

May 19, 2017

Dear PHA Members,

We wanted to provide you with an update and additional information regarding the Overlook at Roland Park project.

- The land on which the Overlook at Roland Park is being built is zoned for an apartment building both under current zoning and under [the new](#) Transform Baltimore Zoning. This land has been zoned for an apartment building for over 50 years.
- The Poplar Hill Association (“PHA”), North Roland Park Association (“NRPA”) and others attempted, but were not successful to have the zoning changed.
- Therefore, a developer may build an apartment building on this land by right. Our understanding, from Baltimore City officials and others, is that Baltimore City will not stop a development for traffic or school enrollment issues.
- Some or all of the people who formed the Lehr Stream Neighborhood Association (“St. Georges’ group”) have been negotiating with the developer, Blue Ocean, since January 2017 or earlier.
- The St. Georges’ group did not include either the PHA or the North Roland Park community associations in their negotiations, although we were invited to a few meetings, which we attended.
- The Board of Directors (“the Board”) of the PHA held back taking any action, based on our understanding that the St. Georges’ group would be representing the PHA’s interests.
- The Board received a copy of the proposed St. Georges’ group agreement that did not contain any language that would protect the Poplar Hill neighborhood from encroachment. The proposed agreement specifically provided for no encroachment to Cliffhurst Road or St. Georges Road, but was silent as to Poplar Hill Road.
- Once the developer filed a PUD (Planned Unit Development), the PHA Board of Directors (“the Board”) was under time pressure to reach an agreement with the developer that would protect the Poplar Hill community from encroachment from the development, among other things.
- The Board decided that since 1) we had no known way of stopping the development, 2) the St. Georges’ group had not reached an agreement with the developer, 3) the St. Georges’ proposed Agreement had provisions that the PHA Board did not think would be accepted by the developer and were not important to the PHA, and 4) their proposed agreement did not meet the needs of the PHA; we felt it was in the PHA community’s best interest to negotiate an agreement to protect the Poplar Hill community.
- Unfortunately, we had no time to gain consensus of the community. Had we not reached an agreement prior to the meeting of the Baltimore City Planning Commission meeting on May 4, 2017, the PHA would have no protection from encroachment to our community. We had 6 drafts of the Agreement with numerous negotiations between the parties in a very short period of time. It was an intensive, iterative process and it would not be possible to include the

membership in the negotiations. Further, we were not binding the rights of any individual members of the PHA community in any way.

- The PHA Board of Directors, the North Roland Park Association Board, and the Developer negotiated the Agreement. Both community associations have attorneys on their Boards who were involved in the negotiations and approved the agreement. We believe we have a good agreement that will be enforceable.
- Prior to signing the Agreement, we met with PHA residents who had reached out to the Board and who were working with the St. Georges' group. We explained the contents of the PHA's proposed agreement. It appeared from that discussion that our proposed agreement covered most of the essential issues of the St. Georges' group.
- We also discussed that the PHA Agreement could serve as a "backstop" for any agreement that was entered into by the St. George's group. That is, our agreement covered the most essential issues and did not prevent the St. George's group or any other group from entering into a separate agreement.
- The PHA Board voted unanimously to approve the proposed Covenant Agreement ("Agreement").
- The PHA Board is governed by its Bylaws. The Bylaws specifically authorize the Board of Directors to enter into contracts on behalf of the PHA association.
- Upon signing the Agreement on May 2, 2017, which was prior to the May 4, 2017 Planning Commission hearing, the PHA Board sent out the Agreement to its members with the Board's reasoning and with the specific intent to be transparent. Please see our May 3, 2017 email.
- We received two concerns about the agreement. One from the St. Georges' group, now called the Lehr Stream Neighborhood Association, and one from a PHA member. We responded to the PHA member and responded via our testimony at the Planning Commission meeting to the Lehr Stream group.

For further information regarding The Blue Ocean property, please see the attached information from the developer.

In closing, the PHA Board of Directors are volunteers who have been elected by its membership at the annual meeting to represent the interests of the Poplar Hill Community. We are always open to input from the community; we work hard for the interests of our community and we do try to keep the community informed.

If you are interested in becoming a member of the Board or working on a PHA committee, please volunteer.

We hope that this information was helpful. If you have any further questions or concerns, please reach out to a Board Member or me.

Best regards,

Poplar Hill Association
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For your convenience, below are facts provided by Blue Ocean – the developer:

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.
- Expected 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 4th 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 work diligently to compromise with the community and satisfy their concerns.
- An agreement was reached that included provisions for the benefit of 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 or Poplar Hill Road, 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 3rd 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.
 - The plans show that the Overlook will be higher than the Belvedere less than 23 feet, which is below the PUD maximum height which is set an elevation of 365 feet. In fact, even if the Overlook would built to the maximum height provided by the PUD, it will only be higher than the Belvedere Towers by approximately 25.40 feet. The height is still dependent on architectural and grading studies, but is no more than 23 feet and could be less. The original 50 year agreement allowed an elevation of up to 385.

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 7th 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 will also be creating and recording a 'restrictive covenant' to be recorded in the land records of Baltimore City.
- Because we have yet to purchase the property, the restrictive covenant cannot be recorded at this time. 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 7th 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 R-1 6 acres as well as any other changes to the plan that have occurred following introduction.
- 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, my team and I have attended numerous community meetings and have addressed feedback and concerns.
- We have agreed to substantially revise the plans for a lower building,