

# BLUE OCEAN

## DEVELOPMENT OVERVIEW

- *The proposed development is on a 12-acre undeveloped property.*
- *The property is zoned by right for approximately 200 apartments.*
- *Due to community concern, we originally proposed a smaller, seven-level building that included 157 apartment units on 5 floors over a two-level parking garage.*
- *The proposal has undergone several iterations based on feedback from the community.*
- *We have since reduced the size of the building from 7 total floors to 6 total floors. We have also reduced the quantity of units from 157 to 148.*
- *The proposed 148-unit building is approximately 50 units less than what can be built by right today. We can essentially walk into the permit office today and apply, by right, for a permit to build approximately 200 apartments.*
- *We are expecting to complete the purchase of the land by the end of this month (May 2017).*
- *The proposed development is the subject of City Council Bill 17-0049.*
- *On May 4<sup>th</sup> the Planned Unit Development was unanimously recommended by the Planning Commission to be approved by the City Council.*
- *Under the terms of the PUD, no additional apartment units are permitted anywhere on the property.*
- *The maximum height of the building (exclusive of accessory roof structures, mechanical equipment and decorative architectural parapets) is set at an elevation 365 feet – 20 feet lower than the original 50 year agreement permitted, which was 385 feet above sea level.*

## HISTORY

- *The Belvedere Towers building was constructed in the mid 1960's.*
- *A recorded 50 year agreement between the developer and the North Roland Park Improvement Association established the developer's right to construct a future apartment building on the adjoining 12 acres.*
- *This agreement for a future apartment building was reflected in the property's R-6 zoning.*
- *This R-6 zoning was recently reaffirmed by governing authorities and remains in full force and effect.*
- *As stated above, the property is currently zoned for approximately 200 apartments.*

## Planned Unit Development (PUD)

- *A Planned Unit Development (PUD) is essentially a contract between the City, the developer and community that incorporates the agreed upon plan into a City Council Bill.*
- *The proposed PUD will allow the developer to complete the construction of the 148 unit apartment project while also restricting future development and several other important elements as negotiated among the parties.*
- *Major changes including any increase in use, height or density requires City Council consideration and approval.*
- *Without the PUD, the developer would be free to develop the entire property.*

## COMMUNITY PROCESS

- *Meetings were held with the affected neighborhood groups of North Roland Park, Poplar Hill, Sabina Mattfeldt, and a group of residents on St Georges and Cliffhurst Roads.*
- *At the encouragement of the Councilman that we negotiate with the community and find a compromise, the parties worked diligently to satisfy the relevant concerns.*
- *An agreement was reached among the parties that included several key provisions that will benefit the community.*

- *Highlights of the agreement include the developer providing 6 acres of 'green/open' space to serve as a buffer, restrictions on connections to St. Georges, Cliffhurst or Poplar Hill Roads, future development by Blue Ocean in the neighborhood, among many others.*

#### HEIGHT

- *The height is established in the PUD at 365' above sea level.*
  - *There is no height limit in the City's current zoning for this property. Hence, we are within the zoning code's allowable height to build an even higher structure by right, at this very moment.*
  - *By agreeing to a PUD with the city, we are limiting the height of the building to the proposed structure. Without the PUD, we could build significantly higher.*
  - *The proposed building cannot be designed to be lower without affecting the viability of the project. For your reference, I have provided below several key facts related to the height of the building.*
- *The proposed building will be set upon an existing solid rock base under the thin soil covering of the property today. The rock cannot be removed.*
  - *The garage must be the height that it is (or higher) for the residential units on the 3<sup>rd</sup> level that face east into the hillside to have windows with access to light and air.*
  - *The four residential levels, plus the half level in the parking structure, provide the project with just the right number of units possible to make it economically viable.*

#### REMOVAL OF THE R-1 6 ACRES FROM THE PUD

- *Several groups and individuals have requested an amendment to the PUD that would essentially remove the R1A portion of the 12 acre property from the PUD.*
- *We have agreed to this and will be submitting an amendment to the City Council Bill for adoption at the June 7<sup>th</sup> Committee hearing.*
- *It is important to note that this removal will not change the terms of the neighborhood agreements to prevent future development.*

#### TRAFFIC AND ACCESS TO NEIGHBORHOOD STREETS

- *Major developments in Baltimore City require an independent traffic study (TIS) by a third-party traffic engineering firm.*
- *This analysis is under way. Traffic counts have been completed at major city intersections nearby and the preliminary results are expected by late May.*
- *These results will be shared with the public and may result in additional design or safety requirements on the developer.*
- *The Sabina Mattfeldt community has requested that the existing Belvedere Towers entrance on Falls Road across from Mattfeldt Avenue not be configured in a way that will promote traffic to travel through Mattfeldt Avenue. We have shared several alternative designs with the neighborhood and the City that would potentially accomplish this.*
- *At this point in time we are awaiting the results of the traffic study and further direction from DOT on how they would like to see the construction of the driveway. Nothing else can be done on this front until then.*

#### ENFORCEABILITY OF AGREEMENT WITH TWO NEIGHBORHOOD ASSOCIATIONS

- *At the encouragement of the Councilman to find a middle ground with our neighbors, we agreed to enter into a binding agreement to restrict the development.*
- *While all parties of the agreement consider it sufficient and binding, we have also created and signed a 'restrictive covenant' which will further protect the agreement. This restrictive covenant will be recorded in the land records of Baltimore City.*

- *Because we have yet to purchase the property, at this time, the restrictive covenant cannot be recorded. However, contemporaneously with the recording of the Deed at the time of our purchase, we will record the Restrictive Covenant.*

*To ease concerns about the enforceability of the agreement, at my request, our attorney prepared the below summary discussing what rights NRPA or PHA would have, should we breach the agreement.*

*Maryland law is clear regarding the enforceability of the Restrictive Covenant, and the available remedies upon a breach of its terms. “There is also no question that the law of Maryland has long-recognized properly created restrictive covenants as permissible encumbrances on land.” City of Bowie v. Mie Properties, Inc., 922 A.2d 509, 522 (Md. 2007). Moreover, restrictive covenants by definition provide rights in both property and contract for the parties benefitted by the covenant. See Chestnut Real Estate P’ship v. Huber, 811 A.2d 389, 398 (Md. App. 2002) (“An equitable restriction on land has been held to be a property right in the person in favor of whose estate it runs or to which it is appurtenant . . . [s]uch covenants, while running with the land, are also in the nature of contracts while being compensable property rights.”).*

*Maryland courts have also consistently held that those benefitted by restrictive covenants have multiple avenues to enforce their rights in the event the covenant is breached. It is well settled that, “[a] party may bring an action for a declaratory judgment and request a permanent injunction to enforce a covenant.” Sandler & Archibald, Pleading Causes of Action in Maryland, § 6.15 (2013); see also, e.g., Bowie, 922 A.2d at 518. Further, courts will regularly provide injunctive relief in the event of the breach of a restrictive covenant. See Huber, 811 A.2d 389, 400 (2002) (“The moment the court finds that there has been a breach of the covenant, that is an injury, and the court has no right to measure it, and no right to refuse to the plaintiff the specific performance of his contract, although his remedy is an injunction.” (internal citations omitted)). Parties may also seek money damages when a restrictive covenant is breached. See Borssuck v. Pantaleo, 183 Md. 148, 154, 36 A.2d 527, 530 (Md. 1944) (“The appellees did not have to seek the aid of a court of equity. They had a right to bring suit for damages against the appellant in a court of law.”).*

#### PUD APPROVAL PROCESS

- *The PUD Bill will be heard by the City Council’s Land Use Committee on June 7<sup>th</sup> at noon in the City Council chambers.*
- *At the hearing, the Committee will review agency reports on the proposal and take testimony from the public.*
- *The Committee will entertain amendments such as the removal of the R1A 6 acre parcel, as well as any other changes to the plan that have occurred following the introduction of the PUD.*
- *Both the Bill and any amendments must be approved by a vote of the Committee at either the hearing or a subsequent public voting session.*
- *If approved by the Committee, the full Council will vote on the Bill at two subsequent Council meetings.*

#### SUMMARY

- *From the beginning of the development review process, we have attended numerous community meetings and have received support from many individuals. Pursuant to our negotiated agreement with the NRPA and PHA; we now have their support.*
- *We have agreed to substantially revise the plans for a lower building with less apartment units, and voluntarily put restricted covenants on the land for a development project that is permitted by right under the Zoning Code.*
- *All of this was done in good faith, in an effort to be a good neighbor in the community, and establish positive relationships with our new neighbors.*
- *We want this to be a win for everyone, not just for us.*