

Resolution No.: 17-555  
Introduced: September 25, 2012  
Adopted: September 25, 2012

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
IN MONTGOMERY COUNTY**

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By: District Council

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**SUBJECT:** APPLICATION NO. G-909 FOR AMENDMENT TO THE ZONING ORDINANCE MAP, Nancy Regelin, Esquire, Attorney for Applicants, GLENWOOD GLEN ALDON, LLC, GLENMONT APARTMENTS, LLC AND GLENBROOK, LLC, OPINION AND RESOLUTION ON APPLICATION  
Tax Account Nos. 07-00524265, 07-00524653, 07-00524276, 07-00524378.

**OPINION**

Filed on October 25, 2011 by Applicants Glenwood Glen Aldon, LLC, Glenmont Apartments, LLC and Glenbrook, LLC (Applicants), Local Map Amendment G-909 requests rezoning of approximately 5.67 acres of land from the R-10 and R-10/TDR Zones to either the PD-88 or PD-100 Zones. The subject site is comprised of four parcels with addresses of 4857, 4858, 4890, and 4900 Battery Lane, Bethesda, Maryland. The site is identified as Lots 8, 22, and Parts of Parcels 35-38, Pt. of 5, 38, 40, 41, 42, in the Northwest Park subdivision, tax account numbers 07-00524265, 07-00524653, 07-00524276, 07-00524378, in the 7<sup>th</sup> Election District.

The applications include four alternative development plans varying in density, the number of Transferable Development Rights (TDRs) to be acquired, and whether or not 10 voluntary affordable housing units (VAHUs) proposed by the Applicants are included in the project.<sup>1</sup> All alternatives propose that 15% of the dwelling units will be Moderately Priced Dwelling Units (MPDUs). These alternative development plans are summarized below:

PD-88: 644 dwelling units, 31 TDRs (Exhibit 80)  
PD-100: 692 dwelling units, 20 TDRs, 10 VAHUs (Exhibit 31)  
PD-100: 692 dwelling units, 31 TDRs, 10 VAHUs (Exhibit 82)  
PD-100: 750 dwelling units, 31 TDRs, 10 VAHUS (Exhibit 81)

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<sup>1</sup> As described, *infra*, the voluntary affordable housing units comply with the income eligibility and rents of Workforce Housing established under Chapter 25B of the Montgomery County Code, but unlike Workforce Housing units, are restricted for a period of 20 rather than 99 years.

The Hearing Examiner's Report and Recommendation (ZHE Report) was filed on August 31, 2012, and is incorporated herein by reference. The Hearing Examiner found that the PD-100 development plan calling for 692 dwelling units, 31 TDRs and 10 VAHUS (Exhibit 82) and the PD-88 development plan (Exhibit 80) met the purposes and standards of the PD-Zone, would be compatible with the surrounding area, and in the public interest.<sup>2</sup> Of these two plans, she preferred the PD-100 development plan because it best furthered multiple public interests, including providing both TDRs and VAHUs. She did not recommend the PD-100 alternative proposing 750 dwelling units because the amount of density exceeded the maximum permissible in the PD-100 Zone. Nor did she recommend the PD-100 development plan providing only 20 TDRs because it did not sufficiently serve the public interest.

After a careful review of the entire record, the District Council finds that the PD-100 development plan (Exhibit 82) be approved for the reasons stated in the Hearing Examiner's Report and Recommendation.

### **THE PROPERTY AND THE SURROUNDING AREA**

The subject property consists of four parcels containing a total of approximately 5.67 acres of gross tract area located on both the north and south sides of Battery Lane in Bethesda, Maryland. Exhibits 1, 80, 82. The property on the north side (Building A as shown on all of the development plans) is located close to the northwest corner of the intersection of Battery Lane and Woodmont Avenue.<sup>3</sup> The properties along the southern side of Battery Lane (Buildings B and C as shown on all development plans) are located in the southwest corner of that intersection and extend further west along Battery Lane toward, but not reaching, the Battery Lane Urban Park. Exhibits 80-82.

Consisting of approximately 1 acre of gross tract area, Parcel A (4857 Battery Lane) has approximately 116 feet of frontage on the north side of Battery Lane. A long and relatively narrow rectangular lot, it is separated from Woodmont Avenue to the east by an intervening property approximately 60 feet in width. Parcel A is zoned R-10 (Multi-family--High Density Residential), but is recommended for PD-75 in the *1994 Bethesda Central Business District Sector Plan* (1994 Plan). Exhibit 36, pp. 3-4.

The southern portion of the site consists of three parcels totaling approximately 4.61 acres of gross tract area on the south side of Battery Lane (4858, 4890, and 4900 Battery Lane). Exhibits 80-82, 53; T. 120. The northern property lines of these parcels extend from the southwest corner of the intersection of Woodmont Avenue and Battery Lane approximately 640 feet to the west. This tract also fronts on the west side of Woodmont Avenue for approximately 160 feet. T. 240-241. The westernmost portion of Parcel B is zoned R-10; the balance of Parcels B and C (3.54 acres of gross tract area) is zoned R-10/TDR. The R-10/TDR portion of

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<sup>2</sup> For the purpose of this Resolution, the PD-100 development plan calling for 692 dwelling units, 31 TDRs, and 10 VAHUS (Exhibit 82) shall be referenced as the "PD-100 development plan" or "PD-100 plan" unless otherwise noted.

<sup>3</sup> For ease of reference and for the reasons set forth in the ZHE Report, this Resolution will refer to the different properties as Parcels A, B, and C and the different buildings as Buildings A, B, or C. *ZHE Report*, p. 7, fn. 2.

Parcels B and C comprises approximately 60% of the combined gross tract area of all the parcels. Exhibit 53.

The properties are currently improved with four, four-story multi-family buildings, containing a total of 260 dwelling units, originally constructed in the 1950's and 1960's. T. 23; Ex. 36, p. 4. Each building has a paved circular drive leading to a central entrance and surface parking areas. Exhibit 36, p. 3. None of the existing units include regulated affordable housing (i.e., MPDUs). The rents are considered affordable for the area because of the ages of the buildings and lack of amenities normally associated with higher rental rates. Exhibit 36, p. 4; T. 28. The Applicants' representative testified that rents are slightly above those regulated under the County's Workforce Housing program, but the apartments attract higher income, credit worthy tenants because of their proximity to National Institutes of Health (NIH). T. 28.

Technical Staff advises that there is no "significant" vegetation on the site, the majority of which is paved parking lot or improved with the multi-family buildings. Ex. 38, p. 3; *see also*, T. 282. There are four specimen trees which exceed 30 inches in diameter. Exhibit 66. These trees are "stressed" by their urban environment, according to the Applicants' expert land planner, Mr. Douglas Wrenn. T. 107.

The Hearing Examiner accepted Technical Staff's and the Applicants' delineation of the surrounding area as bounded by NIH to the north, Wisconsin Avenue to the east, Old Georgetown Road to the south and west and Norfolk Avenue to the intersection with Woodmont Avenue and Cheltenham Drive. Located immediately to the north and west of the Bethesda Central Business District (CBD), the Hearing Examiner characterized the Battery Lane portion of the surrounding area as a residential transition from the Metro Core to less densely zoned areas outside the Sector Plan boundary. Proceeding generally to the south and east (within the CBD), the uses become a mix of commercial, retail, and mixed use developments. These more intense uses in the CBD transition gradually to lower density residential and the Battery Lane Park to the east and to the NIH campus to the north. The District Council agrees with the Hearing Examiner's characterization of the surrounding area and so finds.

## **PROPOSED DEVELOPMENT AND BINDING ELEMENTS**

### **Alternative Development Plans**

The four alternative development plans are accomplished under two different density categories in the PD Zone: The 644-unit development plan (Exhibit 80) is proposed under the PD-88 Zone and the 692-unit and 750-unit development plans under the PD-100 Zone. Each plan calls for the demolition of the existing buildings and construction of three new multi-family residential buildings. No retail is proposed under any of the alternatives. T. 260.

The site design of all the plans is the same; the differences are primarily in the maximum number of dwelling units permitted, the number of TDRs to be acquired, and whether VAHUs will be provided. All alternatives propose to that 15% of the total number of dwelling units will be MPDUs, thereby qualifying for a density bonus pursuant to §7.14(c) of the Zoning Ordinance. The MPDUs in the PD-88 plan and the VAHUs proposed in the PD-100 development plans need

not be provided on-site but must be provided within the Battery Lane District (defined in the 1994 Plan), possibly in the Applicants' other properties. T. 71; Exhibits 80-82.

Under all scenarios, the height of Building A is capped at 79 feet, which permits 9 stories. The textual binding elements limit the maximum heights for Buildings B and C to 110 feet. The Applicants' seek flexibility to develop between five and 11 stories for both buildings. According to the Applicants' architect, Mr. David Kitchens, Building B will "probably" be five stories because of the costs involved in building above that level. The Applicants' wish to retain the flexibility to build to 11 stories because it is not economical to develop between 6 and 10 stories due to the higher construction costs for framing and other building code requirements. T. 218-219.

All scenarios call for a minimum of 30% green area within the site. Building A will be setback from Battery Lane by 26 feet and will have a rear yard setback (adjacent to the NIH campus) of 10 feet. Buildings B and C will be setback from Battery Lane by a minimum of 24 feet. T. 72. Building C will have no setback from Woodmont Avenue, which is permissible in the PD-100 and PD-88 density categories. *See*, §59-C-7.11, *et. seq.*

The alternative development plans differ primarily in density, the number of TDRs to be acquired, and whether 10 VAHUs are provided. These variables also change the parking calculations and the number of MPDUs actually to be provided under each scenario. Each alternative development plan calls for the required number of parking spaces. Exhibits 31, 80-82. According to the Applicants, the PD-100 Plan for 750 units is based on a 10% bonus density for provision of TDRs in the PD Zone. *See*, §59-C-7.14(e); Exhibit 78. The Hearing Examiner found that this development plan did not qualify for a bonus density under this section of the Zoning Ordinance, but included it in the following table from her Report for comparison purposes (*ZHE Report*, p. 19):

	<b>PD-88</b>	<b>PD-100</b>	<b>PD-100</b>	<b>PD-100</b>
<b>Maximum Dwelling Units</b>	644	692	692	750
<b>Percentage MPDUs</b>	15%	15%	15%	15%
<b>Potential MPDUs</b>	96	104	104	113
<b>TDRs Acquired</b>	31	20	31	31
<b>VAHUs</b>	0	10	10	10

For the PD-100 applications (i.e., 692 and 750 dwelling units), the Applicants propose to provide 10 "voluntary affordable housing units" or "VAHUs," which may be located off-site within the Battery Lane District. Exhibits 80-82; T. 28-29. These "affordable units" are not legislatively defined; as described by Technical Staff, they are comparable to Workforce Housing units, regulated by Chapter 25B, Article V of the Code, but restricted for a much shorter period. Legislatively defined "workforce housing" is intended to provide housing opportunities for individuals with incomes "at or below 120% of the area-wide median income". *Id.*, §25B-

24(b)(1). To qualify as workforce housing, however, the rents must be limited to an amount set by the Department of Housing and Community Development (DHCA) for 99 years. *Id.*, §25B-26(d). Rents for the VAHUs proffered under of all the PD-100 plans will be restricted to regulated levels for only 20 years. While the Applicants state that they are not taking the bonus densities available under the zoning ordinance for providing Workforce Housing units, they are requesting the higher density in the PD Zone due in part to the cost of providing the VAHUs. T. 29.

### **Binding Elements**

Pursuant to Zoning Ordinance §59-D-1.11, development under the PD Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the PD Zone. This development plan must contain several elements, including a land use plan showing site access, proposed buildings and structures, a preliminary classification of dwelling units by type and number of bedrooms, parking areas, land to be dedicated to public use, and land intended for common or quasi-public use but not intended to be in public ownership. Code §59-D-1.3.

Once approved by the District Council, the development plan is binding on the Applicants except where particular elements are identified as illustrative or conceptual. The project is subject to site plan review by the Planning Board, and minor changes to the plan may be made at that time. The principal specifications on the development plan – those that the District Council considers in evaluating compatibility and compliance with the zone, may not be changed without further application to the Council to amend the development plan.

The alternative development plans (Exhibits 31, 80-82) submitted include some binding elements which are identical under all four alternatives. The full text of the binding elements for the PD-100 development plan approved by the Council herein is included in the appendix to this resolution. The binding elements common to the PD-88 and PD-100 development plans are below:

1. The building north of Battery Lane will have a maximum height of 79' (65' plus additional height for MPDUs), as measured from the centerline of the pavement of Battery Lane, to the high point of the main roof slab or the midpoint of any gable roof (excluding mechanical equipment and screening, access, elevator penthouses and decorative gables and architectural features). Although no specific building stepback was recommended in the Sector Plan, Staff will evaluate any stepbacks and building setbacks at the time of Site Plan review, as appropriate to avoid any canyon effect along Battery Lane, consistent with the goals and objectives of the Sector Plan.
2. The buildings south of Battery Lane will have a maximum height of 110', with respect to the building fronting on Woodmont Avenue and Battery Lane as measured from the centerline of the pavement along Woodmont Avenue, and with respect to the building fronting on Battery Lane as measured from the centerline of the pavement on Battery Lane, to the high point of the main roof slab or the

midpoint of any gable roof (excluding mechanical equipment and screening, access, elevator penthouses and decorative gables and architectural features). Although no specific building stepback was recommended in the Sector Plan, Staff will evaluate any stepbacks and building setbacks at the time of Site Plan review, as appropriate to avoid any canyon effect along Battery Lane, consistent with the goals and objectives of the Sector Plan.

3. The development shall provide 15% of the final unit count as Moderately Priced Dwelling Units per Chapter 25A. MPDUs shall be distributed within the Development and off-site within the Battery Lane District as may be approved by the Department of Housing and Community Affairs (“DHCA”).
4. The Development shall provide no less than 30% of the gross site area as green area on-site, variably distributed throughout the Development Plan area. Final green area per building site shall be finalized at site plan.
5. Required building setbacks along Woodmont Avenue right-of-way shall be zero per zoning ordinance. Setbacks shall be no less than 24’ from the Battery Lane right-of-way for Buildings B and C, and not less than 26’ from the Battery Lane right-of-way for Building A. Side yard setbacks shall be zero, and rear yard setback shall be zero except along the northern rear yard boundary with NIH where they shall be 10 feet. In the event Building B exceeds 5 stories, the side yard setback adjoining Block 1, Lot 43, Northwest Park shall be reviewed at site plan.<sup>4</sup>
6. Final parking counts and layouts to be determined at site plan.
7. At least one point of vehicular access for the building north of Battery Lane shall be provided by the common driveway per the Common Driveway Agreement recorded in Liber 26425 at folio 122.
8. The Development program is intended to be developed in multiple phases. Development of on-site amenities associated with each building will occur concurrently with the occupancy of the residential units in such building and will be completed prior to the occupancy of 75% of the units in such building, subject to possible deferral of landscaping to the appropriate planting season.
9. Any structured parking that is not below grade must be lined with residential units so the parking is not visible from the street, and lined with units or architectural screening so the parking is not visible from the courtyards and adjacent residential properties. Details to be reviewed with the Site Plan for each building.<sup>5</sup>

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<sup>4</sup> The PD-100 development plan mandating purchase of 20 TDRs (Exhibit 31) was not updated to include this binding element.

<sup>5</sup> The numbering here is sequential and does not correspond to the actual numbers of the binding elements shown on the alternative development plans because the numbering varies on the different plans. Exhibits 31(j), 80-82.

The additional binding elements relating to density, TDRs, and VAHUs are summarized in the chart on page 4 of this Resolution.

### STANDARD FOR REVIEW

The subject application seeks to rezone the property from the R-10 and R-10/TDR Zones either the PD-88 or PD-100 density categories of the zone. These zones fall into a category known as “floating zones.” A floating zone is a flexible device that allows a legislative body to establish a district for a particular type of use, with land use regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, *i.e.*, it satisfies the purpose clause and requirements for the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

PD (Planned Development) zones are a special variety of floating zones with performance specifications integrated into the requirements of the zone. These zones allow considerable design flexibility if the performance specifications are satisfied. The applicant is not bound to rigid design specifications, but may propose site-tailored specifications, within the parameters established for the zone, for elements such as setbacks, building heights and types of buildings. These specifications are set forth on a development plan to facilitate appropriate zoning oversight by the District Council.

Accordingly, the evaluation of zoning issues must begin with the development plan and proceed to the requirements of the zone itself. Before approving a development plan, the District Council must make five specific findings set forth in Zoning Ordinance §59-D-1.61. These findings relate to consistency with the master plan and the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas.

In addition to these five findings, Maryland law also requires that the proposed rezoning be in the public interest. As stated in the State Zoning Enabling Act applicable to the County, all zoning power must be exercised:

*“ . . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . . and [for] the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district.” [Regional District Act, M-NCPPC Article (Art. 28), Md. Code Ann., § 7-110].*

The “Required Findings” are discussed below in the order set forth in the statute. Based on its review, the District Council concludes that the evidence in this case supports approval of the PD-100 development plan which includes a maximum density of 692 dwelling units, 31 TDRs, and 10 VAHUs.

## REQUIRED FINDINGS

### Purpose Clause of the PD Zone

The purposes of the PD-Zone are addressed by paragraph in the order contained in the Zoning Ordinance. *See, Montgomery County Code, §59-C-7.11.* The full text of §59-C-7.11 is included in the Hearing Examiner's Report and Recommendation, and therefore is not repeated unless necessary.

### First Paragraph: Consistency with the Sector Plan and Other County Policies

The Council must find that the development plan substantially complies with both the relevant sector plan and does not conflict with other County plans and policies:

*It is the purpose of this zone to implement the general plan for the Maryland-Washington Regional District and the area master plans by permitting unified development consistent with densities proposed by master plans. It is intended that this zone provide a means of regulating development which can achieve flexibility of design, the integration of mutually compatible uses and optimum land planning with greater efficiency, convenience and amenity than the procedures and regulations under which it is permitted as a right under conventional zoning categories. In so doing, it is intended that the zoning category be utilized to implement the general plan, area master plans and other pertinent county policies in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.*

As noted, the subject property is within the geographic area covered by the *1994 Plan*, and the *2006 Woodmont Triangle Amendment* (2006 Amendment) thereto (collectively, the Sector Plan). The District Council agrees with the Hearing Examiner's finding that the densities proposed in the PD-88 plan and PD-100 development plans substantially comply with the Sector Plan for the reasons expressed by the Hearing Examiner.

### Density Proposed

The Applicants justify the densities proposed in the alternative development plans by asserting that the Council would have rezoned the properties to a density of 100 dwelling units per acre were it considering the matter today. They also propose a number of mathematical formulas which mix the base density of the Sector Plan recommended zoning with bonus densities in the PD Zone.

The evidence supports the Applicants' assertion that the Council intended to increase residential capacity in the Battery Lane District and particularly desired to increase the number of MPDUs in the area. While the 2006 Amendment did not change the zoning for the Battery Lane District, it did articulate one policy goal for the *entire* study area including the subject property: It identified the need for more MPDUs, pronouncing that this should be "a priority

for all projects developing under the Optional Method of Development.” *Id.* The specific references to the blocks on which the subject property are located also identify the need for more housing, calling for another Sector Plan amendment to “address options to retain or increase housing in the Battery Lane District while maintaining a stock of affordable housing.” *Id.* at 23. The amendment anticipated for the Battery Lane District was placed on the Planning Board’s work program, but was eventually deferred and then finally removed.

When evaluating consistency with the Sector Plan in this case, the Council agrees with the Hearing Examiner that it is more appropriate to compare the densities proposed with the potential density which may have been achieved under the Sector Plan at the time it was enacted, including bonus densities available under the zoning categories recommended for the property in the Sector Plan. The Council presumably considered the achievable density as a possibility when it adopted the Sector Plans, assuming the development accomplished the policy goals desired. The achievable density would include the base density under the zoning recommended in the Sector Plan (using the optional method of development under the R-10/TDR Zone) with a 22% density bonus for affordable housing. Utilizing the bonus densities in this calculation is appropriate here as a starting point because all development plans provide a sufficient number of TDRs and all of the MPDUs necessary to qualify for the density bonuses. Therefore, both development plans will fulfill the Council’s policies for providing these bonuses.

The District Council agrees with the Hearing Examiner and Technical Staff that development under the zoning categories recommended in the Sector Plan would yield 585 dwelling units. The PD-88 application, requesting 644 dwelling units, is approximately 9% above the achievable density in the Sector Plan. The PD-100 density of 692 dwelling units is an increase of 15% over the Sector Plan’s achievable density. Given the need for additional and more affordable housing options within the Battery Lane District, it is reasonable to conclude a maximum of 692 dwelling units substantially conforms to the goals of the 1994 Plan and the 2006 Amendment.

Further, when considering the “appropriate density” for a property, the PD Zone permits the Council to take into account “other relevant” information in determining whether the density requested is appropriate. *Zoning Ordinance*, §7.14(b). The Hearing Examiner found that the anticipated increase in jobs in the Bethesda area stemming from the Base Realignment and Closing Act (BRAC) and the critical shortage of affordable housing in Bethesda (both of which occurred after adoption of the 1994 Plan) are appropriate for the Council to consider. Exhibit 78, p. 5. The Council agrees and so finds. As the PD-88 development plan proposes fewer dwelling units, it also substantially complies with this purpose of the PD Zone. Because it does not provide any VAHUS and because its lower density results in fewer MPDUs to address the affordable housing shortage, the Council approves the PD-100 development plan.

The Council also concludes that it does not have the ability to approve the development plan calling for 750 dwelling units, as this would exceed the density permitted by the PD Zone. The Applicants state that the additional density derives from §59-C-7.14(e) of the Zoning Ordinance. That subsection restricts the Council’s ability to award a TDR bonus in the PD Zone to 10% above the “maximum density specified in the approved and adopted master plan

for the provision of TDRs, if the use of TDRs is recommended for the site.”<sup>6</sup> The maximum density of development permitted under the Sector Plan for provision of TDRs is the “base density” of 480 dwelling units, because it already includes the maximum development potential providing TDRs in the R-10/TDR Zone (i.e., the optional method of development which yields 100 dwelling units per acre). Thus, the maximum density achievable for the site in the PD Zone is the PD-100 development plan with 692 units.

### **Provision of TDRs**

Opponents of the application further argued that the number of TDRs being provided does not sufficiently comply with the recommendation in the 1994 Plan to support the County’s agricultural program. For the following reasons, the Council finds that the numbers of TDRs proposed by the PD-88 development plan and the PD-100 development plan substantially comply with the Sector Plan, but the 20 TDRs originally proposed for the PD-100 Zone (Exhibit 31(a)), does not substantially comply with the Sector Plan.

The Montgomery County Civic Federation (Federation) argued that the 31 TDRs provided by the PD-100 and PD-88 plans did not comply sufficiently with the Sector Plan because it represented only 2/3 of the TDRs that would be required in order for the Applicants to receive the maximum density of 100 dwelling units per acre for the portion of Parcels B and C zoned R-10/TDR. Mr. Jim Humphrey, who appeared on behalf of the Federation, opined that Sector Plan compliance requires acquisition of 46 TDRs, pointing out that one of the purposes of the PD Zone is to “implement the general plan, area master plans, and other County plans and policies *in a manner and to a degree more closely compatible with said county plans and policies than may be possible under other zoning categories.*” Exhibit 79, p. 3 (emphasis in original). The Federation believes that the full number of TDRs is particularly important here because the proposed rezoning will eliminate a TDR receiving area.

Technical Staff concluded that development of Parcels B and C at the maximum density permitted under the optional method of the R-10/TDR Zone (i.e., 100 dwelling units per acre) would require the Applicants to purchase 46 TDRs. Exhibit 36, p. 22. Staff found, however, that the “required” number was 2/3 of that total or 31 TDRs on the theory that this was the minimum number to qualify for *any* TDR density and because there was no requirement to purchase TDRs in the PD Zone. *See, Montgomery County Code, §§59-C-2.443, 59-C-7.11, et. seq.*

The Montgomery County Agricultural Advisory Committee (AAC) opposed all the development plans, submitting evidence that more TDR receiving areas are necessary to implement the County’s agricultural preservation program. Aside from its general position advocating the need for TDR receiving areas, the AAC did not weigh in on whether the higher number of TDRs (i.e., 31) substantially complied with the Sector Plan, instead advocating against elimination of a receiving area. Exhibit 67.

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<sup>6</sup> The Montgomery County Civic Federation (Federation) argues that the 10% bonus density from the PD Zone should be applied only to the portion of the parcel designated as a TDR receiving area. Exhibit 90, p. 2. Because the Hearing Examiner finds that 750 dwelling units exceed the number authorized by the TDR density bonus, she does not address the Federation’s position.

While mindful of the admonition that development plans for the PD Zone should implement the Sector Plan “in a manner and to a degree more closely compatible” with the Plan, the Council finds, as did the Hearing Examiner, that the 31 TDRs proffered by the Applicants in the PD-88 and PD-100 development plans do comply with the Sector Plan sufficiently to fulfill this purpose of the PD Zone. It is difficult to predict how many TDRs would actually be achieved if the site were developed under the existing zoning; the 2/3 minimum may be more or less than would have been achieved (because the Planning Board has the ability to waive that minimum standard). This conclusion is particularly appropriate here where the development plans *do* more closely achieve other goals, such as the provision of a variety of affordable housing options (i.e., the VAHUs and MPDUs) in the Battery Lane District. The Council finds, as did the Hearing Examiner, that both the PD-88 application and the PD-100 development plans substantially comply with the Sector Plan.

The Council does not find, however, that the PD-100 development plan providing only 20 TDRs sufficiently complies with the Sector Plan. Twenty TDRs represents fewer (by approximately 35%) than the minimum amount of the TDRs necessary to implement the Sector Plan’s objectives (absent a waiver from the Planning Board). The Applicants assert that the lower number of TDRs is necessary to offset the cost of the VAHUs, but did not present any evidence before the Hearing Examiner that this is the case.

### **Urban Design Guidelines**

The Council finds that there is sufficient evidence in this record to support a finding that the PD-88 and PD-100 substantially comply with the urban design guidelines contained in the Sector Plan, although the development plans do vary from those guidelines in some respects. These aspects relate to the maximum height recommended for the property as well as utilization of roofline setbacks (recommended to avoid a “canyon effect” along Battery Lane.)

Located just outside of the CBD, the Sector Plan designates the Battery Lane District as a “residential edge”, traditionally an area of transition between the CBD and residential uses outside the CBD. The Sector Plan’s “urban form” for Bethesda called for gradual decreases in heights from the Metro Core to the residential edge, and capped heights on specific parcels and identified urban designs to be avoided. Exhibit 83, pp. 37-43. The Sector Plan permitted a setback height between 65 and 110 feet for the eastern portion of Parcel B zoned R-10/TDR; it did not recommend this height for the westernmost portion of the property south of Battery Lane, which is zoned R-10.<sup>7</sup>

The Applicants’ architect testified that Building B will most likely be 5 rather than 11 stories because the current market is for smaller, more affordable units. To support its case for

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<sup>7</sup> The Applicants argued that the 2006 Amendment expanded the higher height limit to the western portion of Parcel B because the line delineating building heights (shown on page 12 of the 2006 Amendment (Exhibit 53)) is further west than that shown on the same graphic in the 1994 Plan. Exhibit 83, p. 39. The Council does not find a perceptible difference in the graphic, nor does it override the site-specific direction in the text that: “This Amendment leaves unchanged the current zoning and height limits in the Battery Lane District.” Exhibit 55, p. 23.

the 11-story height of Building B, the Applicants posit that the overall transition in heights called for in the Sector Plan may be accomplished through varied building heights (i.e., some taller buildings mixed with some small buildings) rather than a straight line descending from east to west. They presented a conceptual illustration of the project showing that 692 dwelling units could be accomplished if Building A were 9 stories, Building C were 11 stories, and Building B were 5 stories. The illustration is based on an average-sized unit of 1,000 square feet.

In addition to building heights, the Applicants do not propose to use the stepbacked rooflines recommended in the 1994 Plan because they believe these are not suitable for residential buildings, which, according to their architect, are much more efficient if all plumbing and unit designs are aligned. The Applicants opined that the Sector Plan intended the stepbacked rooflines to apply to commercial properties. They argue that the heights set in the Sector Plan should be modified because the Sector Plan is old and because the “new urbanism” suggests a newer, more urban approach is desirable in the longer term, i.e., for the next 50-60 years.

Technical Staff attempted to implement the “urban form” envisioned by the Plan by recommending binding elements mandating roofline stepbacks. The Planning Board removed the stepbacks from the binding elements in order to provide the developer with more flexibility in future site design and deferred the matter to site plan review. It did, however, recommend including binding elements mandating that the issue be addressed at the time of site plan. Exhibit 39.

While the exact method of achieving the transitioning heights is deferred to site plan, there is evidence in the record that the transition may be accomplished without sacrificing the Sector Plan’s objectives. The District Council finds that the illustrative graphic (Exhibit 46) presented by the Applicants does accomplish a transition which substantially complies with the Sector Plan’s recommendations. While the graphic assumes that all of the units are 1,000 square feet in size, this assumption is reasonable given that the owners intend the market rate units to be more affordable than others in the area. In addition, binding elements ensure that this transition will be reviewed at site plan approval.

Without more evidence regarding how the transition from the CBD to areas outside the Sector Plan will be accomplished, however, Council does not approve the 750-unit development plan (even were it able to award that level of density under the PD Zone).

In addition to transitional heights, the Sector Plan also recommends roofline setbacks to maintain a “human scale” at the street level, to avoid a “canyon like” effect along Battery Lane and to mitigate the impacts of wind and shadows. With regard to the project’s human scale, the Applicants’ architect testified that this goal might be accomplished by varying the building edges at the street level, with the additional setbacks from the street. Based on this evidence, the Council concludes that compliance with these urban design guidelines may appropriately be left to site plan review, as suggested by the Planning Board.

In other respects, the Council determines that the development plan approved herein accomplishes the goals of the Sector Plan. The Council finds that the development plans recommended for approval by the Hearing Examiner (Exhibits 80 and 82) continue the existing multi-family residential uses called for in the Sector Plan. Both will provide landscaped streetscape at widths of 24 and 26 feet, a significant improvement over the existing multiple curb cuts and mixed materials. This furthers the Sector Plan's objective to provide a residential, pedestrian-oriented environment and to connect the site to the Central Business District.

Both the PD-88 and the PD-100 development plans further the goals expressed in the Sector Plan for the Battery Lane District, which included (1) retaining existing affordable housing, (2) increasing the zoning on the subject property (with the exception of the western portion of Parcel B) to provide housing close to Metro Stations and to further the County's agricultural preservation policy. The PD-100 development plan furthers the first goal by introducing regulated affordable housing units, both in the form of MPDUs and VAHUs, into the District. As discussed, both development plans 31 TDRs, substantially supporting the County's agricultural preservation program.

Because the PD-100 development plan better implements multiple objectives of the Sector Plan, however, the Council approves that PD-100 development plan (Exhibit 82) calling for 692 dwelling units, 31 TDRs, and 10 VAHUs, rather than the PD-88 development plan. Mr. Richard Nelson, Director of DHCA, submitted evidence of the critical shortage of affordable housing in the area, including a shortage of Workforce Housing units. The introduction of VAHUs into the Battery Lane District, along with designating 15% of the units MPDUs in addition to the 31 TDRs, better implements all objectives of the Sector Plan.

### **Second Paragraph: Social and Community Interaction, Visual Character, Mix of Uses**

The Council finds, as did the Hearing Examiner, the Planning Board, and Technical Staff, that both the PD-88 and PD-100 development plans (Exhibits 80, 2) encourage social and community interaction by creating a courtyard area for residents and significantly improved streetscape connecting the property to the Central Business District and Battery Lane Urban Park. Exhibit 36, p. 32. The Applicants' expert land planner testified that the project organizes buildings so that people can circulate around them and creates setbacks that provide a more residential character to the area. Technical Staff found that the plans use green space to create a distinctive visual character, establishing a visual connection along Battery Lane west toward the park with additional green space buffering the subject properties from the NIH. Exhibit 36. T. 105.

### **Third Paragraph: Broad Range of Housing Types**

All development plans would increase the stock of multi-family housing, including MPDUs, available in Bethesda. The PD-100 development plan would add 10 new unit types, called here "voluntary affordable housing units" in which rentals and incomes are restricted to Workforce Housing levels for a period of 20 years. DHCA supports all of the development plans, although it expressed a preference for the 692-unit PD-100 plan because it provided

more affordable housing units. The 750-unit plan was submitted after the DHCA's comments, and the DHCA provided no further comments on the last alternative plan. The District Council concludes that the PD-100 development plan (Exhibit 82) better fulfills this purpose of the PD-Zone because it (1) includes VAHUs and (2) will provide more MPDUs as a result of the higher density.

#### **Fourth Paragraph: Tree Preservation**

The photographs of existing conditions submitted by the Applicants support Mr. Wrenn's assessment that the four specimen trees on the site (over 30 inches in diameter) are indeed stressed from existing conditions and that there is little significant vegetation on the site. The Planning Board waived the requirement to preserve these trees under the County's Forest Conservation Law, as evidenced by their opinion submitted into the record in this case. Mr. Wrenn testified that redevelopment of the property will introduce more vegetation onto the site than exists today, a finding confirmed by Technical Staff. T. 107, 281, Exhibit 36, p. 32. Based on this evidence, the Council finds that this purpose of the PD Zone has been fulfilled.

#### **Fifth and Sixth Paragraphs: Open Space and Pedestrian Networks**

The Applicants opine that the project uses open space to locate residential and commercial uses conveniently to each other and to allow circulation around the buildings. T. 108. Building A has a 10-foot setback on its north edge adjacent to the NIH campus. The Hearing Examiner determined that this purpose of the zone was met because the courtyard areas for the residents and landscaping and lighting will provide a more enjoyable pedestrian experience. The minimum 30% green space in the PD Zone is met through the streetscape proposed along Battery Lane, the internal courtyards and buffer areas to adjacent uses. Exhibit 36, pp. 32-33. The District Council agrees with these conclusions and so finds.

#### **Seventh Paragraph: Scale**

The PD Zone encourages development on a large scale. The Applicants assert that the ability to assemble a parcel of 5 acres in this area is unusual, and offers the opportunity to design more comprehensively a gateway to the CBD. According to the Applicants, unified ownership of the parcels makes it possible to provide affordable housing and a range of units that probably would not be possible under other circumstances. T. 109. Technical Staff agreed that the development plans incorporate an assemblage of parcels that permit a more comprehensive residential development with different housing types at a scale that achieves the purposes of the zone. Exhibit 36, p. 33. Based on this evidence, the District Council finds, as did the Hearing Examiner, that the PD-88 development plan and the PD-100 development plan fulfill this purpose.

#### **Eighth Paragraph: Compatibility and Maximum Safety, Convenience and Amenity**

The Hearing Examiner found that both the PD-88 and PD-100 development plans maximize safe connections between the proposed development and the surrounding area. Internal sidewalks connect residences to open areas and amenities. Buffer areas around the

perimeter add to the compatibility with adjacent properties. Exhibit 36, p. 33. The District Council agrees with the Hearing Examiner's conclusions and so finds.

### **Ninth Paragraph: Summary of Required Findings**

Paragraph nine of the purpose clause states that the PD Zone "is in the nature of a special exception," and shall be approved or disapproved based on three findings:

- 1) the application is or is not proper for the comprehensive and systematic development of the county;
- 2) the application is or is not capable of accomplishing the purposes of this zone; and
- 3) the application is or is not in substantial compliance with the duly approved and adopted general plan and master plans.

This paragraph of the purpose clause does not add new requirements. Based on the preponderance of the evidence and for the reasons stated above, the Council concludes that the PD-88 development plan and the PD-100 development plan, both support the comprehensive and systematic development of the County, but approves the PD-100 development plan because it strikes the best balance among the competing County plans and policies, including Sector Plan density, support of the agricultural preservation program, and provision of affordable housing for a variety of incomes in the Bethesda area.

### **Standards and Regulations of the PD-Zone**

The standards and regulations of the PD-Zone are summarized below, together with the grounds for the District Council's conclusion that the proposed development would satisfy some, but not all of the applicable requirements.

Section 59-C-7.121, Master Plan Density. Pursuant to Code §59-C-7.121, "no land can be classified in the planned development zone unless such land is within an area for which there is an existing, duly adopted master plan which shows such land for a density of 2 dwelling units per acre or higher." The subject property is recommended in the Sector Plan for residential development at a potential density of up to 480 dwelling units per acre, so this requirement is satisfied for both the PD-88 and PD-100 development plans.

Section 59-C-7.122, Minimum Area. Code §59-C-7.122 specifies several criteria, any one of which may be satisfied to qualify land for reclassification to the PD Zone. The subject application satisfies the first of these criteria, which states the following:

That it contains sufficient gross area to construct 50 or more dwelling units under the density category to be granted.

The District Council finds that the subject property contains sufficient gross area to permit the construction of 50 or more dwelling units.

Section 59-C-7.131, Residential Uses. Both the PD-88 and PD-100 density categories are designated as “urban high” densities PD Zone. For these density categories, all types of residential units are permitted except single-family detached houses, without a specific percentage mix of uses required. Both the PD-88 development plan and the PD-100 development plan include only multi-family residential units; therefore, this requirement has been met.

Section 59-C-7.132, Commercial Uses. Commercial uses are permitted but not required in the PD Zone. Neither the PD-88 development plan nor the PD-100 development plans propose any commercial use; therefore, the standards governing these uses are not applicable to the application.

Section 59-C-7.14, Density of Residential Development. Section 59-C-7.14, Density of Residential Development. The Zoning Ordinance provides the following relevant directions for the District Council in considering a request for the PD Zone (§ 59-C-7.14):

\* \* \*

*(b) The District Council must determine whether the density category applied for is appropriate, taking into consideration and being guided by the general plan, the area master or sector plan, the capital improvements program, the purposes of the planned development zone, the requirement to provide [MPDUs], and such other information as may be relevant. . . .*

*(c) The density of development is based on the area shown for residential use on the master plan and must not exceed the density permitted by the density category granted. However, the maximum density allowed under subsection (a) may be increased to accommodate the construction of Moderately Priced Dwelling Units and workforce housing units as follows...*

\* \* \*

*(e) The District Council may approve a density bonus of up to 10 [percent] above the maximum density in the approved and adopted master plan for the provision of TDRs, if TDRs are recommended for the site.*

Technical Staff advised that the Applicants submitted the initial PD-100 development plan at 692 dwelling units because that was the maximum density in the PD-100 Zone plus a 22% bonus for designating 15% of the units as MPDUs. Staff reports that the alternative PD-88 development plan was submitted because it was more consistent with the Sector Plan. Staff advised that, overall, the two alternative zoning requests represented a 25-30% increase over the base density recommended in the Plan, and achieved 121-130 dwelling units per acre.

The Applicants assert that the 692 dwelling units (the maximum density in the PD-100 Zone with the MPDU bonus density) is appropriate because the Council may take into account “relevant information” in addition to the Sector Plan recommendations. The Applicants’ experts testified that

the BRAC consolidation at the Bethesda Naval Medical Center and the affordable housing crisis in Bethesda are both factors occurring after adoption of the 1994 Plan that support higher density. The Council agrees that these factors do justify a relatively small increase above the maximum density recommended in the Sector Plan. For that reason, the Council concludes that a density of up to 692 dwelling units *is* appropriate for the site. Because the PD Zone prohibits the Council from approving a development plan that exceeds the density permitted in the zone (exclusive of applicable bonus densities), the Council denies the PD-100 plan for 750 units, as that number is above the maximum allowable density in the PD-100 Zone.

Section 59-C-7.15, Compatibility. Section 59-C-7.15(a) provides:

*(a) All uses must achieve the purposes set forth in section 59-C-7.11 and be compatible with the other uses proposed for the planned development and with other uses existing or proposed adjacent to or in the vicinity of the area covered by the proposed planned development.*

This subsection requires that a proposed development be compatible internally and with adjacent uses.

The graphic illustration of building heights submitted by the Applicants (Exhibit 46) demonstrates that a compatible transition may be achieved with 692 dwelling units. This illustration shows Building A as 7 stories in height, Building C at 11 stories, and Building B as 5 stories in height. Opponents argued that the project will not be compatible with nearby uses if Building B is constructed to the maximum 11-story height. The Applicants oppose roofline setbacks because they do not lend themselves efficiently to residential development.

A neighboring property owner expressed concern about the impact on his property if Building B is developed to the maximum of 11 stories. He owns property adjacent to the western boundary of Parcel B, which is improved with an apartment building approximately 2½ stories in height. He testified that his building is in close proximity to the existing buildings on Parcel B and gets little sunlight at present. He is concerned that sunlight will be completely blocked if Building B is developed to 11 stories.

The Applicants' architect testified that Building B will increase the existing setbacks from 20 to 40 feet and that the courtyard design should provide some sunlight onto the neighboring property. He estimated that the adjacent building will receive sun from Noon throughout the rest of the day. T. 210. The Applicants added a binding element to the PD-88 and PD-100 development plans requiring that the setbacks between Building B and the neighboring property will be reviewed at the time of site plan if Building B exceeds 5 stories in height.

Because the Applicants have demonstrated that the transition from the CBD to areas outside the Sector Plan may be accomplished compatibly with areas outside the Sector Plan, that Building B will increase the existing setbacks from the adjacent property, and have committed to addressing the issue at site plan review, the District Council finds that both the

PD-88 and PD-100 development plans will be compatible with the surrounding area, as did the Planning Board and the Hearing Examiner.

Section 59-C-7.16, Green Area. Both the PD-88 and PD-100 density categories require a minimum of 30 percent green area. Both the PD-88 and PD-100 development specify that the development will meet this requirement by providing a minimum of 1.519 acres of green area out of a gross tract area (including the abandonment areas) of 5.67 acres. Exhibit 36, p. 35. The District Council finds that this requirement has been met.

Section 59-C-7.17, Dedication of Land for Public Use. This section requires that land necessary for public streets, parks, schools and other public uses must be dedicated to public use, with such dedications shown on all required development plans and site plans. Both the PD-88 and PD-100 development plans show the required dedications along Woodmont Avenue and Battery Lane. Exhibits 80, 82; Exhibit 36, p. 35.

Section 59-C-7.18, Parking Facilities. Off-street parking must be provided in accordance with the requirements of Article 59-E of the Zoning Ordinance. Both the PD-88 and PD-100 development plans (Exhibits 80, 82) provide the required number of spaces to support the multi-family use.

#### **Site Access and Circulation**

The third finding required is:

*(c) That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.*

The Applicants' architect and its land planner testified that the PD-88 and PD-100 development plans will reduce the number of existing curb cuts along Battery Lane and thus minimize the amount of conflicting movements. T. 106, 200. Based on this evidence, the District Council finds that the proposed internal vehicular and pedestrian circulation systems and points of external access would be safe, adequate, and efficient.

#### **Environmental Concerns**

The fourth finding necessary to approve an application for the PD Zone requires an evaluation of environmental issues, including minimizing grading and preserving natural features on the site:

*(d) That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.*

The Applicants' experts testified that development of the project will require a minimal amount of grading because most of the site is already paved. T. 107, 280. According to the Applicants' civil engineer, redevelopment will improve existing conditions and improve erosion because there is no stormwater management currently existing on the property and because redevelopment will increase the amount of on-site vegetation. T. 279-280. The District Council finds that this standard has been met for the PD-88 and PD-100 development plans.

### **Ownership and Maintenance of Common Areas**

The fifth required finding under the PD-Zone requires the application to submit documents demonstrating the method of ownership and maintenance of common areas:

*(e) That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.*

Applicants' ownership of the subject site set forth in Exhibit 9(b). The Applicants have provided draft documents regarding perpetual maintenance of common areas, and therefore the District Council finds this requirement has been met. Exhibit 75(b).

### **The Public Interest**

Initially, the Applicants offered a choice among competing public policies, i.e., support for the agricultural preservation program or increasing affordable housing through the 10 VAHU units. The justification for this is that the family's long term goal has been to support affordable housing. It is clear that provision of affordable housing is in the public interest, as expressed in the Sector Plan. However, a finding that an Applicant's preferred activities would be in the public interest is not the same as a finding that a rezoning would be in the public interest. The Maryland statute specifies first that all zoning power must be exercised, ". . . with the purposes of guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, . . ." Thus, the public interest question, first and foremost, addresses the systematic development issue, which is embodied in consistency with master plans, or in this case, the Sector Plan, and the public policies adopted by the County Council.

The Council agrees with the Hearing Examiner's finding that a development plan which balances to the maximum extent all of the competing public interests in this case furthers the public interest best. Thus, while the owners' personal commitment to provide affordable housing (represented by the VAHUs), clearly benefits the public, this does not *legally* provide a basis for favoring one policy over the other. As a result, the Council finds that the PD-100 development plan which includes only 20 TDRs is not in the public interest.

The Applicants have proposed three alternative development plans all committing to the purchase of a higher number of TDRs. None of these plans necessitate a choice between supporting agricultural preservation or provision of affordable housing. The Council does not

find the PD-100 development plan for 750 dwelling units to be in the public interest because the Zoning Ordinance limits the ability of the Council to award that level of density as a TDR bonus in the PD Zone. Thus, the additional density requested is not consistent with the systematic development of the County.

In addition, the Hearing Examiner, Planning Board and Technical Staff found that there are still issues relating to conformity with the urban design guidelines in the Sector Plan and compatibility with the surrounding area to address at site plan review stage. While there is some evidence here that the PD-100 plan for 692 dwelling units can be implemented in a manner compatible with the surrounding area, there is little evidence as to how this will be achieved for 750 units. While the Applicants maintain that the 750 dwelling units may be provided within the footprint of the PD-100 development, the issue here is height rather than building footprint, which will ultimately depend on the size of the units. For that reason also, the Council denies the PD-100 development plan for 750 units.

Of remaining two alternatives, the Council concludes that the PD-100 development plan (Exhibit 82) furthers the public interest better than the PD-88 development plan. While the PD-88 development plan addresses the need for affordable housing by designating 15% of the units as MPDUs, the PD-100 development plan also includes VAHUs at Workforce Housing income levels, which also is needed in the Bethesda area. In addition, even though the percentage of MPDUs under both development plans is the same, the PD-100 development plan will potentially result in more MPDU due to its higher density.

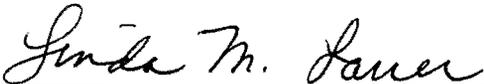
For these reasons, the application for the PD-100 Zone calling for development of 692 dwelling units, and providing 31 TDRs and 10 voluntary affordable housing units (Exhibit 82) will be **approved**, as set forth below, and the remaining development plans (Exhibits 31(a), 80 and 81) will be **denied**.

### ACTION

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

Zoning Application No. G-909, requesting that 5.67 acres of land located at 4857, 4858, 4890, and 4900 Battery Lane, Bethesda, Maryland, in the 7th Election District, be reclassified from the R-10 and R-10/TDR Zones to the PD-100 Zone under a development plan specified as Exhibit 82, is hereby **approved**, and the remaining development plans (Exhibits 31(a), 80, and 81) will be **denied**.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council

## APPENDIX

**Exhibit 82 (PD-100 Development Plan including 692 Dwelling Units, 31 TDRs,  
and 10 VAHUs)**

## TEXTUAL BINDING ELEMENTS

1. The maximum number of multi-family dwelling units to be contained in the Development shall not exceed 692 du.
2. Thirty-one (31) Transferable Development Rights (TDRs) must be acquired for the increase in density.
3. The building north of Battery Lane will have a maximum height of 79' (65' plus additional height for MPDUs), as measured from the centerline of the pavement of Battery Lane, to the high point of the main roof slab or the midpoint of any gable roof (excluding mechanical equipment and screening, access, elevator penthouses and decorative gables and architectural features). Although no specific building setback was recommended in the Sector Plan, Staff will evaluate any setbacks and building setbacks at the time of Site Plan review, as appropriate to avoid a canyon effect along Battery Lane, consistent with the goals and objectives of the Sector Plan.
4. The buildings south of Battery Lane will have a maximum height of 110', with respect to the building fronting on Woodmont Avenue and Battery Lane as measured from the centerline of the pavement of Woodmont Avenue, and with respect to the building fronting on Battery Lane as measured from the centerline of the pavement of Battery Lane, to the high point of the main roof slab or the midpoint of any gable roof (excluding mechanical equipment and screening, access, elevator penthouses and decorative gables and architectural features). Although no specific building setback was recommended in the Sector Plan, Staff will evaluate any setbacks and building setbacks at the time of Site Plan review, as appropriate to avoid a canyon effect along Battery Lane, consistent with the goals and objectives of the Sector Plan.
5. The Development shall provide 15% of the final unit count as Moderately Priced Dwelling Units per Chapter 25A. MPDUs shall be distributed within the Development and off-site within the within the Battery Lane District as may be approved by the Department of Housing and Community affairs ("DHCA").
6. The Development shall provide 10 units as Voluntary Affordable Housing Units ("VAHUs") with a control period of 20 years pursuant to a recorded covenant satisfactory to the Department of Housing and Community affairs ("DHCA") and income eligibility consistent with Chapter 25B except as modified by DHCA. VAHUs shall be distributed within the development and off-site within the Planning Area as may be approved by the Department of Housing and Community Affairs ("DHCA"). The VAHUs to be provided per the terms of the covenant are to be recorded before the first building permit is issued.
7. The Development shall provide no less than 30% of the gross site area as green area on-site, variably distributed throughout the Development Plan area. Final green area per building site shall be finalized at site plan.
8. Required building setbacks along Woodmont Avenue right-of-way shall be zero per zoning ordinance. Setbacks shall be no less than 24 feet from the Battery Lane right-of-way for Buildings B and C and not less than 26 feet from the Battery Lane right-of-way for Building A. Sideyard setbacks shall be zero, and rear yard setback shall be zero except along the northern rear yard boundary with NIH where they shall be 10 feet. In the event Building B exceeds 5 stories, the sideyard setback adjoining Block 1, Lot 43 Northwest Park shall be reviewed at site plan.
9. Final parking counts and layouts to be determined at site plan.
10. At least one point of vehicular access for the building north of Battery Lane shall be provided by the common driveway per the Common Driveway Agreement recorded in Liber 26425 at folio 122.
11. The Development program is intended to be developed in multiple phases. Development of on-site amenities associated with each building site will occur concurrently with the occupancy of the residential units in such building and will be completed prior to the occupancy of 75% of the units in such building, subject to possible deferral of landscaping to the appropriate planting season.
12. Any structured parking that is not below grade must be lined with units so the parking is not visible from the street, and lined with units or architectural screening from courtyards and adjacent residential properties. Details to be reviewed with the Site Plan for each building.