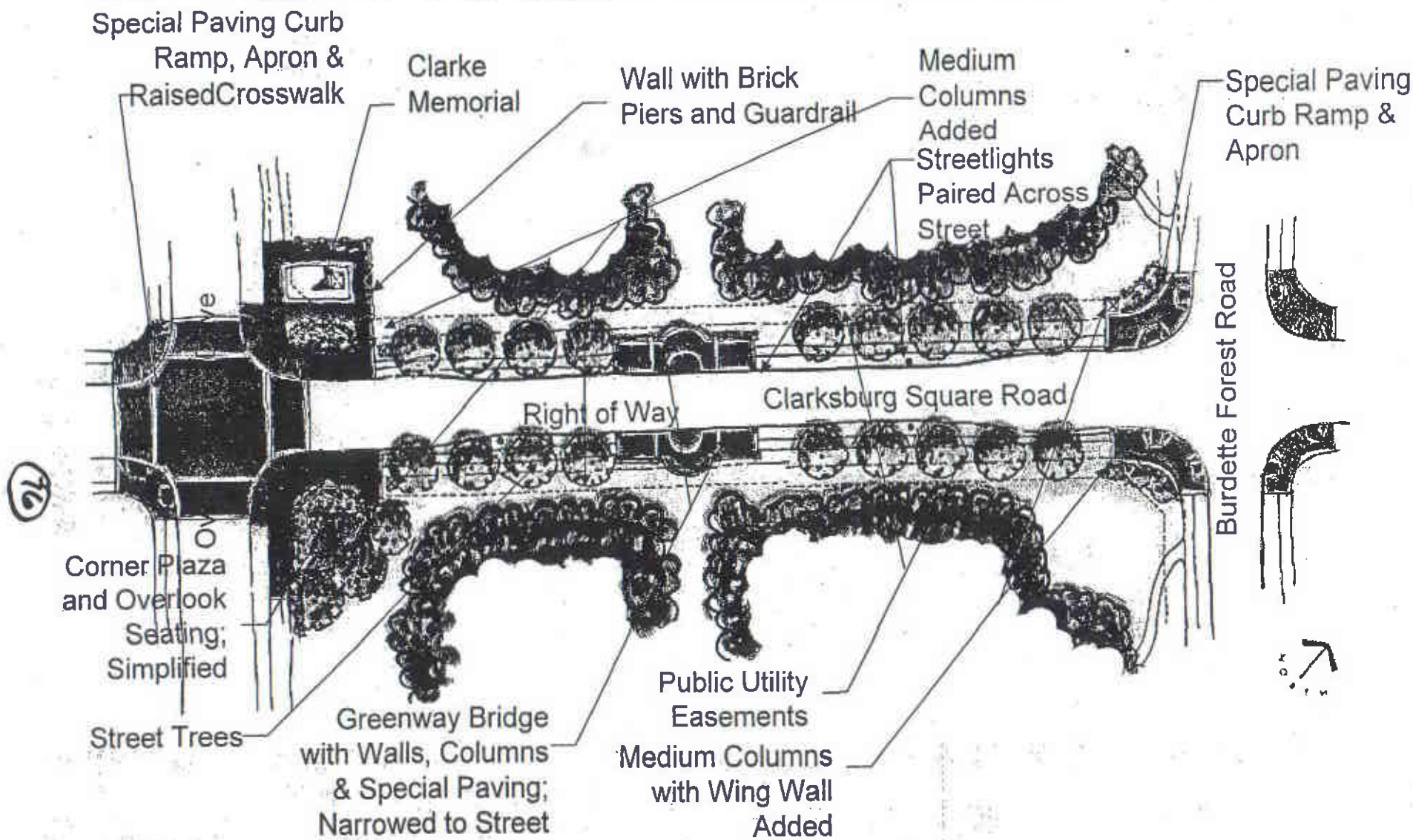
Concept for the Grand Staircase at Clarksburg United Methodist Church

CLARKSBURG

Greenway Bridge



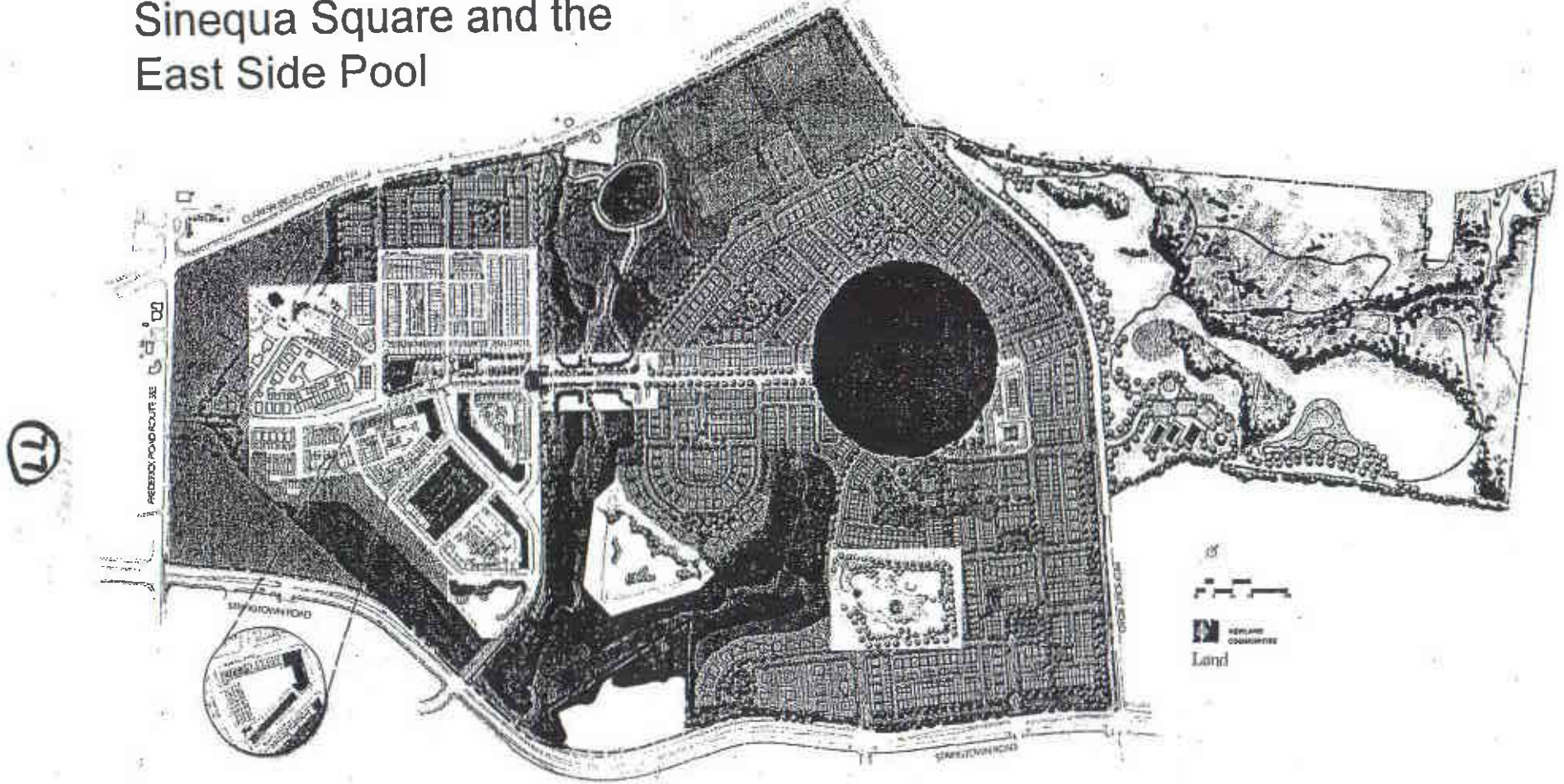
CLARKSBURG



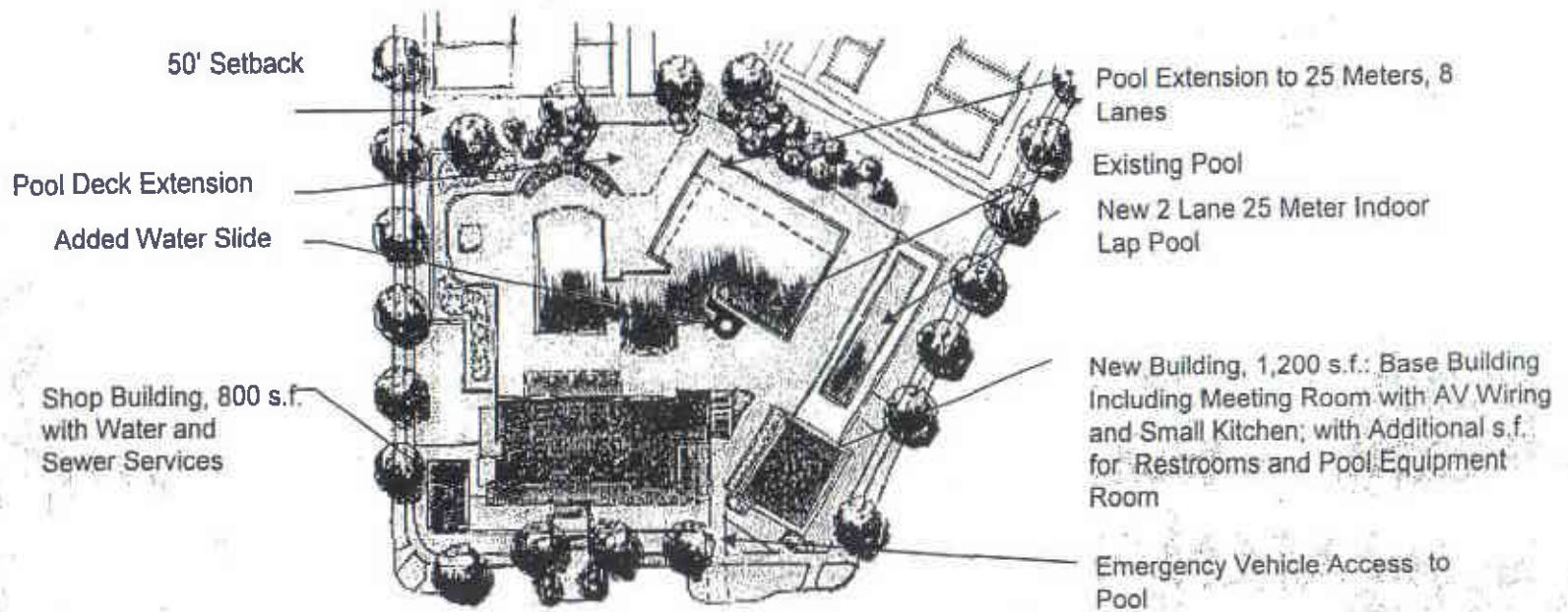
Concept for the Greenway Bridge

CLARKSBURG

Sinequa Square and the East Side Pool

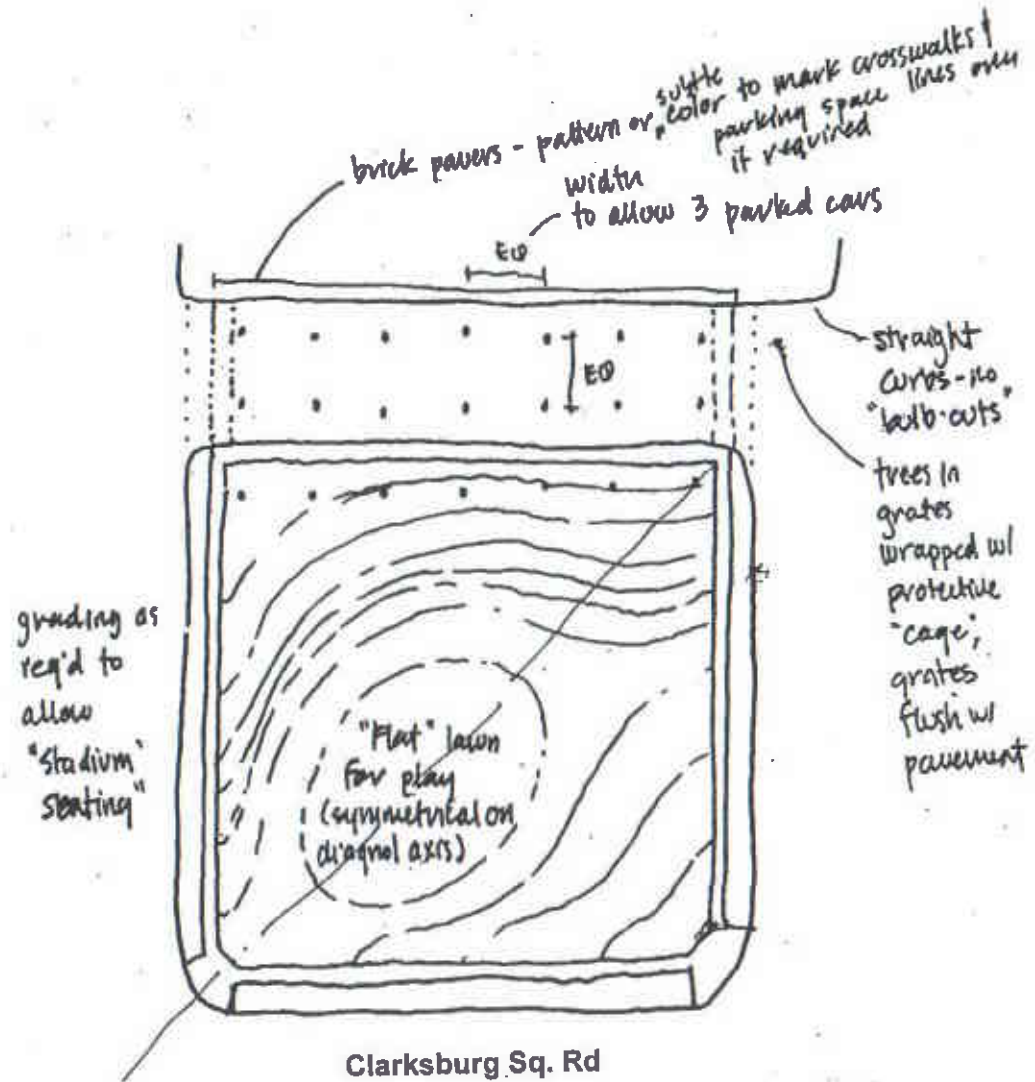


CLARKSBURG



CLARKSBURG

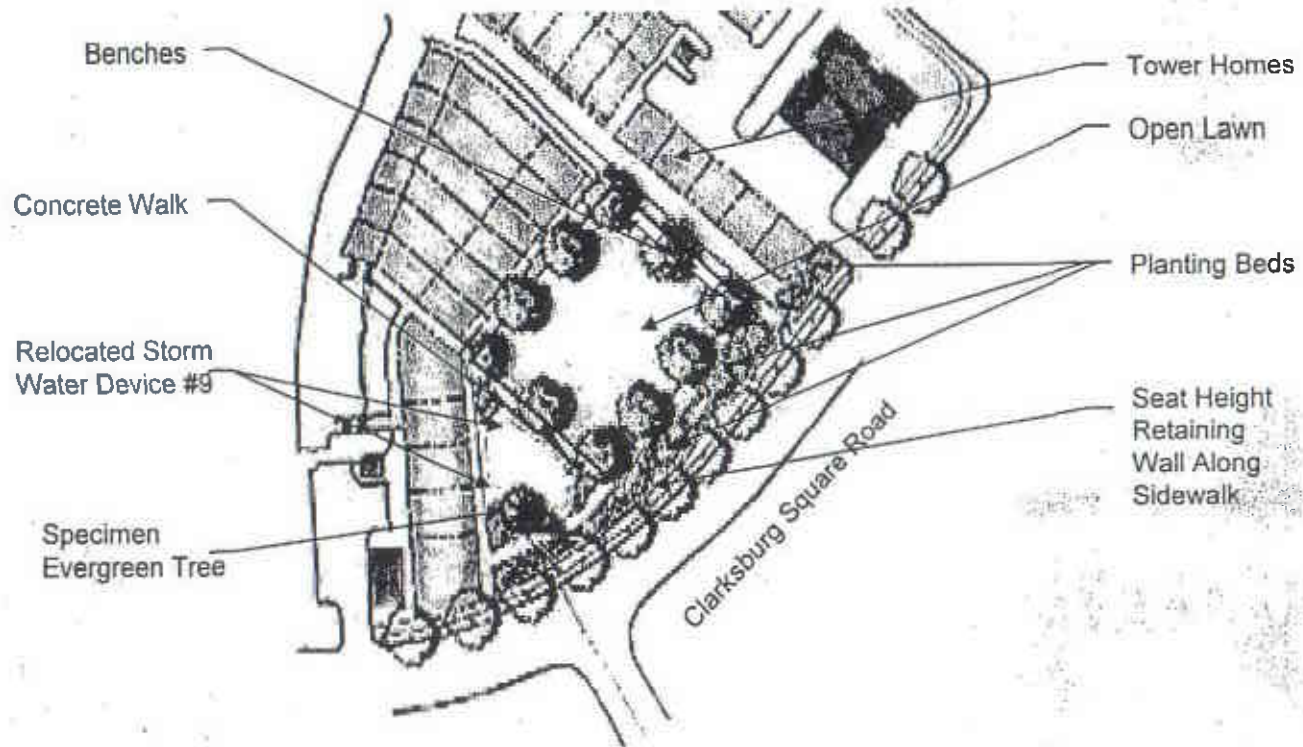
62



Sinequa Square Concept



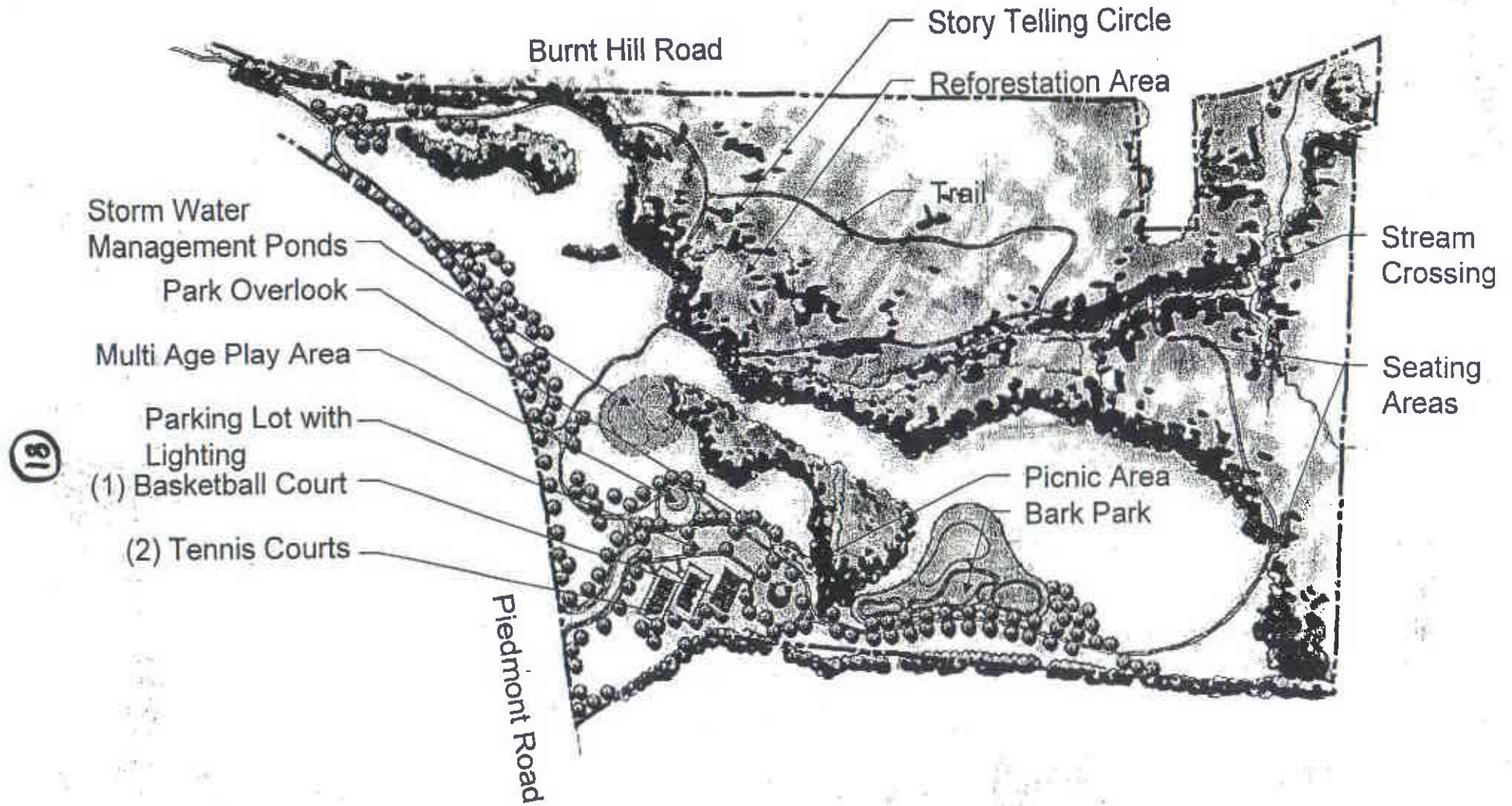
CLARKSBURG



Block H – Townhomes and a Park replace a large condominium building



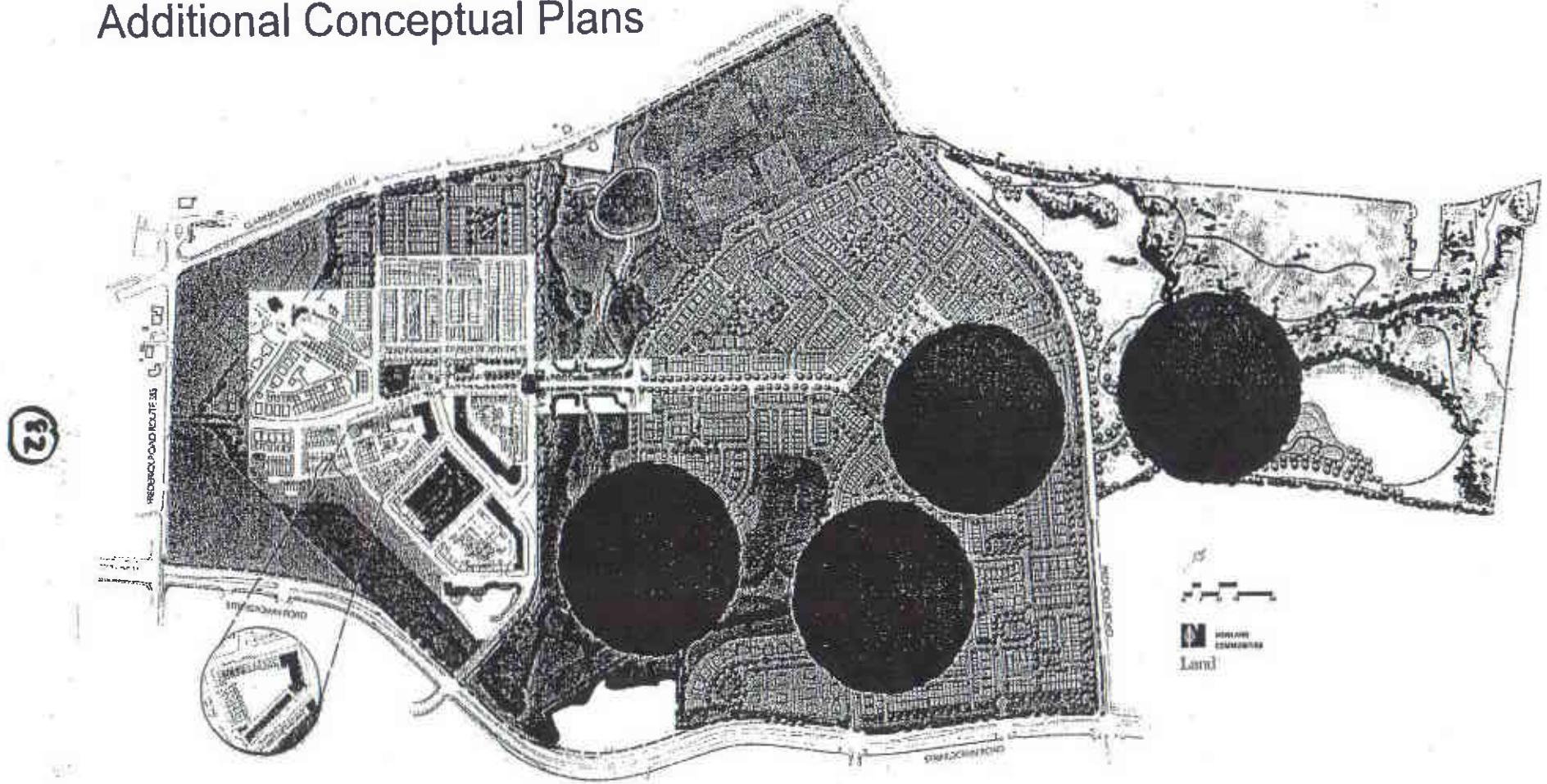
CLARKSBURG

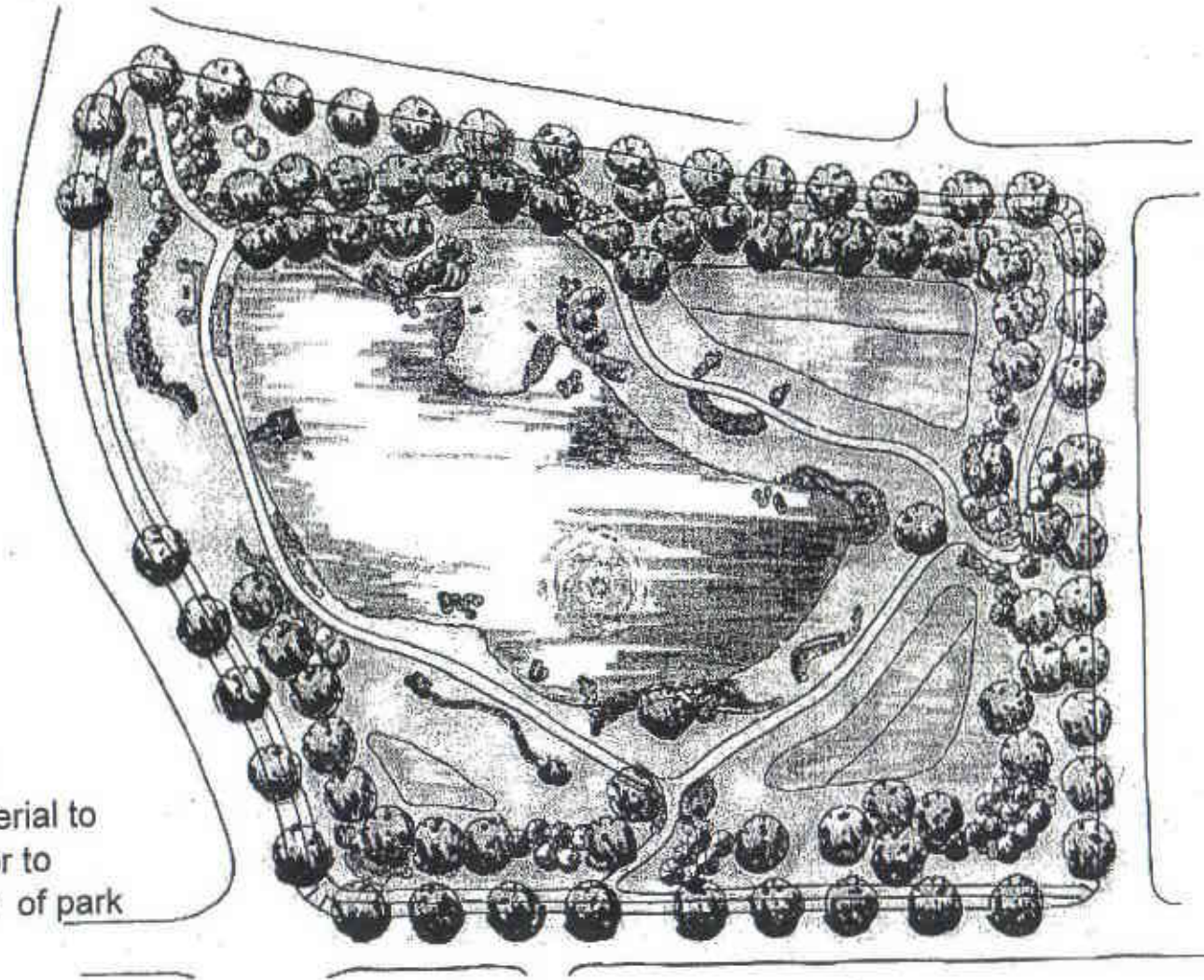


Concept for Piedmont Woods

CLARKSBURG

Additional Conceptual Plans





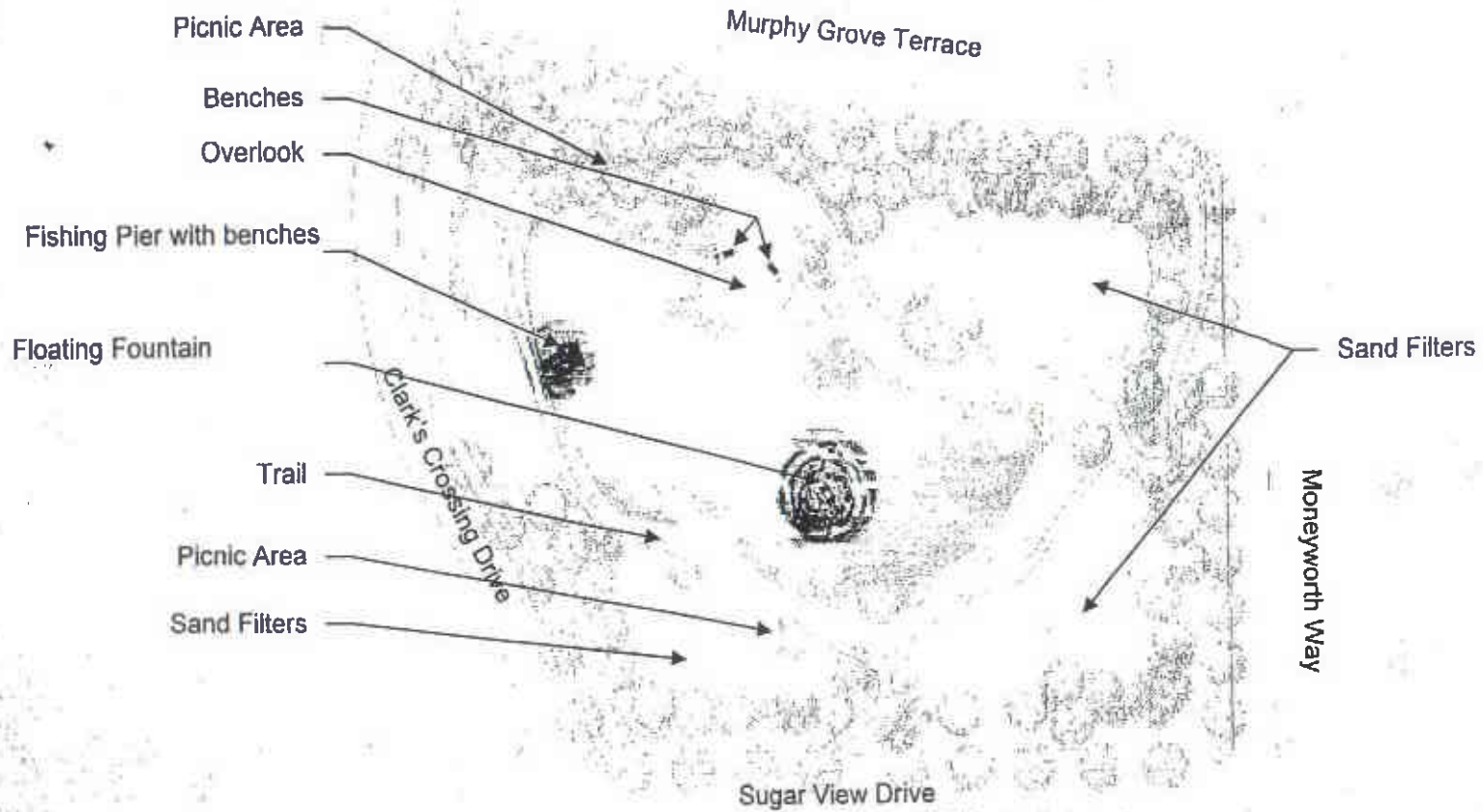
13

Note:

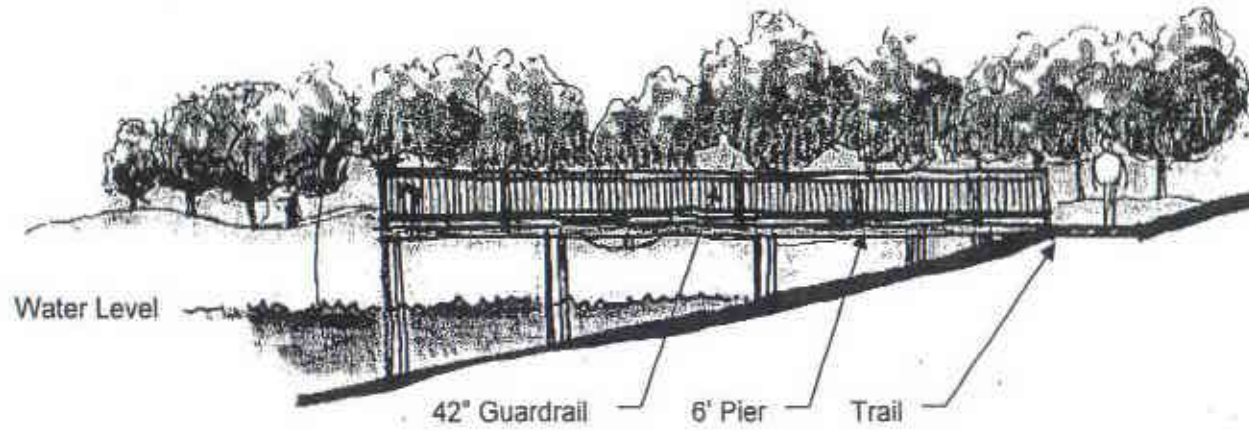
Color Indicates
Landscape Material to
be Installed prior to
final conversion of park

Interim Concept for Murphy's Grove Pond

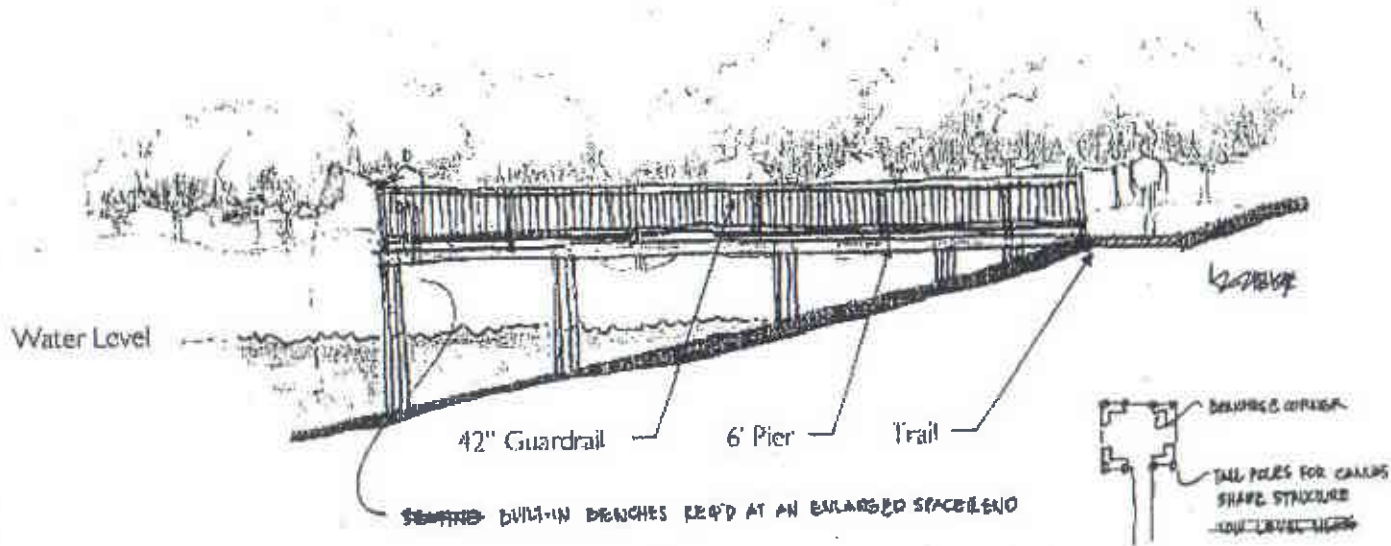
CLARKSBURG



Ultimate Concept for Murphy's Grove Pond



85



Concept for Murphy's Grove Pond Pier

CLARKSBURG

Additional
Landscape
Plantings

Sand Filter

Gravel Filter

Wildflower Mix
in Foreground

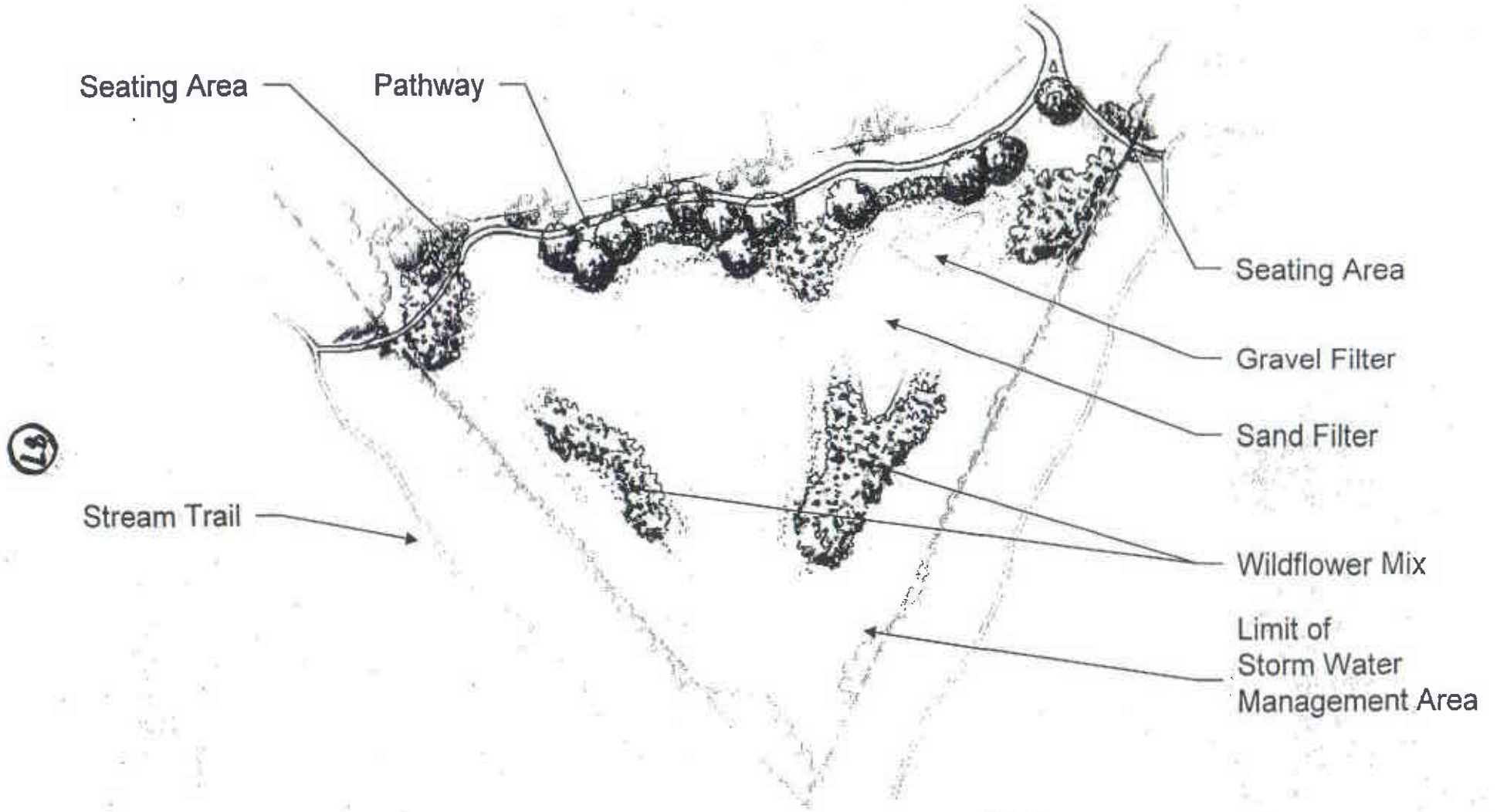
Limit of
Storm Water
Management Area

Overlook Park Drive
General Store Drive
To Stringtown
Road

98

Concept for Storm Water Pond #2





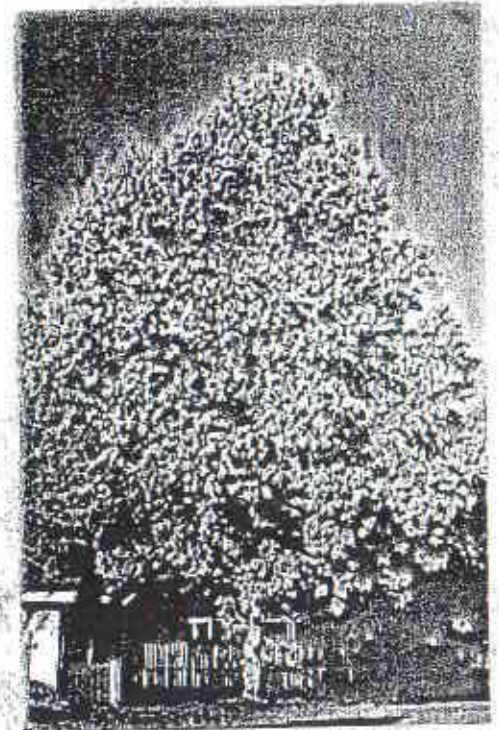
Concept for Storm Water Pond #3

CLARKSBURG

BB

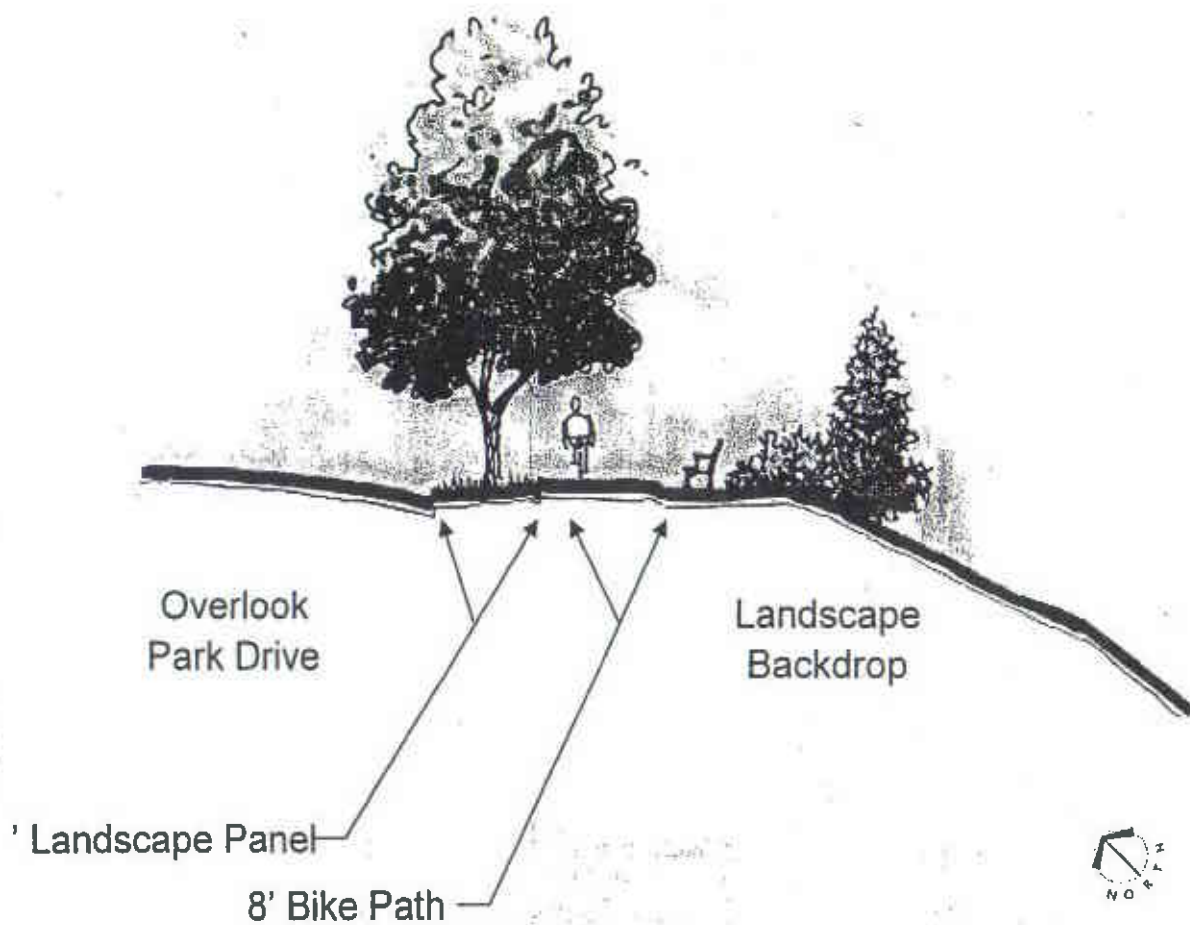
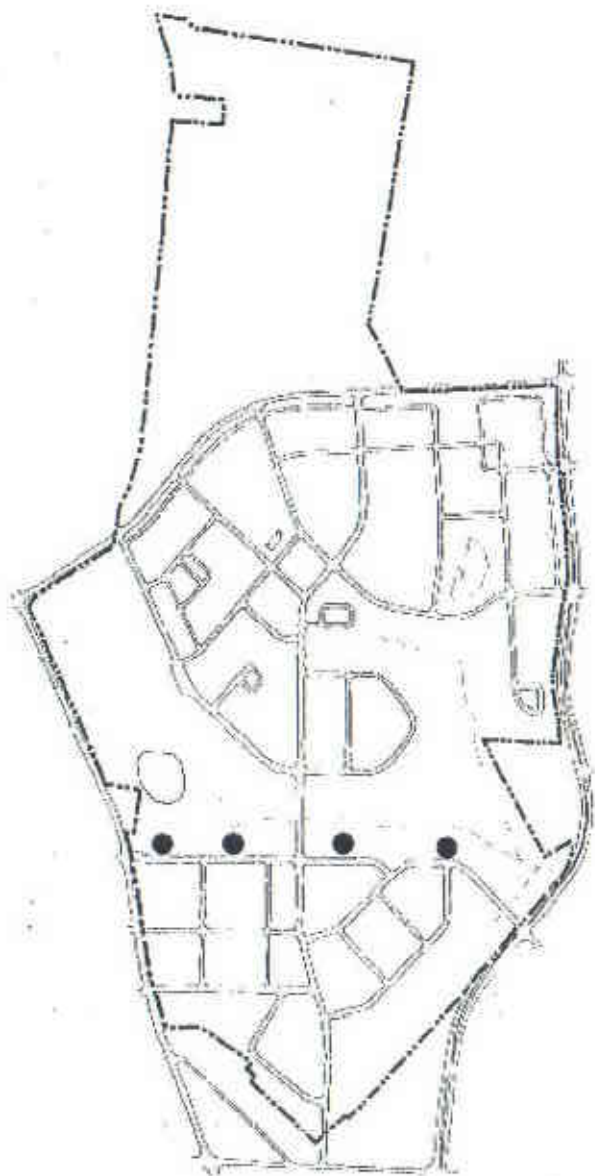


- Street tree selection to be London Plane Tree
- Increase size to 4" caliper
- Install trees at 30' on center +/-
- Continuous improved topsoil, 3' deep



Concept for Enhanced Street Tree Plantings

89



Concept for East Side Overlook Park Drive Seating Areas

CLARKSBURG

Town Square Conceptual Depiction



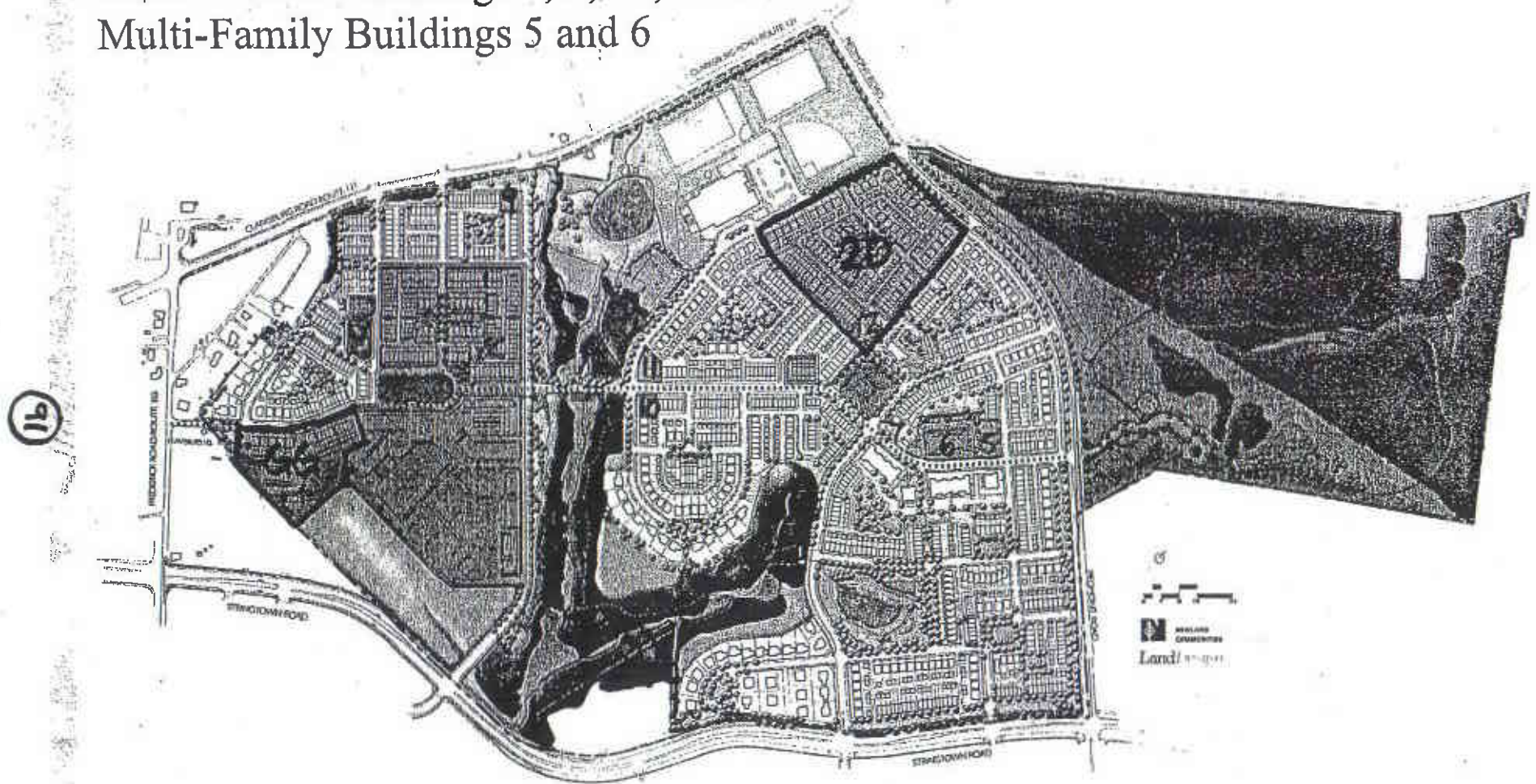
TORTI GALLAS AND PARTNERS • DUANY PLATER-ZYBERK & COMPANY • Michael Vergason Landscape Architects

CLARKSBURG

Sections 2D and GG

Manor Home Buildings 7, 9, 10, 11 and 12

Multi-Family Buildings 5 and 6



Existing Plan showing Un-built Areas

ATTACHMENT 5

JUNE 15, 2006 ERRATA

4. **Status of the Plan of Compliance** -- The Plan of Compliance includes the concepts presented in the written description along with the conceptual drawings, and the comments and modifications made by staff on Page 1 and 2 of this staff report. These comments replace the entire Section "S Outcome of this Plan of Compliance." The comments and modifications also revise Exhibit "R" to match the number and type of units shown on the enclosed Development Standards and the attached drawing of Units/Lots.

All dwelling units already built or occupied that were the subject of violations already found or alleged are "grandfathered."

The pending amendments to the approved Project Plan, the pending amendment for the Site Plan for Section 1A4, as well as the pending site plan for the retail area, are all withdrawn.

The Project Plan, Preliminary Plan, and Site Plans that will reflect the elements of this Plan of Compliance must be submitted before October 26, 2006. These plans must include a Phasing Plan for the entire development, including all facilities and amenities. The entire project must be completed by June 15, 2010 unless the Planning Board approves an extension.

ATTACHMENT 6

**FIRST STAGE: DEVELOPMENT STANDARDS
CLARKSBURG TOWN CENTER**

Table 1: Manor House Buildings 7 and 9 (Multi-Family Units)

| Item | Required/Approved | Proposed |
|--|--------------------------|-------------------|
| Residential Uses: | | |
| - Single-Family Detached Units | 0 | 0 |
| - Townhouses | 0 | 0 |
| - Multi-Family Units | 12, Each Building | 12, Each Building |
| - Total Units | 12, Each Building | 12, Each Building |
| Minimum Lot Size (square feet): | 5,000 | 5,000 |
| Maximum Building Height: | 45' | 45' |
| Setbacks: | | |
| - Front | 10' | 10' |
| - Side | 5' | 5' |
| - Back | 5' | 5' |
| Parking Spaces: | | |
| - Off-Street | 10, Each Building | 10, Each Building |
| - On-Street | 8, Each Building | 8, Each Building |

Table 2: Proposed Development Standards from Exhibit R of the Plan of Compliance June 30, 2006

| Lot | Block | Minimum Lot Area | Minimum Front Yard*** | Minimum Rear Yard (distance to principal structure) | Minimum Side Yard (left) | Minimum Side Yard (right) | Maximum Height * | Builder |
|-----|-------|------------------|-----------------------|---|--------------------------|---------------------------|------------------|------------------|
| 1 | K | 5,951 sf | 10'/12' | 35' | 3' | 3' | 32' | Porten Homes |
| 2 | K | 4,160 sf | 10' | 35' | 3' | 3' | 31' | Porten Homes |
| 3 | K | 4,160 sf | 10' | 35' | 3' | 3' | 32' | Porten Homes |
| 4 | K | 4,160 sf | 10' | 35' | 3' | 3' | 32' | Porten Homes |
| 5 | K | 5,196 sf | 10'/5' | 35' | 3' | 3' | 31' | Porten Homes |
| 6 | K | 4,992 sf | 10'/7' | 32' | 3' | 3' | 31' | Porten Homes |
| 7 | K | 3,840 sf | 10' | 32' | 3' | 3' | 32' | Porten Homes |
| 8 | K | 3,840 sf | 10' | 32' | 3' | 3' | 31' | Porten Homes |
| 9 | K | 3,840 sf | 10' | 31' | 4' | 4' | 31' | Miller and Smith |
| 10 | K | 3,840 sf | 10' | 31' | 4' | 4' | 32' | Miller and Smith |
| 11 | K | 5,186 sf | 10'/10' | 31' | 10' | 4' | 32' | Miller and Smith |
| 12 | K | 5,652 sf | 10'/12' | 37' | 3' | 3' | 33' | Porten Homes |
| 13 | K | 4,004 sf | 10' | 37' | 3' | 3' | 34' | Porten Homes |
| 14 | K | 3,874 sf | 10' | 38' | 3' | 3' | 33' | Porten Homes |
| 15 | K | 7,932 sf | 11'/11' | 60' | 3' | 3' | 32' | Porten Homes |
| 16 | K | 5,519 sf | 19' | 37' | 3' | 3' | 32' | Porten Homes |
| 17 | K | 4,312 sf | 20' | 37' | 3' | 3' | 32' | Porten Homes |
| 18 | K | 4,498 sf | 20' | 36' | 3' | 3' | 32' | Porten Homes |
| 19 | K | 4,432 sf | 20' | 34' | 3' | 3' | 32' | Porten Homes |
| 20 | K | 5,406 sf | 21' | 33' | 3' | 3' | 32' | Porten Homes |
| 21 | K | 5,638 sf | 20'/7' | 35' | 3' | 3' | 33' | Porten Homes |
| 15 | N | 3,880 sf | 10' | 31' | 4' | 4' | 30' | Miller and Smith |
| 16 | N | 3,880 sf | 10' | 31' | 4' | 4' | 31' | Miller and Smith |
| 17 | N | 3,880 sf | 10' | 31' | 4' | 4' | 32' | Miller and Smith |
| 26 | N | 5,282 sf | 10'/10' | 34' | 8' | 13' | 32' | Miller and Smith |
| 27 | N | 4,004 sf | 10' | 34' | 4' | 4' | 33' | Miller and Smith |
| 28 | N | 4,004 sf | 10' | 34' | 4' | 4' | 33' | Miller and Smith |
| 29 | N | 4,004 sf | 10' | 34' | 4' | 4' | 33' | Miller and Smith |
| 30 | N | 4,004 sf | 10' | 34' | 4' | 4' | 32' | Miller and Smith |
| 31 | N | 4,004 sf | 10' | 34' | 4' | 4' | 31' | Miller and Smith |
| 32 | N | 4,004 sf | 10' | 34' | 4' | 4' | 31' | Miller and Smith |
| 33 | N | 4,004 sf | 10' | 34' | 4' | 4' | 32' | Miller and Smith |
| 34 | N | 5,440 sf | 10'/13' | 34' | 13' | 9' | 32' | Miller and Smith |
| 38 | N | 5,543 sf | 24'/9' | 41' | 9' | 4' | 29*** | Miller and Smith |
| 52 | N | 4,475 sf | 22' | 33' | 4' | 4' | 34' | Miller and Smith |
| 53 | N | 4,453 sf | 22' | 33' | 4' | 4' | 33' | Miller and Smith |
| 54 | N | 4,453 sf | 22' | 33' | 4' | 4' | 33' | Miller and Smith |
| 10 | GG | 4,512 sf | 10'/6' | 33' | 6' | 4' | 32' | Miller and Smith |
| 11 | GG | 4,000 sf | 10' | 33' | 4' | 4' | 32' | Miller and Smith |
| 12 | GG | 4,000 sf | 10' | 33' | 4' | 4' | 32' | Miller and Smith |
| 13 | GG | 4,000 sf | 10' | 33' | 4' | 4' | 32' | Miller and Smith |
| 14 | GG | 5,080 sf | 10'/14' | 33' | 4' | 14' | 33' | Miller and Smith |

| | | Minimum Lot Area | Minimum Front Yard*** | Minimum Rear Yard (distance to principal structure) | Minimum Side Yard (left) | Minimum Side Yard (right) | Maximum Height * | Builder |
|----|---|------------------|-----------------------|---|--------------------------|---------------------------|------------------|------------------|
| 1 | N | 4,468 sf | 10'/12' | 19' | 5' | 12' | 30' | Miller and Smith |
| 2 | N | 3,640 sf | 10' | 19' | 5' | 5' | 29' | Miller and Smith |
| 3 | N | 3,640 sf | 10' | 19' | 5' | 5' | 29' | Miller and Smith |
| 35 | N | 4,760 sf | 35'/15' | 0' | 4' | 15' | 27'** | Miller and Smith |
| 36 | N | 4,410 sf | 40' | 6' | 5' | 5' | 27'** | Miller and Smith |
| 37 | N | 4,894 sf | 40' | 20' | 5' | 5' | 27'** | Miller and Smith |
| 55 | N | 4,565 sf | 22'/8' | 14' | 8' | 8' | 33' | Miller and Smith |
| 7 | L | 2,546 sf | 20' | 37' | 0' | 4' | 40'** | Miller and Smith |
| 8 | L | 2,154 sf | 18' | 39' | 0' | 0' | 40'** | Miller and Smith |
| 9 | L | 1,763 sf | 20' | 41' | 0' | 0' | 33'** | Miller and Smith |
| 10 | L | 2,154 sf | 18' | 39' | 0' | 0' | 40'** | Miller and Smith |
| 11 | L | 3,757 sf | 20'/8' | 37' | 18' | 0' | 40'** | Miller and Smith |

Notes:

* As measured from centerline of street to midline of roof from primary front yard. May include up to 8:12 roof pitch. A terrace credit will be applied to any unit that receives a front retaining wall due to grade. Height measurement is not applicable from side street or rear (alley).

** A 1.5'-2' retaining wall is proposed in front of Lots 7-11, Block L & Lots 35-38, Block K. The height measurement does not include a terrace credit at this time.

***When two front yard setbacks are shown on a corner lot the second number applies to the side of the house that does not contain the primary (front) door to the house. To comply with the second Front Yard Setback for Lot 11, Block L the garage will be built 20 ft. wide instead of 22 ft. wide (tapered lot).

General:

All lot sizes are based on approved record plats. Height and Setback measurements are based on the Builder's lot grading plan, which includes a composite footprint. Actual field measurements may vary based on house type selected. Height is based on grade difference from centerline of road to first floor, plus distance from proposed first floor to mid-roof based on existing architecture. While actual heights may vary based on house elevation selected, in no case will any home exceed the new height development standards.

From: [Adrienne Elefantis](#)
To: [MCP-Chair](#)
Subject: please approve the Clarksburg Town Center plan amendment on 2/29
Date: Friday, February 23, 2024 12:27:40 PM

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

Dear Planning Board members,

My husband and I are writing to express our unequivocal support for the Clarksburg Town Center (CTC) plan amendment you are reviewing on February 29. Please vote to approve this plan so that my family and neighbors can escape this dreaded state of limbo we've been stuck in and finally see our neighborhood completed after 20 years.

Please know this request is coming from two individuals who have spent the past two decades in Clarksburg and almost 50 years in Montgomery County, who know this development's complicated history, and who are committed only to the best interests of Clarksburg Town Center homeowners and residents.

My husband and I bought our townhouse in 2004 and spent the past 16 years raising two children here. My husband testified before the planning board in 2015 to support earlier plan amendments. I've been actively engaged in community advocacy through my position on the Clarksburg HOA Board of Directors and Grounds Committee. Being on the Board I believe I have a good grasp of what the community wants, based on comments we hear at annual meetings. Everyone's number one wish here is simply to see our neighborhood finished.

We truly value the hard work you do every day for the betterment of our County. Our region would not be as beautiful and well preserved if not for your diligence and thoughtful approach to development. However, the County works in a time scale that is extremely slow compared with how most people live their lives -- and that's in the BEST of cases. CTC has been the WORST of cases, stuck in a glacial cycle of amendment, review, amendment, review for years. This prolonged uncertainty has actually harmed my family's quality of life. When you have young children who from diapers to kindergarten in 5 years, and from kindergarten to high school in 9 years, 20 years is an entire lifetime lived. Our children weren't even born when we moved to Clarksburg and now our eldest is starting to look at colleges.

We've had to watch from the sidelines as Clarksburg got five new public schools, more new planned communities, outlets, gas stations and restaurants, a drug store. Meanwhile, we still have a pile of dirt where a town center should be. Families like mine are losing out on the kind of cohesive neighborhood experience we were promised, during important years we will never get back.

It is time to close the books on CTC and let the developer "get it done." We like the specifics of the plan presented by Third Try and believe they are putting forth a good faith effort to create the best possible version of Town Center given current market conditions. Please give this plan amendment your vote of approval. We are counting on you and thank you so much for your support.

Sincerely,
Adrienne and Demetrios (Jim) Elefantis
23800 Branchbrier Way
Clarksburg MD 20871