

(Attachment H)

Criss, Jeremy

From: Criss, Jeremy
Sent: Thursday, December 15, 2011 9:43 AM
To: 'Jim Humphrey'
Cc: Zawitoski, John
Subject: RE: Bethesda rezoning application to avoid purchase of TDRs

Hello Jim,

Thank you for this message and the opportunity to submit recommendations to the Planning Board on this rezoning application.

The Montgomery County Agricultural Advisory Committee and the Agricultural Preservation Advisory Board will forward recommendations.

Attached, you will see what I forwarded to Marlene Michaelson regarding the status of our Building Lot Termination Program.

Let us know if you have any questions.

Happy Holidays. J

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-----Original Message-----

From: Jim Humphrey [mailto:theelms518@earthlink.net]
Sent: Wednesday, December 14, 2011 5:05 PM
To: Criss, Jeremy
Subject: Bethesda rezoning application to avoid purchase of TDRs

Mr. Criss/Jeremy-

This is a follow-up to the telephone conversation we had this week about a rezoning application (Limited Map Amendment G-909) that, if granted by Council, would allow the applicant to avoid purchase of TDRs to achieve the full recommended density when redeveloping their properties.

I received a letter, dated October 27, 2011, from Nancy Regelin (attorney with Shulman, Rogers, Gandal, Porty and Ecker law firm) stating her client, Glenwood Glen Aldon LLC, has requested Council rezone properties they own on Battery Lane in Bethesda. In her letter, Ms. Regelin states "The request seeks reclassification from the R-10/R-10TDR Zone to the PD-100 Zone, or in the alternative PD-88, for 5.29 acres, located at 4857, 4858, 4890 and 4900 Battery Lane in the 7th Election District."

The property at 4857 Battery Lane will likely not concern you. It was zoned R-10 (multi-family residential) prior to approval of the 1994 Bethesda CBD Sector Plan, and with adoption of that Plan the Council retained the R-10 zoning with a recommendation that the property could be developed under the PD-75 Zone.

The properties at 4858 Battery Lane (referred to as Site 2), and 4890 and 4900 Battery Lane (referred to as Site 3), are the ones I wish to bring to your attention. These 3 properties total 186,286 square feet in size, or 4.276 acres. They were also zoned R-10 prior to adoption of the 1994 Bethesda CBD Sector Plan. But with approval of the '94 Plan the Council changed the zoning for Sites 2 and 3 to the R-10/TDR Zone, recommended at a density of 100 dwelling units to the acre. Now the property owner is requesting

(Attachment A.)

rezoning "to the PD-100 Zone, or in the alternative PD-88...", which would allow them the 100 dwelling unit per acre density recommended in the Sector Plan without their having to purchase TDRs (transferable development rights) to achieve that level of density.

The multiple family residential R-10 Zone allows a maximum of 53.07 dwelling units per acre in projects that include Moderately Priced Dwelling Units (MPDUs), which this project would. In order to achieve the 100 du/acre density recommended in the '94 Bethesda CBD Sector Plan, the developer would have to purchase sufficient TDRs to make up the difference, or 46.93 dwelling units per acre.

While the subject properties on Battery Lane are located within the Bethesda Sector Plan boundaries, they are not located within the boundaries of the Bethesda Metro Station Policy Area (which are the same as the boundaries for the Central Business District). Therefore, the developer would be allowed 2 multiple-family dwelling units for each TDR purchased [County Code Sec.59-C-2.441]. By my calculations this would require purchase of 23.465 TDRs per acre for each of the 4.276 total acres in these three properties, or a total of 100 TDRs. However, if the Council grants the applicant's request for rezoning into the PD (Planned Development) Zone, no TDRs would need to be purchased.

The language concerning the approval process for a rezoning that includes a Development Plan (necessary for PD rezoning requests) states the District Council must find "The zone applied for substantially complies with the use and density indicated by the master plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies." [County Code Sec.59-D-1.61(a)] Relevant to this case, it is a county policy to identify TDR receiving properties in master and sector plans, in order to fulfill the purposes of the Transferrable Development Rights Program. Because this rezoning request is in conflict with the Sector Plan zoning recommendation and the county policy regarding the TDR Program, we believe the Council should deny it.

As to the rezoning process, a public review of this request for rezoning will be scheduled by the Planning Board, after its Technical Staff has reviewed the application. You may provide facts and opinions to Technical Staff during their review, and you may testify before the Board at the hearing on this issue (which will likely take place in March). The Board will then make a written recommendation to the Hearing Examiner assigned to this case by the Office of Zoning and Administrative Hearings (OZAH). The Hearing Examiner will also conduct a public hearing on the application, which is currently scheduled for Friday, April 13. Should you wish to participate in that process, you will have the opportunity to testify at that hearing. Or you may send written materials to OZAH at 100 Maryland Avenue, Room 200, Rockville, Maryland 20850.

For your information, I have included below the relevant language from the 1994 Bethesda CBD Sector Plan concerning these Battery Lane properties. I will email you again as soon as I find out the date the Planning Board will hold its hearing on this rezoning request, or when I find out the name of the Technical Staff member assigned. Feel free to call or email me if you have questions. Thank you.

- Jim Humphrey

Chair, Planning and Land Use Committee, Montgomery County Civic Federation

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Excerpts from 1994 Bethesda CBD Sector Plan, Chapter 4 - Land Use and Zoning Plan for Battery Lane District (pg. 92):

"An amendment to the multiple family residential zones created three new TDR zones: R-30/TDR, R-20/TDR, and R-10/TDR. On the south side of Battery Lane, the Plan recommends the R-10/TDR Zone at 100 dwelling units to the acre for Sites 2 and 3. A greater density can be accommodated on the south side of the street because higher heights are acceptable toward the rear of the property. *Use of the TDR Zone will further the public policy objective of agricultural preservation.* Any redevelopment on these sites should be compatible with the possible development of housing and parking on the Garage 35 site." [emphasis added]