






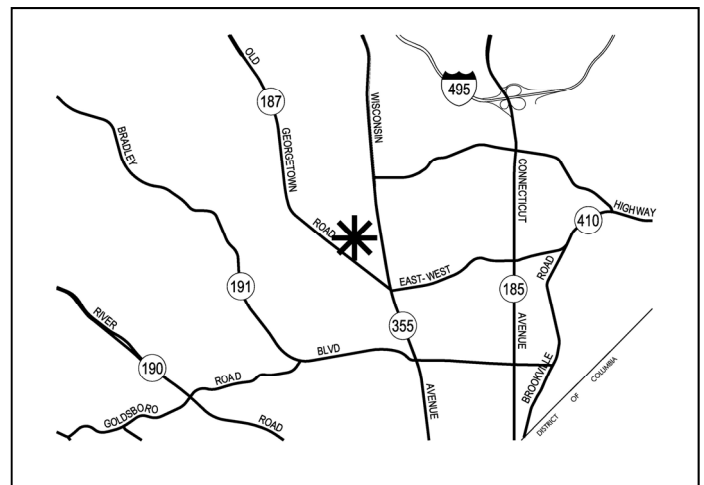
**Battery Lane District  
Preliminary Plan No. 120190240**

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**Completed: 4.10.20**

**Description**

- Preliminary Plan for four lots for up to 1,341,000 square feet of development including 6,000 square feet of non-residential uses and 1,335,000 square feet of residential uses for up to 1,130 units;
- Current use: five existing buildings totaling 483,386 square feet of garden-style apartments (411 units) with associated surface parking;
- Located on Battery Lane between Old Georgetown Road and Woodmont Avenue;
- 9.65 acres zoned CR 3.5 C 0.5 R 3.5 H 120 and CR 1.5 C 0.5 R 1.5 H 120 and the Bethesda Overlay Zone (BOZ) in the 2017 *Bethesda Downtown Sector Plan*;
- Applicant: Aldon Properties;
- Acceptance date: July 3, 2019.



**Summary**

- Staff recommends approval of the Battery Lane District Preliminary Plan with conditions.
- The Proposal will create four lots for the redevelopment of existing multi-family housing along Battery Lane. The associated Sketch Plan approved redevelopment over five lots, but only four lots are proposed with this Preliminary Plan due to the anticipated build-out extending beyond the maximum Adequate Public Facilities finding period.
- A subsequent Preliminary Plan amendment will be required for creation of the remaining lot (Site B).
- The Applicant proposes to design and construct a two-way Separated Bicycle Facility along the south side of Battery Lane with a protected intersection at Battery Lane and Woodmont Avenue. Design of the Separated Bicycle Facility will be finalized at the time of Site Plan review for each Site.
- The Planning Board approved two extensions to the review period for this Application, from October 24, 2019 to no later than April 30, 2020.

## **SECTION 1: RECOMMENDATION AND CONDITIONS**

### **Preliminary Plan No. 120190240**

Staff recommends approval of Preliminary Plan No. 120190240, to create four lots for up to 1,341,000 square feet of development including 6,000 square feet of non-residential uses and 1,335,000 square feet of residential uses for up to 1,130 units. The following site development elements shown on the latest electronic version as of the date of this Staff Report submitted via ePlans to the M-NCPPC are required except as modified by the conditions below:

### **General Approval**

1. This Preliminary Plan is limited to four lots for up to 1,341,000 square feet of development including 6,000 square feet of non-residential uses and 1,335,000 square feet of residential uses for up to 1,130 units.

### **Adequate Public Facilities and Outside Agencies**

2. The Adequate Public Facility ("APF") review for the Preliminary Plan will remain valid for one hundred twenty (120) months from the date of mailing of this Planning Board Resolution, as illustrated on the Certified Preliminary Plan.
3. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Transportation ("MCDOT") in its letter dated February 20, 2020, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
4. The Planning Board has reviewed and accepts the recommendations of the Maryland State Highway Administration ("MDSHA") in its letter dated March 3, 2020, and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MDSHA if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
5. Before recording any plat for any Site included in the Subject Property, the Applicant must satisfy MCDOT's requirements for access and improvements.
6. Any record plat for any site within the Subject Property must show all floodplain and associated 25-foot building restriction lines.
7. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS") – Water Resources Section in its stormwater management concept letters dated November 13, 2019, November 18, 2019, and April 2, 2020 and incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section if the amendment does not conflict with any other conditions of the Preliminary Plan approval.
8. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Permitting Services ("MCDPS"), Fire Department Access and Water Supply Section in its letter dated October 22, 2019 and revised February 20, 2020, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which

MCDPS may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

9. The Planning Board has reviewed and accepts the recommendations of the Montgomery County Department of Housing and Community Affairs (“DHCA”), in its letter dated November 13, 2019, and incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which DHCA may amend if the amendment does not conflict with other conditions of Preliminary Plan approval.

#### **Future Site Plan Required**

10. Before clearing or grading or Planning Board approval of a record plat for any Site included in the Subject Property, the Applicant must receive Staff certification of a Planning Board-approved Site Plan. Demolition and site preparation are permitted. The number and location of site elements, including but not limited to buildings, dwelling units, on-site parking, site circulation, sidewalks, and any associated bike path design will be determined through Site Plan review and approval.
11. If any approved Site Plan(s) or Site Plan amendment(s) for the Subject Property substantially modifies the lot or right-of-way configuration or quantities shown on this Preliminary Plan, the Applicant must obtain approval of a Preliminary Plan amendment before certification of the Site Plan(s) or Site Plan amendment(s).
12. Building and Site Design  
Prior to Planning Board approval of individual Site Plans associated with this Preliminary Plan, the Applicant must:
  - a. Site C; Submit Alternative Method of Compliance request for the lay-by access point for consideration by the Planning Board and approval by MCDPS – Right-of-Way Permitting Section;
  - b. Sites A, C, & D; Provide public pedestrian and bicycle connections and enhanced open spaces as specified in the 2017 *Bethesda Downtown Sector Plan*;
  - c. Site D; Design of any open space areas between the building and 100-year floodplain must minimize hardscape and maximize planting of native species.
  - d. Address the SITES & LEED recommendations of the Sector Plan, specifically related to energy efficiency and building design features;
  - e. At the time of each Site Plan, the Applicant must provide a minimum of 35% of site area on each Site as green cover as described in Section 2.4.1 of the *Bethesda Downtown Sector Plan* and any proposed tree canopy must utilize tree species and canopy sizes at 20-year maturity per the M-NCPPC Approved Trees Technical Manual.
  - f. For any open spaces on Sites A and E, submit either a noise analysis or a waiver request per Section 2.2.2 of the Noise Guidelines;
  - g. Address Bird-Safe Design per the Sector Plan Design Guidelines.

#### **Environment**

13. The Applicant must comply with the following conditions of approval of Preliminary Forest Conservation Plan 120190240, approved as part of this Preliminary Plan.
  - a. Prior to certification of Preliminary Plan, the Applicant must update the Variance Tree Mitigation Table to reflect the correct number of mitigation trees to be planted based on the 114.50 caliper inch mitigation requirement with a minimum size of 3 caliper inches per tree.

- b. The Variance Tree Mitigation Table must demonstrate appropriate mitigation plantings for each individual site, however staff may approve minor adjustments to the quantities per site at the time of Final Forest Conservation Plan.
  - i. The location of trees credited towards variance mitigation plantings must be at least 5 feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or associated easements.
- c. Future Site Plan submittals for implementation of any Site included in the Preliminary Plan must include an associated Final Forest Conservation Plan.
- d. Prior to any permit for land disturbance activity for any Site included in the Subject Property, the Applicant must record a Certificate of Compliance to use an off-site forest mitigation bank easement in the Montgomery County Land Records. The Certificate of Compliance must address the applicable site(s) and be in a form approved by the M-NCPPC Office of the General Counsel.

## **Transportation**

- 14. The Applicant must dedicate and show on the record plat(s) all land necessary to accommodate a minimum of 35 feet from the existing right-of-way centerline along the Subject Property frontages for Battery Lane in support of a master-planned 70-foot right-of-way.
- 15. Before the release of any above-grade building permit, the Applicant must enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and MCDOT to participate in the Bethesda Transportation Management District (TMD) and work toward the Sector Plan goal of 55% Non-Auto Driver Mode Share.

## **Off-Site Improvements**

- 16. Separated Bicycle Facility
 

Due to the Applicant's requested multi-phased build-out, the Applicant must implement the two-way separated bicycle facility along the south side of Battery Lane as both an interim and ultimate condition.

  - a. Prior to the issuance of the first above grade building permit, the Applicant must obtain MCDOT acceptance of the Interim Separated Bike Lane Facility between Old Georgetown Road and Woodmont Avenue.
  - b. Prior to the issuance of the first residential Use & Occupancy Certificate for the first building, the Applicant must construct and obtain MCDOT acceptance of the protected intersection at Woodmont Avenue and Battery Lane.
  - c. Prior to the certification of each Site Plan for each individual site, the Applicant must show the final design of the Ultimate Separated Bike Lane Facility on the Certified Site Plan, subject to MCDOT approval. Construction of the ultimate facility is preferred; however the final determination of construction or financial contribution will be made by MCDOT. Any financial contribution amount must be approved by MCDOT prior to Certification of each Site Plan.
  - d. Prior to the issuance of the first Use & Occupancy Certificate for each individual Site Plan, the Applicant must construct for MCDOT acceptance or financially contribute to the implementation of the Ultimate Separated Bike Lane Facility along the associated site frontage. If a financial contribution is accepted by MCDOT, the contribution must be made prior to issuance of the first Use & Occupancy Certificate for each individual Site Plan.

## **Certified Preliminary Plan**

- 17. The Applicant must include all applicable agency approval letters and Preliminary Plan Resolution on the approval or cover sheet(s) of the Certified Preliminary Plan.

18. The certified Preliminary Plan must contain the following note:

*Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of Site Plan approval. Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot.*

19. Prior to submittal of the Certified Preliminary Plan, the Applicant must make the following changes:
- a. Revise Phasing Plans to define “Interim” and “Ultimate” Separated Bike Lane Facility, and to incorporate Off-Site Improvements as stated in the above conditions.
  - b. Update Preliminary Plan for Site D to reflect the recently approved floodplain study.
  - c. Modify data table to reflect development standards approved by Planning Board.

## SECTION 2: SITE DESCRIPTION

### Site Vicinity and Analysis

#### *Subject Property*

The subject site (Subject Property, Property, or Project) consists of an assemblage of noncontiguous lots along Battery Lane that were originally created in 1910 by Plat No. 134, “Northwest Park”, located on both the north and south sides of Battery Lane between Woodmont Avenue and Old Georgetown Road. The individual sites are addressed as 4857 Battery Lane (Site A), 4890/4900 Battery Lane (Site C), 4949 Battery Lane (Site D), and 4998 Battery Lane (Site E). The Project has a total tract area of 9.65 acres. Site B, 4858 Battery Lane, is not part of this Preliminary Plan Application and is not considered part of the Subject Property, but is shown below in relation to the total Battery Lane District Sketch Plan.



Figure 1 - Aerial View

The Property is within the area encompassed by the 2017 *Bethesda Downtown Sector Plan* (Sector Plan), and Sites A, C, & D are within the Height Incentive Area of the Bethesda Overlay Zone (BOZ). The Project is located approximately ½ mile north of the Bethesda Metrorail Station and approximately ½ mile south of the Medical Center Metrorail Station. The Project is not within the Parking Lot District or the Bethesda Urban District.

#### *Site Analysis*

Two of the sites (Site A & C) are zoned CR 3.5 C 0.5 R 3.5 H 120' and the other two (Sites D, & E) are zoned CR 1.5 C 0.5 R 1.5 H 120', all within the Bethesda Overlay Zone (BOZ). All four sites are currently improved with below market-rate garden apartment buildings, totaling 411 units, with associated surface parking. The Subject Property is within the Lower Rock Creek, Use I-P watershed. Each site contains significant and/or specimen trees in addition to street trees and trees along property borders measuring less than 24" in DBH. Each site is also bounded by offsite specimen trees with critical root zones that may be impacted by site development.



Sites A, C, and E are not associated with any sensitive environmental features such as forest, streams or stream buffers, wetlands, or 100-year flood plains. However, Site D, 4949 Battery Lane, intersects with an unnamed tributary to Rock Creek. The tributary daylights from a piped stream in the northeast corner of the site and drains to the North towards NIH. The piped stream, which is owned by MCDOT, captures stormwater runoff from areas south of this site and runs along the eastern portion of Site D. From the daylight head of the tributary stream, a stream valley buffer extends towards the site, encompassing approximately 0.39 acres (16,945 sq. ft.). There are no known historic properties on the Property.

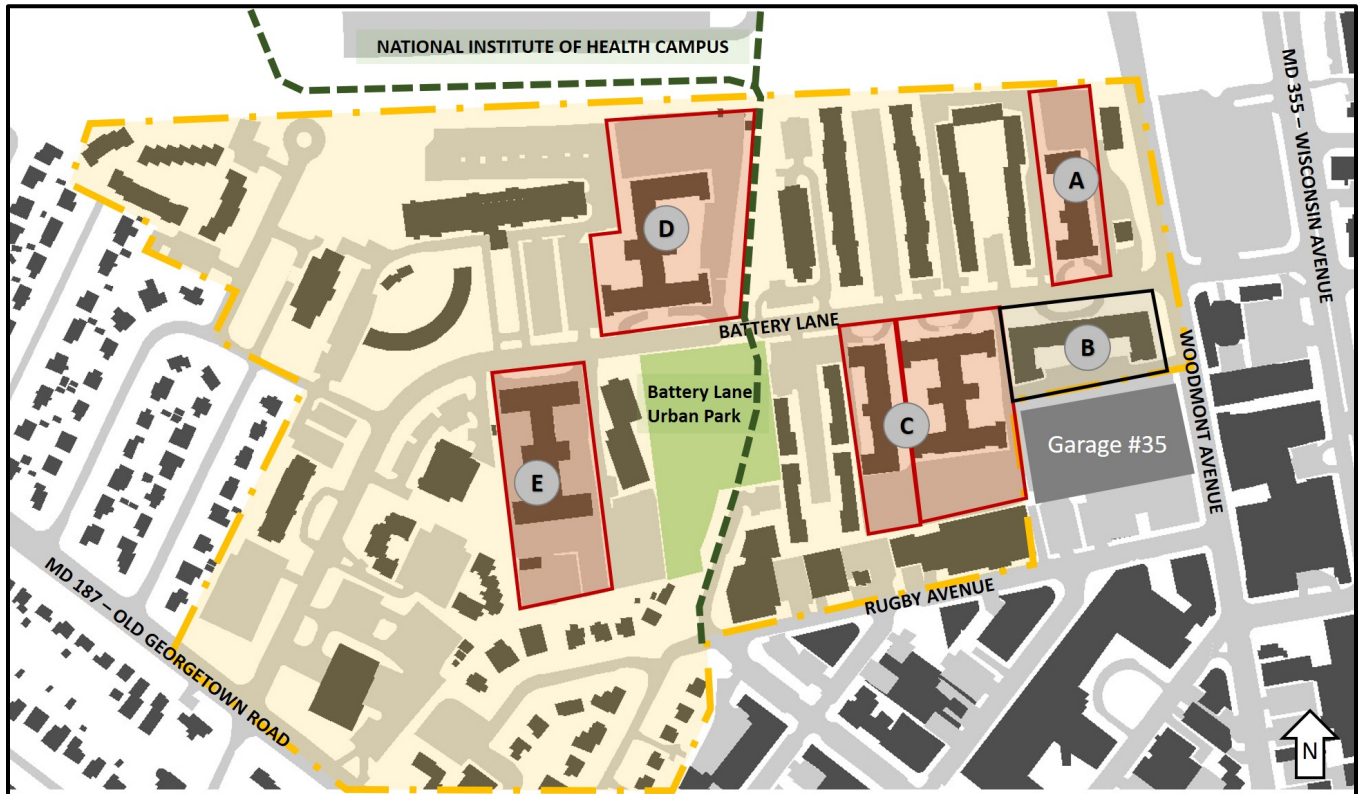


Figure 2 – Project Vicinity, Green dashed line indicates Bethesda Trolley Trail

#### Surrounding Uses

The surrounding uses along Battery Lane are predominantly mid-rise residential buildings varying from three stories (City Commons of Bethesda adjacent to Site E, and garden apartments adjacent to Site A and Site C) to ten stories in height (Whitehall and Madison Park Condominiums and Sunrise Senior Living adjacent to Site D). To the south of the Project, particularly Site E, there is a single-family detached zone along Rugby Avenue. To the south of Site B & C is a mix of newer development including the newly constructed Brightview Bethesda (senior living) and 2<sup>nd</sup> District Police Station, Parking Garage 35, and other commercial uses. To the north of Site A and D is the beginning of the National Institutes of Health (NIH) Campus. Battery Lane Urban Park is located in the middle of the Project, confronting Site D.

### SECTION 3: PROJECT DESCRIPTION

#### Previous Approvals

Prior to the adoption of the 2017 *Bethesda Downtown Sector Plan*, the County Council approved Zoning Application No. G-909 by Resolution No. 17-555. This approval reclassified sites A, B, and C of the Property from the R-10/TDR zone to the PD-100 zone, subject to the binding elements and requirements of the approved Development Plan. The Applicant could proceed with the PD-zoned application and apply the densities, heights and binding elements from that case or implement what the Sector Plan applied to the site. Since the Applicant has chosen to implement the densities, heights and recommendations of the recent Sector Plan, the Sketch Plan was conditioned to submit a letter of withdrawal for the Development Plan prior to Certification of the Preliminary Plan.

On December 12, 2019, the Planning Board approved Sketch Plan 320190080 (MCPB Resolution No. 19-134) to allow up to 1,752,000 square feet of total development on five sites including up to 12,000 square feet of non-residential uses and up to 1,740,000 square feet of residential uses with an overall average of 20% MPDUs project wide and a minimum of 15% MPDUs on each site, and a request of density from the Bethesda Overlay Zone. The Sketch Plan is envisioned to be implemented over the next 10 to 15 years and through multiple phases.

#### Proposal

The Applicant proposes to create four lots totaling 9.65 tract areas for: Site A containing 0.98 acres, Site C containing 2.93 acres, Site D containing 3.05 acres, and Site E containing 1.95 acres, to allow the redevelopment of the Property with four high-rise residential buildings and one high-rise mixed use building (Site D). Each Site will provide appropriate right-of-way (ROW) dedication to Battery Lane to achieve the master planned 70-foot width, as well as vehicular and pedestrian access from Battery Lane. The Applicant proposes to redesign the existing Battery Lane ROW to provide a separated two-way bike facility on the south side as recommended in the *Bicycle Master Plan* and 2017 *Bethesda Downtown Plan*. The exclusion of Site B from this Preliminary Plan application, which is the fifth site included in the approved Sketch Plan, is due to the Applicant's expected build out period to be beyond the 10 years that is allowed by the Adequate Public Facilities Regulations.



Figure 3 - Lotting Diagram



## Transportation

### Access and Circulation

Pedestrian access to the Sites will be from the established sidewalk network and will be enhanced by streetscape improvements along each of the Property frontages, consistent with the Bethesda Streetscape Standards or approved equal by MCDOT and Planning Staff, and an improved Bethesda Trolley Trail connection, from Battery Lane to property owned by NIH, along Site D. Battery Lane is designated as a neighborhood connector street in the Design Guidelines, which requires a minimum planting/buffer area of 6-8 feet, pedestrian zone of 6-10 feet, and a frontage zone of 5-8 feet with a setback of 20 – 25 feet from the curb to the building facade. Further detail and final design for the frontage improvements will be provided at the time of each subsequent Site Plan. Vehicular access to each of the sites is discussed below and the final location, design, and approval of site access points will be determined at the time of each subsequent Site Plan:

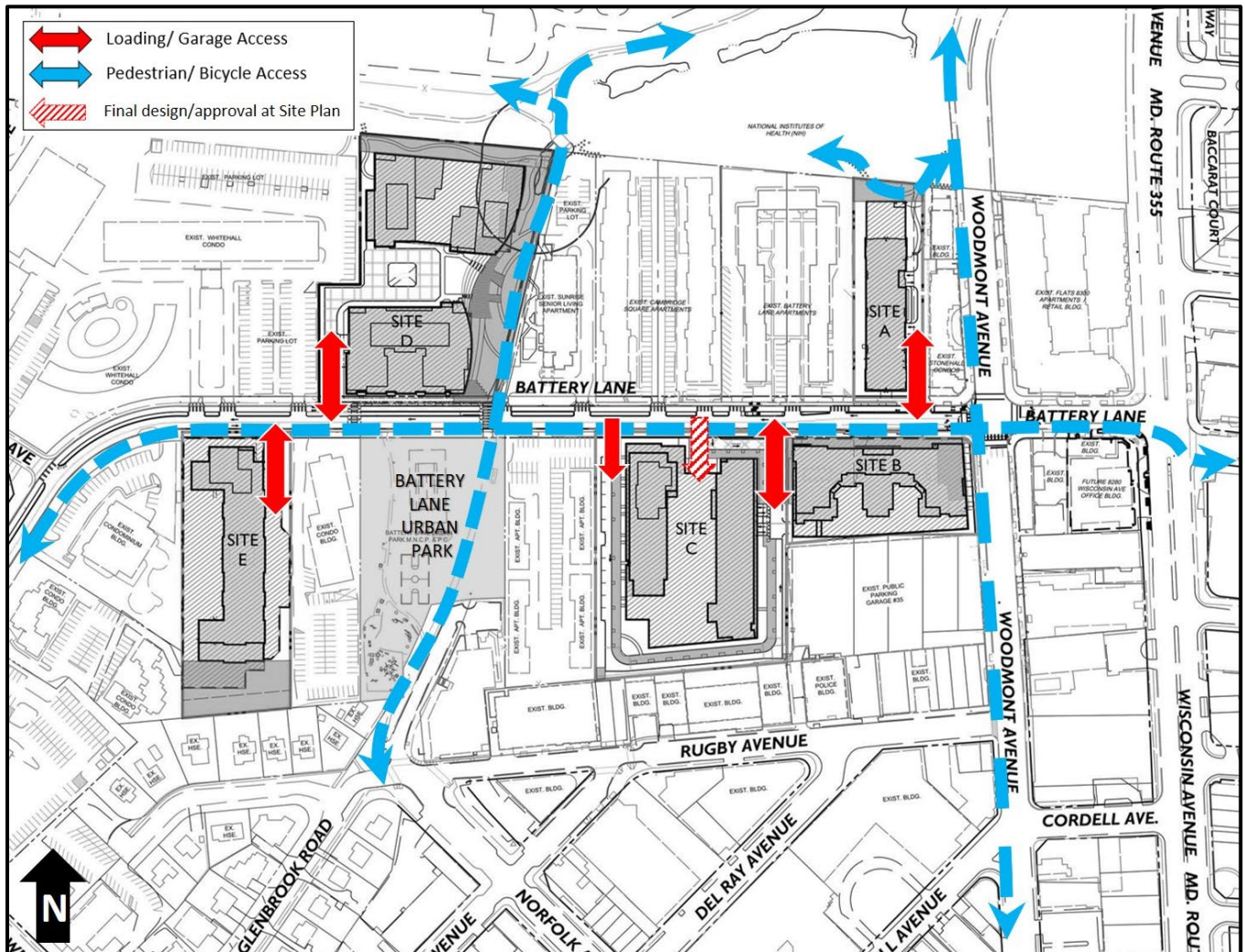


Figure 4 – Proposed Circulation and Access

**Site A:** Site A, located on the eastern edge of the Battery District near Woodmont Avenue, proposes its access point as a consolidated garage and loading driveway at the southeast corner of the site via the north side of Battery Lane. This access point currently exists and operates under a Common Driveway Agreement with 4811 Battery Lane (Stonehall Condominiums).

Site C: Site C, located on the south side of Battery Lane and adjacent to Site B, proposes three access points via the south side of Battery Lane: The western-most access point is a one-way inbound driveway that circumnavigates the perimeter of Site C before exiting the site at the eastern-most driveway, which is shared with Site B (not included in the Subject Application). The third access point, located in the middle of Site C, is a one-way inbound lay-by that connects with the eastern-most driveway shared with Site B. The third access drive may result in an unnecessary conflict point between vehicles and bicyclists, which Section 59.6.1.3A.2 requires limitation of access across primary pedestrian and bicycle routes wherever feasible. Additionally, Section 59.6.1.4 limits a maximum of 2 driveways for every 300 feet of site frontage, whereas the Application proposes three access points within 300 feet of frontage. The related Sketch Plan was conditioned to require the Applicant, at the time of Site Plan, to submit design alternatives for this Site (Site C) that removes the lay-by. As conditioned, the lay-by access point will require submittal of an Alternative Method of Compliance waiver for consideration by the Planning Board and approval by MCDPS – Right-of-Way Permitting Section at the time of Site Plan review.

Site D: Site D, located in the center of the Battery District adjacent to the Bethesda Trolley Trail proposes its access point as a consolidated garage and loading driveway at the southwest corner of the site via the north side of Battery Lane. This access configuration will facilitate all vehicular traffic to the site and will minimize potential conflicts between vehicles and bicyclists along the Bethesda Trolley Trail.

Site E: Site E, located on western of Battery Lane Urban Park, proposes its access point as a consolidated garage and loading driveway at the northeast corner of the site via the south side of Battery Lane. This access point is immediately adjacent to the adjacent driveway for 4970 Battery Lane.

#### *Battery Lane Separated Bike Lanes*

The Project is providing two-way separated bicycle lanes along the south side of Battery Lane (Figure 5) in accordance with the 2018 *Bicycle Master Plan* and supplemental guidance from the Montgomery County Department of Transportation (MCDOT). The location of the separated bicycle lanes, either on the north side or south side of Battery Lane, was a major discussion point during the Planning Board's Sketch Plan public hearing, however, MCDOT determined that the south side of the street was the preferred alignment to facilitate safe and efficient travel across the Battery Lane / Woodmont Avenue intersection and Wisconsin Avenue/ Battery Lane/ Rosedale Intersection, and coordinate with previously approved bicycle lanes east of the project along the 8280 Wisconsin Avenue frontage. As conditioned, the two-way separated bicycle lanes will be on the south side of Battery Lane.

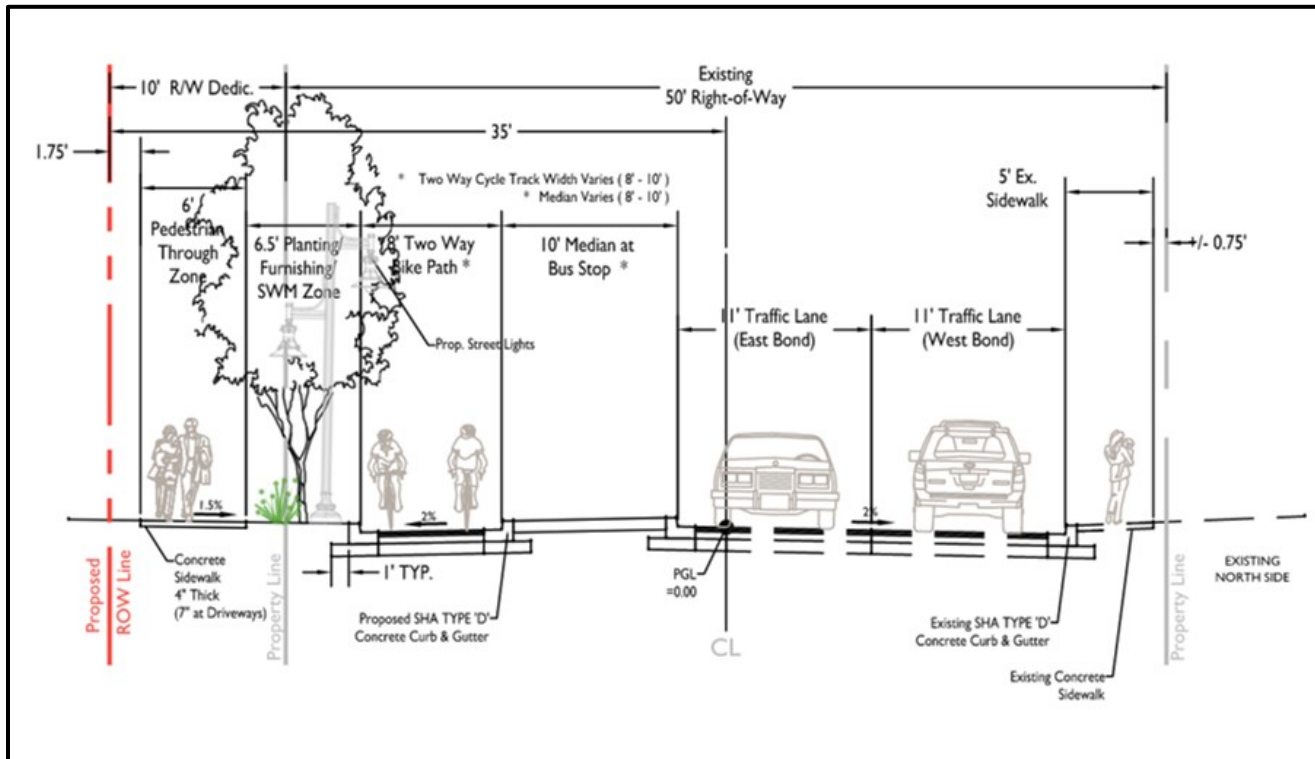


Figure 5 - Section of Two-way Separated Bicycle Facility (south side) Battery Lane looking west

#### Transit Connectivity

The immediate area is served by Metrobus, RideOn, the Bethesda Circulator and the WMATA Metrorail Red Line. Two metrorail stops are generally between ½ mile from the development sites.

#### Master Plan Roadways and Pedestrian/Bikeway Facilities

The 2017 *Bethesda Downtown Sector Plan* and 2018 *Bicycle Master Plan* recommend the following master plan facilities along Property frontage:

1. Battery Lane: A minor arterial roadway (MA-8) with a minimum right-of-way width of 70-feet and two-way separated bicycle lanes on the south side of Battery Lane.
  - a. Between the Old Georgetown Road and the Bethesda Trolley Trail, the 2018 *Bicycle Master Plan* does not specify the north or south side of the street;
  - b. Between the Bethesda Trolley Trail and Woodmont Avenue, the separated bicycle lanes are designated as a portion of the *City of Rockville to Friendship Heights Breezeway Network* and are recommended to be on the north side of Battery Lane<sup>1</sup>;
2. Bethesda Trolley Trail: an off-street trail, this bicycle facility is designated as a portion of the *City of Rockville to Friendship Heights Breezeway Network*.

#### Sector-Planned Transportation Demand Management

The Sector Plan encourages a Non-Auto Driver Mode Share (NADMS) of 55%, averaged between employees and residents of downtown Bethesda. In order to meet this goal, downtown Bethesda is organized into a Transportation Demand Management District (TMD) that strives to promote travel by means other than single-occupancy vehicles. As a Project the includes at least 100 residential dwelling units, the the development is

<sup>1</sup> As conditioned, the Battery Lane separated bicycle lanes will be on the south side of the street to facilitate safe and efficient travel across the Battery Lane / Woodmont Avenue intersection and Wisconsin Avenue/ Battery Lane/ Rosedale Intersection and coordinate with previously approved bicycle lanes east of the project along the 8280 Wisconsin Avenue frontage.

required to enter into a Traffic Mitigation Agreement (TMAg) with the Planning Board and Montgomery County Department of Transportation (MCDOT) to participate in the Bethesda TMD.

### *Phasing*

As conditioned, the Preliminary Plan will be implemented in phases, with each phase finalized through subsequent Site Plan review. Unless otherwise specified through a condition of approval, construction phasing for any site covered by the Preliminary Plan can take place in any order, either sequentially or simultaneously. However, specific conditions are recommended to ensure timely delivery of the public amenities associated with the Applications.

- Prior to the issuance of the first above grade building permit, the Applicant must obtain MCDOT acceptance of the Interim Separated Bike Lane Facility between Old Georgetown Road and Woodmont Avenue.
- Prior to the issuance of the first residential Use & Occupancy Certificate for the first building, the Applicant must construct and obtain MCDOT acceptance of the protected intersection at Woodmont Avenue and Battery Lane.
- Prior to the certification of each Site Plan for each individual site, the Applicant must show the final design of the Ultimate Separated Bike Lane Facility on the Certified Site Plan, subject to MCDOT approval. Construction of the ultimate facility is preferred; however the final determination of construction or financial contribution will be made by MCDOT. Any financial contribution amount must be approved by MCDOT prior to Certification of each Site Plan.
- Prior to the issuance of the first Use & Occupancy Certificate for each individual Site Plan, the Applicant must construct for MCDOT acceptance or financially contribute to the implementation of the Ultimate Separated Bike Lane Facility along the associated site frontage. If a financial contribution is accepted by MCDOT, the contribution must be made prior to issuance of the first Use & Occupancy Certificate for each individual Site Plan.

#### SECTION 4: PRELIMINARY PLAN 120190240 ANALYSIS AND FINDINGS

The Preliminary Plan will create four lots for up to 1,341,000 square feet of development including 6,000 square feet of non-residential uses and 1,335,000 square feet of residential uses for up to 1130 units. This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, Subdivision Regulations. The Application meets all applicable sections. The size, width, shape, and orientation of the proposed lot is appropriate for the location of the subdivision taking into account the recommendations included in the applicable Master Plan, and for the type of development or use contemplated. The Application has been reviewed by other applicable County agencies, all of whom have recommended approval of the Preliminary Plan.

1. *The layout of the subdivision, including size, width, shape, orientation and diversity of lots, and location and design of roads is appropriate for the subdivision given its location and the type of development or use contemplated and the applicable requirements of Chapter 59.*

- a. *The block design is appropriate for the development or use contemplated*

The length, width, and shape of the block are consistent with Section 50.4.3.B of the Subdivision Code. The proposed subdivision is within an existing block and established street grid that is developed for multifamily housing.

- b. *The lot design is appropriate for the development or use contemplated*

The Preliminary Plan meets all applicable sections of the Subdivision Code. The four proposed lot sizes, widths, shapes, and orientation are appropriate for the location of the subdivision, taking into account the recommendations of the Sector Plan, the existing lot pattern of the surrounding properties, and for the building-type contemplated for the Property, multi-family development.

As further discussed in Finding 4, the lot design for Site D is large enough to develop for the purposes of multi-family residential while being encumbered by an existing floodplain.

- c. *The Preliminary Plan provides for required public sites and adequate open areas*

##### Master Planned Sites

The 2017 *Bethesda Downtown Sector Plan* recommends an enhanced public open space, referred to as the North Bethesda Urban Greenway, on Site D. The development of Site D and the related open space and recreation improvements will be reviewed as part of the Site Plan for Site D. The Preliminary Plan has been conditioned to require conformance with the Sector Plan recommendations for Site D at the time of Site Plan review. The Sector Plan also calls for a public connection on Site A and Site C. On Site A, the intent is to create a pedestrian connection going east from Woodmont Avenue, through the rear of the properties on the north side of Battery Lane, to the Bethesda Trolley Trail on Site D. The design for Site A will allow for a public pedestrian connection as recommended in the Sector Plan. The recommended public connection on Site C will provide a north/south pedestrian connection from Rugby Avenue to Battery Lane, which will be accommodated by Site C.

There are no other Sector Plan recommendations for public facilities or local recreation requirements for the Subject Property.

- d. *The Lot(s) and Use comply with the basic requirements of Chapter 59*

The lots were reviewed under and found to be in compliance with the dimensional requirements for the CR zone as specified in the Zoning Ordinance. A summary of this review is included in Table 1.



*Table 1 - Preliminary Plan Data Table*  
**Project Data Table (Section 59.4)**

Development Standard	Permitted/ Required	Proposed
<b>Tract Area (Square Feet/ Acres)</b> CR 3.5 C-0.5 R-3.5 H-120' Site A Site C <b>Subtotal CR 3.5</b>  CR 1.5 C-0.5 R-1.5 H-120' Site D Site E <b>Subtotal CR 1.5</b>  <b>Total Tract Area</b>	n/a	46,553 (1.07) 139,099 (3.19) <b>185,652 (4.26)</b>  143,307 (3.29) 91,452 (2.10) <b>234,759 (5.39)</b>  <b>420,411 (9.65)</b>
<b>Site Area (Square Feet/ Acres)</b> CR 3.5 C-0.5 R-3.5 H-120' <b>Site A</b> Prior Dedication Proposed Dedication <b>Site A Area</b> (Tract Area – Dedications) <b>Site C</b> Prior Dedication Proposed Dedication <b>Site C Area</b> (Tract Area – Dedications)  CR 1.5 C-0.5 R-1.5 H-120' <b>Site D</b> Prior Dedication Proposed Dedication <b>Site D Area</b> (Tract Area – Dedications) <b>Site E</b> Prior Dedication Proposed Dedication <b>Site E Area</b> (Tract Area – Dedications)  <b>Total Site Area</b>	n/a	2,914 (0.07) 1,165 (0.03) <b>42,474 (0.98)</b>  8,094 (0.19) 3,238 (0.07) <b>127,767 (2.93)</b>  7,078 (0.16) 3,133 (0.07) <b>133,096 (3.05)</b>  4,648 (0.11) 1,743 (0.04) <b>85,061 (1.95)</b>  <b>388,398 (8.91)</b>
<b>Residential Density (GFA/FAR)</b> CR 3.5 C-0.5 R-3.5 H-120' CR 1.5 C-0.5 R-1.5 H-120' <b>Subtotal</b>	649,782 (3.5) 352,138 (1.5) <b>1,001,920 (2.38)</b>	-- -- <b>995,920 (2.37)</b>
<b>Commercial Density (GFA/FAR)</b> CR 3.5 C-0.5 R-3.5 H-120' CR 1.5 C-0.5 R-1.5 H-120' <b>Subtotal</b>	92,826 (0.5) 117,379 (0.5) <b>210,205 (0.49)</b>	-- -- <b>6,000 (0.01)</b>
<b>Total Mapped Density (GFA/FAR)</b>	Residential 1,001,920 (2.38) Commercial 210,031 (0.49) <b>1,001,920 (2.38)</b>	995,920 (2.37) 6,000 (0.01) <b>1,001,920 (2.38)</b>
<b>Bethesda Overlay Zone Density (GFA/ FAR)</b>	n/a	<b>339,080 (0.81)</b>
<b>Total GFA/ FAR</b>	n/a	<b>1,341,000 (3.19)</b>

2. *The Preliminary Plan substantially conforms to the Master Plan or Urban Renewal Plan.*

a. Land Use

The Project substantially conforms to the site recommendations included in the 2017 *Bethesda Downtown Sector Plan*. The Property is located in the Battery Lane District, designated as sites 4, 7, 9, 11, & 14 on page 130 of the Sector Plan, which recommends rezoning to the CR zone to promote enhanced redevelopment opportunities to foster a quality mix of housing options. This District consists of a range of housing types including garden style apartments along Battery Lane as well as single unit homes and low- to high-rise buildings. Battery Lane Park and the North Bethesda Trail are located in the center of the District and are heavily utilized, however wider buffered sidewalks and connections through long blocks are needed to make this neighborhood a truly walkable area. Specifically, the Project addresses the following applicable goals as outlined in the Sector Plan:

- *Preserve existing market-rate affordable housing.*

The Applicant owns two additional buildings within the Battery Lane District that are not part of this development application that will remain as market-rate affordable. The associated Sketch Plan was conditioned to require certain sites provide MPDUs in excess of the 15% minimum requirement.

- *Promote enhanced redevelopment opportunities to foster a quality mix of housing options.*

The Preliminary Plan will create four lots to allow for redevelopment of older multifamily buildings to provide an increase of multifamily units with a mix of housing styles including townhouse entry units and taller residential apartment buildings. The related Sketch Plan proposal includes a mix of unit sizes including efficiency, one-bedroom, two-bedroom, and three-bedroom units at varying levels of affordability, including MPDU's.

- *Expand neighborhood green at Battery Lane Park.*

On Site D of the Preliminary Plan, the Sector Plan recommends an expansion of Battery Lane Urban Park, referred to as the North Bethesda Trail Urban Greenway (Page 82 of the Sector Plan) and calls for this to be a green and active linear park connection between the National Institutes of Health and Woodmont Triangle. The Sector Plan recommends the expansion to be approximately 0.9 acres in size and wide enough to allow stream improvements, including daylighting of the existing piped stream, environmental interpretation and play elements. The proposed configuration of Site D will allow for an expansion of a neighborhood green as recommended in the Sector Plan, with the details of size and design to be reviewed at the time of Site Plan, as conditioned.

b. Environment

The Sector Plan recommends that development on private property provide a minimum of 35 percent green cover, which may include singularly or a combination of intensive green roof and tree canopy. As conditioned, each Site will meet the minimum requirements for 35 percent green cover through green roof, tree canopy, or a combination of the two. The Applicant has provided a green cover exhibit conceptually showing how each of the five Sites may provide green roof and/or tree canopy meeting the Sector Plan's goals. Each Site's green cover will be further reviewed at the time of each Site Plan.

The Sector Plan calls for any future development on Site D to consider daylighting the existing piped stream. The ecosystem benefits provided by daylighting the piped stream, which include significantly

increased stormwater capture; improved water quality; and increased biodiversity and habitat, are also directly linked to Sector Plan goals. While the Applicant has initially stated this is infeasible due to the depth of the existing pipe, the related Sketch Plan conditioned the Applicant to continue working with applicable County agencies to determine the feasibility of daylighting the stream. This feasibility will be determined during subsequent Site Plan review of Site D, along with related Sketch Plan conditions requiring expansion of the neighborhood green.

c. Transportation

The 2017 *Bethesda Downtown Sector Plan* recommended improvements to pedestrian and bike connectivity throughout the Battery District and along the park. The 2018 *Bicycle Master Plan* also recommended specific pedestrian and bicycle improvements such as enhancement of the existing Bethesda Trolley Trail to support the MD 255 South Breezeway network and the construction of two-way Separated Bicycle Facilities along Battery Lane. The Applicant proposes to enhance the existing Bethesda Trolley Trail which will separate the pedestrian and bicyclists on two separate paths. The Preliminary Plan also proposed a redesign of the existing Battery Lane right-of-way to allow the construction of a two-way Separated Bicycle facility along the south side of Battery Lane. As conditioned, these improvements will be in conformance with the recommendations of the 2018 *Bicycle Master Plan* and the Sector Plan.

The Preliminary Plan Application substantially conforms to the 2017 *Bethesda Downtown Sector Plan*. The Preliminary Plan Application complies with the specific density recommendations for the Subject Property as well as the applicable urban design, roadway, and general recommendations outlined in the Sector Plan. The Site is not subject to an Urban Renewal Plan.

3. *Public facilities will be adequate to support and service the area of the subdivision.*

a. Roads and Other Transportation Facilities

Transportation access is adequate to serve the proposed development by this Preliminary Plan.

i. *Existing Facilities*

Each of the proposed lots has direct frontage and access to Battery Lane, which contains two travel lanes, sidewalks, and overhead utilities. The Project is located approximately half a mile from two Metro Stations (Bethesda Metro to the south, and Medical Center to the north). The Project will also provide direct access and enhancements to the Bethesda Trolley Trail with access to Battery Lane Urban Park.

ii. *Proposed public transportation infrastructure*

Vehicular access to each of the proposed lots subject to this Preliminary Plan are proposed directly from Battery Lane. The Applicant proposes consolidating many of the existing access points to reduce curb cuts, which will be finalized at the time of Site Plan review. As conditioned, access points proposed for Site C will require the submittal of an Alternative Method of Compliance waiver at the time of Site Plan. Pedestrian and bicycle access to the Property will be provided along Battery Lane, the sidewalks will be enhanced with the Bethesda Streetscape Standards, or alternative standard as directed by MCDOT at the time of Site Plan(s), and the bicycle facilities will be upgraded with the two-way Separated Bicycle facility. The Project is located approximately half a mile from two Metro Stations (Bethesda Metro to the south, and

Medical Center to the north). The Project will also provide direct access and enhancements to the Bethesda Trolley Trail with access to Battery Lane Urban Park.

b. Local Area Transportation Review (LATR)

A transportation study, dated May 31, 2019, was submitted to analyze the Project. The proposed development is estimated to generate 360 net new morning peak-hour person trips (183 vehicle trips) and 424 net new evening peak-hour person trips (216 vehicle trips) (Tables 2 and 3). Because the estimated transportation impact of the Project exceeds 50 net new trips for the vehicular, pedestrian, and bicycle modes, the Project evaluated the adequacy of each of these modes to satisfy the Local Area Transportation Review requirement.

*Table 2 - Project Peak Hour Trip Generation*

Existing	Vehicle Rates		Adjusted Vehicle Rates		Person Trips	
	AM	PM	AM	PM	AM	PM
411 Mid-Rise Dwelling Units	148	181	117	143	230	281
<b>Existing Trips</b>	<b>148</b>	<b>181</b>	<b>117</b>	<b>143</b>	<b>230</b>	<b>281</b>
Proposed	AM	PM	AM	PM	AM	PM
628 Mid-Rise Dwelling Units	226	276	179	218	352	428
502 High Rise Dwelling Units	153	179	121	141	238	277
<b>1,130 Residential Units Proposed Trips</b>	<b>379</b>	<b>455</b>	<b>300</b>	<b>359</b>	<b>590</b>	<b>705</b>
<b>Net New Trips</b>	<b>231</b>	<b>274</b>	<b>183</b>	<b>216</b>	<b>360</b>	<b>424</b>

Source: Wells & Associates Transportation Study, dated May 31, 2019.

*Table 3 - Net New Peak Hour Trip Generation by Mode*

	Person Trips	Auto Driver	Pedestrian*	Transit	Bike
<b>AM</b>	360	183	102	42	60
<b>PM</b>	424	216	119	49	70

\* Pedestrian trips are the sum of all transit and bicycle trips generated by the project.

Source: Wells & Associates Transportation Study, dated May 31, 2019.

Vehicle Adequacy

As a project that generates fewer than 250 net new peak hour vehicle trips within Downtown Bethesda, the Applicant was required to evaluate one tier of intersections, resulting in a total of four intersections and the site access points along the Battery Lane corridor. In accordance with the 2016-2020 Subdivision Staging Policy, the intersections included in this analysis were evaluated as part of the Battery Lane corridor within the Downtown area under the Highway Capacity Manual (HCM) methodology. That methodology allows for a more comprehensive operational analysis of the transportation network than an evaluation of each of the intersections in isolation. The study locations are presented in Figure 6, below, and results of the HCM methodology corridor analysis are presented in Table 4. The four specific intersections studied as part of the Transportation Study are:

1. Battery Lane/ Old Georgetown Road
2. Battery Lane/ Keystone Avenue
3. Battery Lane/ Woodmont Avenue
4. Battery Lane/ Wisconsin Avenue/ Rosedale Avenue

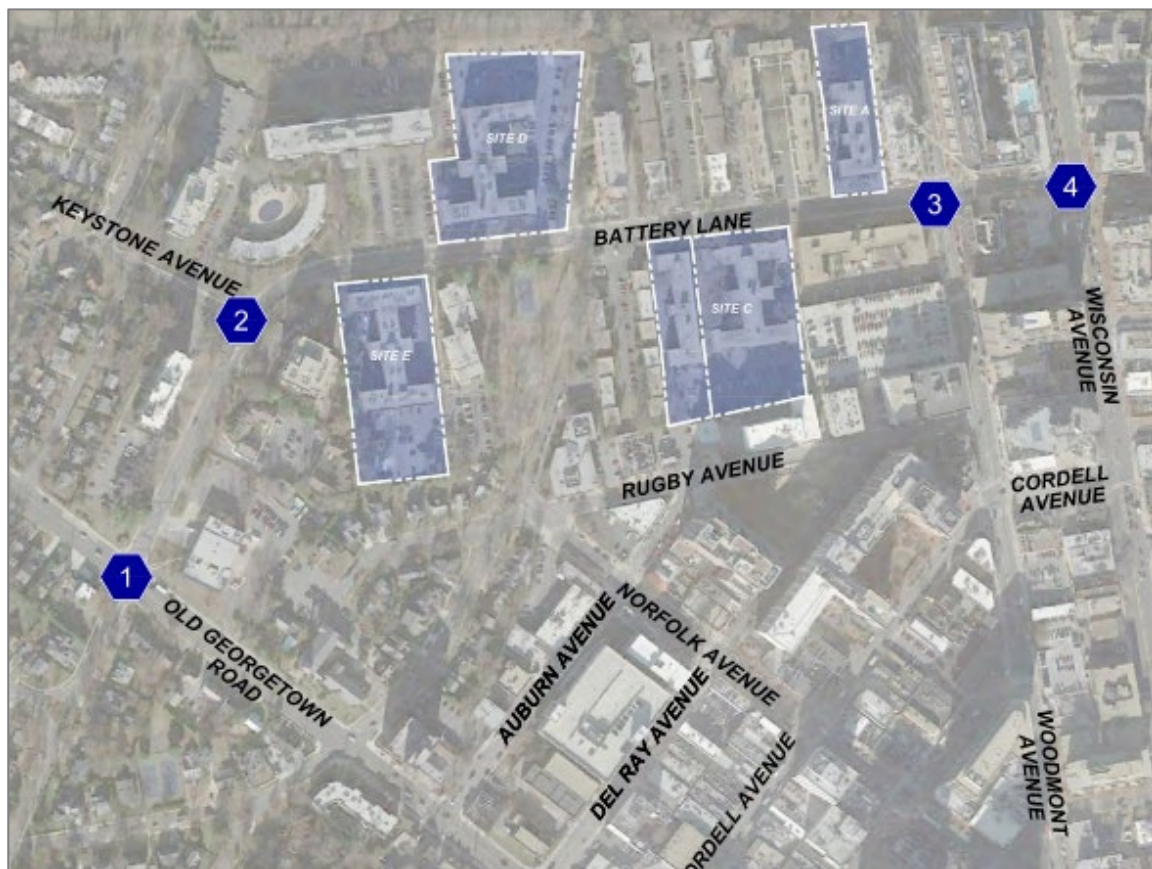


Figure 6 – Intersection Analysis Map

Table 4 - Intersection Capacity Highway Capacity Manual Methodology Control Delay (seconds)

Intersection/Corridor	Delay Standard	Existing Conditions		Background Conditions		Future Conditions	
		AM	PM	AM	PM	AM	PM
Battery Lane Corridor	120	18.0	22.0	21.0	35.0	28.0	45.0

Source: Wells & Associates Transportation Study, dated May 31, 2019.

The Transportation Impact Statement concluded that the Battery Lane Corridor would continue to function within the congestion standard set forth in the Subdivision Staging Policy. Staff at the Montgomery County Department of Transportation (MCDOT), MNCPPC, and the Maryland State Highway Administration (MDSHA) accepted the findings of the Transportation Impact Statement. As a point of clarification, the MDSHA approval letter (Attachment B) indicated that the Applicant team was unresponsive to requests by that agency to provide analysis of each of the isolated intersections along the Battery Lane Corridor. This supplemental information was requested to further evaluate operations at those intersections in the future, however, it is not necessary in the determination of adequate public transportation facilities for the Subject Application.



### Pedestrian Adequacy

Because the Project generates more than 50 peak hour pedestrian trips, the Applicant evaluated each of the crosswalk level of service at LATR study intersections within 500 feet of the Site and determined that each of the pedestrian crossings would operate at a level of service "C" or better in the future condition. The Applicant must fix or fund improvements to non-compliant ADA infrastructure pedestrian infrastructure within 500 feet of the Subject Property, in accordance with the 2016-2020 Subdivision Staging Policy and supplemental guidance issued by the Montgomery County Department of Transportation. As conditioned by MCDOT in their letter dated January 15, 2020, the Project is required to construct or fund improvements to provide adequate pedestrian infrastructure for the pedestrian trips generated by the Project.

### Bicycle Adequacy

The Applicant evaluated bicycle travel in accordance with the Planning Department's "Level of Traffic Stress" analysis, which recognizes the effect different roadways have on bicyclists' comfort. That analysis determined that bicycle facilities within 750 feet of the Site were Level of Traffic Stress "2" or better in the future condition. This finding was based, in large part, on the provision of the two-way separated bicycle facility along Battery Lane and enhancement of the Bethesda Trolley Trail. As conditioned, the Applicant will design and construct the required bicycle infrastructure, in accordance with direction from MCDOT, to provide adequate service for the bicycle trips generated by the Project.

### c. Other Public Facilities

#### **Schools Analysis**

The Project was reviewed for school adequacy based on the applicable annual school test (FY20 Annual School Test) which was approved by the Planning Board on June 20, 2019 and effective July 1, 2019. The application proposes development of 1,130 multifamily high-rise units, replacing 264 existing multifamily high-rise units and 147 existing multifamily low-rise units.

#### Calculation of Student Generation

To calculate the number of students generated by the proposed development, the number of dwelling units is multiplied by the applicable regional student generation rate for each school level. Dwelling units are categorized by structure type: single family detached, single family attached (townhouse), low- to mid-rise multifamily unit, or high-rise multifamily unit. The Subject Property is located in the southwest region of the County.

*Table 5 - Per Unit Student Generation Rates – Southwest Region*

	<b>Elementary School</b>	<b>Middle School</b>	<b>High School</b>
<b>SF Detached</b>	0.186	0.109	0.151
<b>SF Attached</b>	0.167	0.085	0.111
	0.150	0.068	0.085
<b>MF High-Rise</b>	0.041	0.018	0.025

*Table 6 - Generation Rates by school*

<b>Type of Unit</b>	<b>Net Number of Units</b>	<b>ES Generation Rates</b>	<b>ES Students Generated</b>	<b>MS Generation Rates</b>	<b>MS Students Generated</b>	<b>HS Generation Rates</b>	<b>HS Students Generated</b>
<b>MF Low-Rise</b>	-147	0.150	-22.050	0.068	-9.996	0.085	-12.495
<b>MF High-Rise</b>	-264	0.041	-10.824	0.018	-4.752	0.025	-6.600

<b>MF High-Rise</b>	551	0.041	46.330	0.018	20.340	0.025	28.250
<b>TOTAL</b>	<b>719</b>		<b>13</b>		<b>5</b>		<b>9</b>

With a net of 719 units, the proposed project is estimated to generate 13 new elementary school students, 5 new middle school students, and 9 new high school students.

#### Cluster Adequacy Test

The project is located in the Bethesda-Chevy Chase High School Cluster. The student enrollment and capacity projections from the FY20 Annual School Test for the cluster are noted in Table 7.

*Table 7 - Projected Cluster Totals*

<b>School Level</b>	<b>Projected Cluster Totals, September 2024</b>			<b>Moratorium Threshold</b>	<b>Estimated Application Impact</b>
	<b>Enrollment</b>	<b>Program Capacity</b>	<b>% Utilization</b>		
Elementary <sup>1</sup>	3,714	4,020	92.4%	1,111	<b>13</b>
Middle	1,917	2,024	94.7%	511	<b>5</b>
High	2,410	2,457	98.1%	538	<b>9</b>

The Moratorium Threshold identified in the table is the number of additional projected students that would cause the projected utilization to exceed the 120% utilization threshold and therefore trigger a cluster-wide residential development moratorium. As indicated in the last column, the estimated enrollment impacts of this application fall below the moratorium thresholds at all three school levels. Therefore, there is sufficient capacity at the elementary, middle and high school cluster levels to accommodate the estimated number of students generated by this project.

#### Individual School Adequacy Test

The applicable elementary and middle schools for this project are Bethesda ES and Westland MS, respectively. Based on the FY20 Annual School Test results, the student enrollment and capacity projections for these schools are noted in the following table:

*Table 8 - Projected School Totals*

<b>School</b>	<b>Projected School Totals, September 2024</b>				<b>Moratorium Threshold</b>	<b>Estimated Application Impact</b>
	<b>Enrollment</b>	<b>Program Capacity</b>	<b>% Utilization</b>	<b>Surplus/ Deficit</b>		
Bethesda ES <sup>2</sup>	731	698	104.7%	-33	107	<b>13</b>
Westland MS	899	1,089	82.6%	+190	408	<b>5</b>

Under the individual school adequacy test, a school is deemed inadequate if the projected school utilization rate exceeds 120% and the school seat deficit meets or exceeds 110 seats for an elementary school or 180 seats for a middle school. If a school's projected enrollment exceeds *both* thresholds, then the school service area is placed in a residential development moratorium.

The Moratorium Enrollment Thresholds identified in the table above are the numbers of additional projected students that would cause the projected utilization to exceed the 120% utilization threshold and the seat deficit threshold. As indicated in the last column, the estimated enrollment impacts of this application fall below the moratorium thresholds for both Bethesda ES and Westland MS.

<sup>1</sup> The elementary school level capacity reflects the impacts of a six-classroom placeholder project (P651916) at Bethesda ES and a four-classroom placeholder project (P651914) at Somerset ES.

<sup>2</sup> The Bethesda ES capacity reflects the impact of a six-classroom placeholder project (P651916).

Therefore, there is sufficient anticipated school capacity to accommodate the estimated number of students generated by this project.

Based on the school cluster and individual school capacity analysis performed, using the FY2020 Annual School Test, there is adequate school capacity for the amount and type of development proposed by this application.

Public facilities and services are available and will be adequate to serve the proposed development. The Subject Property is proposed to be served by public water and public sewer. The Application has been reviewed by the Montgomery County Fire and Rescue Service who has determined that the Subject Property will have appropriate access for fire and rescue vehicles. Other public facilities and services, such as electrical, telecommunications, gas, police stations, firehouses, and health services are operating according to the *Subdivision Staging Policy* resolution currently in effect and will be adequate to serve the Property.

#### *Adequate Public Facility Validity Period*

In accordance with Section 50.4.3.J.5.b.ii, the Applicant requested a validity period longer than the minimum specified in the Code based on the size and complexity of the Preliminary Plan. That request set forth a detailed phasing plan demonstrating when each phase of development would be completed. Unless otherwise specified through a condition of approval, construction phasing for any site covered by the Preliminary Plan can take place in any order, either sequentially or simultaneously. As conditioned, the Adequate Public Facility review for the Preliminary Plan will remain valid for one hundred twenty (120) months, phased in the following manner to ensure timely delivery of the public amenities:

1. Prior to the issuance of the first above grade building permit, the Applicant must obtain MCDOT acceptance of the Interim Separated Bike Lane Facility between Old Georgetown Road and Woodmont Avenue.
2. Prior to the issuance of the first residential Use & Occupancy Certificate for the first building, the Applicant must construct and obtain MCDOT acceptance of the protected intersection at Woodmont Avenue and Battery Lane.
3. Prior to the certification of each Site Plan for each individual site, the Applicant must show the final design of the Ultimate Separated Bike Lane Facility on the Certified Site Plan, subject to MCDOT approval. Construction of the ultimate facility is preferred; however the final determination of construction or financial contribution will be made by MCDOT. Any financial contribution amount must be approved by MCDOT prior to Certification of each Site Plan.
4. Prior to the issuance of the first Use & Occupancy Certificate for each individual Site Plan, the Applicant must construct for MCDOT acceptance or financially contribute to the implementation of the Ultimate Separated Bike Lane Facility along the associated site frontage. If a financial contribution is accepted by MCDOT, the contribution must be made prior to issuance of the first Use & Occupancy Certificate for each individual Site Plan.

In accordance with Section 50.4.3.J.5.b.ii, the size and complexity of the Preliminary Plan warrants the extended validity period and, as conditioned, would not be adverse to the public interest.

#### *4. All Forest Conservation Law, Chapter 22A requirements are satisfied.*

##### *a. Environmental Guidelines*

Individual Natural Resource Inventory Forest Stand Delineations (NRI/FSD) were approved for each site within this application on April 29, 2019. The plans, designated No. 420191430; 420191450; 420191460; and 420191470 identify the existing man-made and natural features associated with the Property, such as the buildings, associated parking, the street trees and landscape elements. The on-site setting includes

significant and specimen trees present within Sites A, C, D, and E. There are no rare, threatened, or endangered species present within the subject sites.

All of the Sites lie within the Lower Rock Creek Watershed, which is a use I-P watershed<sup>1</sup>. A perennial stream, observed on approved NRI/FSD No. 420191460, and associated 100' stream valley buffer lies within Site D in the northwest corner. The stream runs on the surface for approximately 80', draining to the north, before it becomes piped to run south along Site D's eastern border towards Battery Lane.

*b. Forest Conservation Plan*

There is no forest on-site or adjacent to the Property, however there is an afforestation requirement of approximately 1.51 acres which will be addressed off-site, via certificate of compliance from an off-site bank.

*c. Forest Conservation Variance & Tree Save Plan*

Based on the submitted plans, approximately 114.50 caliper inches of variance mitigation tree plantings are required onsite and must consist of native canopy trees. This required planting may also be counted towards Sector Plan green cover requirements (35% of each site) provided that the selected tree species are consistent with the approved species list found in the MNCPPC Trees – Approved Technical Manual.

Due to the impact anticipated by the proposed project, this Application is subject to forest conservation variance. Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection. The Law requires no impact to trees that: measure 30 inches or greater, DBH; are part of an historic site or designated with an historic structure; are designated as national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species ("Protected Trees"). Any impact to a Protected Tree, including removal or disturbance within the Tree's critical root zone ("CRZ") requires a variance. An application for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law.

The Applicant submitted a variance request in a letter dated August 21, 2019, for the impacts/removal of trees. The Applicant proposes to remove ten (10) trees (Protected Trees) that are considered high priority for retention under Section 22A-12(b)(3) of the County Forest Conservation Law. As conditioned by Sketch Plan No. 320190080, the Applicant has submitted a Tree Save Plan (TSP) for review with the Preliminary Plan Application. The TSP proposes the use of root pruning and tree protection/silt fencing as coordinated by an International Society of Arboriculture certified arborist, who is also a MD licensed tree care expert.

*Table 9 - Trees to be Removed*

Tree Number	Species	DBH Inches	CRZ Impact	Status
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<sup>1</sup> Use I-P:

*WATER CONTACT RECREATION, PROTECTION OF AQUATIC LIFE, AND PUBLIC WATER SUPPLY*

*Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply; industrial water supply; and public water supply.*

ST-40	Red Maple	30	59%	Good condition
ST-45	Tulip Tree	31	22%	good condition; grading, sidewalk and dry utility line
ST-47	Red Maple	33	100%	Good condition; trunk cavities
ST-48	Red Maple	37	100%	Good condition; twin trunk
ST-55	Silver Maple	43	27%	good condition; grading, sidewalk, dry utility line, and storm drain
ST-56	Osage Orange	34	30%	Fair condition; trunk cavities
ST-60	Red Maple	39	69%	Good condition
ST-61	Red Maple	41	67%	Fair condition; epicormic branching
ST-62	Red Mulberry	34	34%	Poor condition; leaning; trunk cavities; vines
ST-80	White Ash	36	34%	Poor condition; ash borer

### **Unwarranted Hardship Basis**

Per Section 22A-21, a variance may only be considered if the Planning Board finds that leaving the Protected Trees in an undisturbed state would result in an unwarranted hardship, denying an applicant reasonable and significant use of a property. In addition to the required findings outlined numerically below, the Applicant has demonstrated that failure to grant the variance would result in an unwarranted hardship because the life cycle of the existing apartment complex has run its course. Redeveloping the site in accordance with the County's Bethesda Downtown Sector Plan would provide an improved quality of life for residents, including those in MPDU's, allow for improved green and open space, and increase connectivity between the Battery District and the rest of Downtown Bethesda. Staff has reviewed this Application and finds that there would be an unwarranted hardship if a variance were not considered.

### **Variance Findings**

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. Staff has made the following determination based on the required findings in the review of the variance request and the preliminary forest conservation plan:

#### *Granting of the requested variance:*

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

Granting the variance will not confer a special privilege on the Applicant as the disturbance to the Protected Trees is due to the reasonable development of the Property. Further, the redevelopment of the Subject Property, which is a right that has been granted to others on nearby properties, would include the fulfillment of Sector Plan recommendations including providing linkages and gateways to the North Bethesda Trail via an Urban Greenway.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The need for the variance is not based on conditions or circumstances which are the result of actions by the Applicant. The Subject Property is in the Battery District, which consists of clusters of similar high-rise and garden apartment buildings. This district is also bordered on the north by



the NIH facilities. The past development of these properties, which include extensive surface parking extending to adjacent property lines, has resulted in an environment that presents various engineering constraints. These circumstances are specific to the Subject Property and are not related to the actions of the Applicant.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The need for the variance is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property. The requested variance is based upon the nature of the existing Sites and the resulting location of trees and on-site environmental features and utilities.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The Department of Permitting Services (DPS) staff approved the stormwater management (SWM) concepts for the project on November 13, 2019, November 18, 2019, and April 2, 2020. The SWM concept proposes to meet required storm water management goals by the use of micro-bioretenion planter boxes and 8-inch thick green roof on proposed buildings. Aside from stormwater management features, water quality will be further enhanced with this project through variance mitigation tree plantings which serve to maximize the permeability of the soil, further reduce water runoff, and provide increased shade and water retention/uptake. Therefore, due to the above, the project will not violate State water quality standards or cause measurable degradation in water quality.

#### *Mitigation for Protected Trees*

There are 10 trees proposed for removal in association with this application. Planting mitigation for removals should be at a rate that approximates the form and function of the trees removed. Replacement should occur at a ratio of approximately one-inch caliper for every four inches DBH of removal, using trees that are a minimum of three inches caliper. For the 357 diameter-inches of subject trees to be removed, the Applicant must provide mitigation of at least 114.5 caliper-inches of replacements. Therefore, the mitigation requirements would be satisfied by the planting of 39 three-inch caliper trees. The Applicant currently proposes the planting of 32 three-inch caliper trees. Prior to the approval of Certified Preliminary Plans, The Applicant currently proposes the planting of 32 three-inch caliper trees. Prior to the approval of Certified Preliminary Plans, the Applicant will be required to update the Variance Tree Mitigation Table to reflect the correct amount of mitigation plantings.

#### *County Arborist's Recommendation on the Variance*

In accordance with Montgomery County Code Section 22A-21(c), the Planning Department is required to refer a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. The request was forwarded to the County Arborist on December 16, 2019. The County Arborist did not provide any comments or concerns regarding this request.

#### *Staff Recommendation on the Variance*

As a result of the above findings, Staff recommends that the Board approve the Applicant's request for variance from Forest Conservation Law to remove 10 subject trees with conditions requiring mitigation plantings of at least 114.5 caliper inches.

*d. Noise*

The Subject Application proposes development within 600 feet of arterial roads with more than 20,000 cars per day on Site A and E, therefore a Noise Analysis for these Sites is required. A waiver per Section 2.2.2 of the Noise Guidelines may be requested for open space only. The Project has been conditioned to require a Noise Analysis be submitted prior to approval of Site Plans for Sites A and E.

*e. Environmental Protection*

There is an existing piped stream that carries water from downtown Bethesda through Site D along the eastern property line. This piped stream daylights at the northeast corner of the Site into an unnamed tributary on the National Institutes of Health property. The portion of the stream that is daylighted on Site D is subject to a 50-foot stream buffer, per the Montgomery County Environmental Guidelines. No buildings or structures are permitted within stream buffers. Exceptions to this guideline may, however, be made for bikeways, trails, and infrastructural uses found to be necessary, unavoidable, and minimized.

Given that Site D is the largest of all five sites (3.05 acres), and the limited size and location of the stream valley buffer, a large developable footprint remains outside of the stream valley buffer. Pursuant to Environmental Guidelines, the related Sketch Plan was conditioned to explore design alternatives for Site D building placement and/or footprints in order to minimize and mitigate any encroachment into the Stream Valley Buffer. The Project is located within an urban environment and therefore future constraints of the site may be identified. Any unavoidable encroachment into the stream valley buffer must be minimized and mitigated per Environmental Guidelines recommendations. Daylighting of the stream may be considered as potential mitigation for encroachment into the buffer.

As part of the Preliminary Plan Application review, the Applicant was required to complete a floodplain delineation study to determine where the existing floodplain line is located within Site D. The study, as approved by MCDPS, determined that the 100-year floodplain is located along the eastern property line. The approval requires the established 100-Year Floodplain and its associated 25-foot Floodplain Buffer to be shown on any associated sediment control plan and record plats. Any disturbance within 25 feet of the approved 100-year floodplain will require a Floodplain District Permit.

Section 50.4.3.K of the Subdivision Ordinance requires that the Planning Board restrict subdivision or development of any property that is located in the 100-year floodplain. The Planning Board may allow a platted lot to contain floodplain when it is demonstrated that there is sufficient safe ground to develop the property within the required setbacks of the zoning classification. Given that this Property (Site D) is zoned CR, there is no required side or rear setbacks where the floodplain exists onsite. After dedication, Site D will be approximately 3 acres in size and large enough to accommodate development despite the encumbrance of the 100-year floodplain and the associated 25-foot floodplain buffer along the eastern property line. The Sector Plan recommends that Site D consider daylighting the existing stream, and the related Sketch Plan conditioned the Project to coordinate the feasibility of daylighting the stream during Site Plan review. The related Sketch Plan also conditioned the Project to explore design alternatives for Site D that would increase the width of the linear open space along the eastern property line with a minimum average of 95' and to minimize encroachment into the stream valley buffer. The Preliminary Plan has been conditioned to update the drawings based on the recently approved floodplain study prior to Certification of the Preliminary Plan. Therefore, Site D will be large enough to develop safely without disturbing the approved 100-year floodplain or 25-foot buffer, and the Project has been conditioned to explore design alternatives that increase open space along this area, minimize hardscape between the building and the 100-year floodplain, and to explore the feasibility of daylighting the stream during Site Plan review.

4. *All stormwater management, water quality plan, and floodplain requirements of Chapter 19 are satisfied.*

All four lots have received Stormwater Concept Plan approvals from the Montgomery County Department of Permitting Services (MCDPS) which are included in Attachment B. Site A/Lot A (4857 Battery Lane) proposes to meet stormwater management requirements through the combination of stormwater planter boxes and extensive (8-inch depth) green roof. Site C/Lot C (4900 Battery Lane) proposes to meet stormwater management requirements through the combination of stormwater planter boxes, extensive (8-inch depth) green roof, and suspended micro-bioretenion (silva cells) areas. Site D/Lot D (4949 Battery Lane) proposes to meet stormwater management requirements through a combination of micro-bioretenion and green roof. Site E/Lot E (4998 Battery Lane) proposes to meet stormwater management requirements through the combination of stormwater planter boxes, extensive (8-inch depth) green roof, non-rooftop disconnection and a partial waiver for the remaining ESD which will drain to an existing NIH stormwater management pond.

5. *Any other applicable provisions specific to the property and necessary for approval of the subdivision is satisfied.*

No other provisions apply to the Subdivision

## **SECTION 5: COMMUNITY OUTREACH AND CORRESPONDENCE**

The Applicant has complied with all submittal and noticing requirements including a pre-submittal public meeting at Imagination Stage in Downtown Bethesda on March 21, 2019. Staff received correspondence from neighbors citing concerns regarding the increase in units and the associated impacts to schools, traffic, and emergency response. As detailed in each of the respective sections of this Staff Report, the Project was reviewed for traffic and school adequacy, and received approval from Montgomery County Department of Permitting Services, Fire and Access Division. The following briefly summarizes Staff's response to concerns:

- School Adequacy: Based on the school cluster and individual school capacity analysis performed, there is adequate school capacity for the amount and type of development proposed with the Preliminary Plan.
- Transportation:
  - Vehicular Adequacy: The Transportation Impact Study (TIS) was reviewed by staff from the Maryland State Highway Administration (MDSHA), Montgomery County Department of Transportation (MCDOT) and Planning staff. The TIS determined that the Proposal would result in less than 250 vehicle trips, therefore the analysis was limited to a single corridor of four surrounding intersections. That TIS concluded that the Battery Lane corridor would continue to operate within acceptable limits set forth in the Subdivision Staging Policy.
  - Bicycle and Pedestrian Adequacy: The TIS analyzed impacts to pedestrian and bicycle infrastructure, and the Project has been conditioned for the Applicant to make certain improvements to the sidewalks and bicycle lanes to provide necessary adequate bicycle and pedestrian infrastructure.
  - Site A Access: Residents of Stonehall Condominiums, the residential building adjacent to Site A, are concerned about the increase in density and the impact it will have on the existing shared driveway. As discussed in this Staff Report, proposed Site A access point operates under a Common Driveway Agreement between the Stonehall Condominium Property owner and Aldon Properties. Planning staff generally encourages shared driveways wherever possible, in

accordance with Section 59.6.1 of the Zoning Ordinance. The design of the entrance will be finalized at the time of Site Plan to determine drive aisle widths, loading, and turning movements.

## **CONCLUSION**

As conditioned, the Preliminary Plan application satisfies the findings of the Subdivision Regulations, substantially conform to the recommendations of the 2017 *Bethesda Downtown Sector Plan Bethesda Downtown Design Guidelines*, and the 2018 *Bicycle Master Plan*. Therefore, Staff recommends approval of the Battery Lane District Preliminary Plan with the conditions specified at the beginning of this report.

## **ATTACHMENTS**

- A. Sketch Plan Resolution MCPB No. 19-134
- B. Agency Letters
- C. Correspondence