



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Memorandum

July 10, 2007

To: Montgomery County Planning Board

Via: Karl Moritz, Chief, Research & Technology Center  
Roselle George, Research Manager

From: Sharon K. Suarez, AICP, Housing Coordinator

Re: MPDU Program Amendment – Bill No. 13-07

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**Background**

On June 26, Councilmember Leventhal introduced Bill No. 13-07 (Attachment A) to put an end to the alternative payment option (aka “buyouts”) and to give a priority to persons with access disabilities the opportunity to apply for those MPDUs that are specially fitted and accessible. The Council is scheduled to hold a public hearing on July 19, 2007 and is scheduled to be discussed by the Planning, Housing, and Economic Development (PHED) Committee meeting on July 23, 2007.

The questions for discussion are whether the buyout option is necessary—is there enough “relief” in the MPDU program without the alternative payment option, and whether a disabled MPDU applicant should receive preference for an MPDU that is outfitted for accessibility.

Planning staff regrets the lateness and brevity of this memorandum. Several housing-related initiatives are occurring at the same time, in preparation for the July 23 PHED meeting, and these initiatives have also consumed staff time.

**Recommendation: *Support the bill.***

Staff recommends that the Planning Board support the Bill 13-07. An important aspect of the MPDU program is the inclusion of moderately-priced units among market rate units in a project. In those rare cases where this is not feasible, staff believes that the alternative location option offers sufficient relief to the developer. Staff also agrees that it makes sense that preference for accessible units be given to those MPDU applicants who need them.

## Discussion

### *Are buyouts necessary?*

The buy-out issue has been the subject of debate for years and banning buyouts have been the objective of previous legislative proposals. Since the inception of the Moderately Priced Dwelling Unit program, there have been concerns about whether developers should be required to build all MPDUs on site or whether they should be allowed to satisfy the MPDU requirement in some other way. Currently, developers may request two alternative ways to comply with the MPDU requirement. They may request to build them at an alternative location or they may request to make a payment—a “buyout.” In 2005, Planning Board considered the *amount* of the buyout option, but not whether the buyout option should be eliminated.

Before the recent changes to the MPDU program became effective on April 1, 2005, developers found that it was relatively easy to obtain permission to buy out of the MPDU requirement for some, if not all, of the MPDUs in their projects. Prior to April, 2005, the average MPDU buyout was \$21,000, which the Planning Board believed was not enough to truly compensate for the loss of an MPDU.

Tightening the buyout provision was one of the significant outcomes of the comprehensive rewrite of the MPDU law in 2004. The tighter rules went into effect on April 1, 2005, and since then, obtaining permission to buy out of an MPDU requirement has been much more difficult and much more expensive. Under the new rules, only one alternative payment has been allowed since April 1, 2005, and the amount of the alternative payment was over \$300,000.<sup>1</sup> Unlike previous buyout amounts, \$300,000 is enough, in staff’s opinion, to provide for the building of at least one MPDU elsewhere.

Although it is much less likely that buyout provision will be used, it remains true that the policy objectives of the MPDU program are not met if MPDUs are not included onsite in new development projects. The Board has previously indicated its strong support for that aspect of the MPDU program. Removing the buyout option leaves the option of allowing MPDUs to be built at alternative locations in the same policy area. That option seems to staff to be preferable to buyouts, to be sufficient relief for the on-site requirement, and may facilitate the dispersal of MPDUs Countywide.

### *Does it make sense to give a preference to disabled MPDU applicants when accessible MPDUs become available?*

Currently, there is no preference for the disabled MPDU applicant, because the lottery process is truly impartial. The unintended consequence has been that when an accessible MPDU became available, it was the household at the top of the lottery list, able-bodied or not, who got the opportunity to buy or rent that unit. Councilmember Leventhal’s proposal is to change the law so that those who could most benefit from the specially-fitted unit will get the first right of refusal to buy or rent it. Staff believes it is sensible and equitable to give priority to persons with access-disabilities, if an accessible unit becomes available.

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<sup>1</sup> Woodside Courts - 820060030

Attachments:

- A. Bill 13-07 – Amendments to the MPDU law
- B. Announcement of Bill 13-07 (Montgomery County Council, 2007)
- C. The MPDU program report for calendar year 2006 (DHCA, 2007)

Bill No. 13-07  
Concerning: Moderately Priced Dwelling  
Units - Amendments  
Revised: 6-22-07 Draft No. 2  
Introduced: June 26, 2007  
Expires: December 26, 2008  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmember Leventhal

**AN ACT to:**

- (1) allow the Director of the Department of Housing and Community Affairs to set aside certain specially equipped moderately priced dwelling units for eligible disabled persons;
- (2) repeal the authority of the Director to allow an applicant to pay into the Housing Initiative Fund instead of building some or all of the required moderately priced dwelling units in a proposed subdivision; and
- (3) generally amend County law governing the moderately priced dwelling unit program.

By amending

Montgomery County Code  
Chapter 25A, Housing, Moderately Priced  
Sections 25A-4 and 25A-5

By repealing

Section 25A-5A

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*



28 development with fewer than 20 dwelling units where an applicant  
29 voluntarily builds MPDUs must comply with any procedures and  
30 development standards that apply to a larger development under this  
31 Chapter and Chapter 59. Sections [25A-5A,] 25A-5B[,] and 25A-6(b)  
32 do not apply to an applicant who voluntarily builds MPDU's under this  
33 subsection and in so doing qualifies for an optional method of  
34 development.

35 **[25A-5A. Alternative payment agreement.**

36 (a) The Director may approve an MPDU agreement that allows an  
37 applicant, instead of building some or all of the required number of  
38 MPDUs in the proposed subdivision, to pay to the Housing Initiative  
39 Fund an amount computed under subsection (b), only if an Alternative  
40 Review Committee composed of the Director, the Commission's  
41 Executive Director, and the Director of Park and Planning, or their  
42 respective designees, by majority vote finds that:

43 (1) either:

44 (A) an indivisible package of services and facilities available to  
45 all residents of the proposed subdivision would cost  
46 MPDU buyers so much that it is likely to make the  
47 MPDUs effectively unaffordable by eligible buyers; or

48 (B) environmental constraints at a particular site would render  
49 the building of all required MPDUs at that site  
50 economically infeasible; and

51 (2) the public benefit of additional affordable housing outweighs the  
52 value of locating MPDUs in each subdivision throughout the  
53 County, and accepting the payment will further the objective of  
54 providing a broad range of housing opportunities throughout the

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County.

- (b) Any payment to the Housing Initiative Fund under this Section must equal or exceed 125% of the imputed cost of land for each unbuilt MPDU. Except as further defined by Executive regulation, the imputed land cost must be calculated as 10% (for high-rise units) or up to 30% (for all other housing units) of the actual sale price charged for each substituted unit. If the substituted unit will be a rental unit, the Director must calculate an imputed sale price under applicable regulations, based on the rent actually charged.
- (c) Any payment to the Housing Initiative Fund under this Section may be used only to buy or build more MPDUs in the same planning policy area (as defined in the County Growth Policy) as the development for which the payment was made, and must not be used to reduce the annual County payment to the Fund.
- (d) Any subdivision for which a payment is made under this Section is not eligible for any density bonus for which it would otherwise be eligible under Chapter 59.]

*Approved:*

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Marilyn J. Praisner, President, County Council

Date

*Approved:*

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Isiah Leggett, County Executive

Date

*This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council

Date

## LEGISLATIVE REQUEST REPORT

### Bill 13-07, *Moderately Priced Dwelling Units - Amendments*

- DESCRIPTION:** Allows the Director of the Department of Housing and Community Affairs to set aside certain specially equipped moderately priced dwelling units for eligible disabled persons. Repeals the Director's authority to approve "buyouts", in which a developer pays a certain amount into the County Housing Initiative Fund instead of building some or all of the required MPDU's.
- PROBLEM:** Certain MPDU's are fitted out for use by disabled persons but DHCA has no legal authority to reserve them for suitable eligible applicants. While the limited "buyout" authority in the current law has been used only once since the law was amended in 2004, it still would let developer s avoid their MPDU obligation.
- GOALS AND OBJECTIVES:** To allow more eligible disabled persons to benefit from MPDU's, and make sure that all legally required MPDU's are built.
- COORDINATION:** Department of Housing and Community Affairs, Planning Board
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** To be researched.
- SOURCE OF INFORMATION:** Michael Faden, Senior Legislative Attorney, 240-777-7905
- APPLICATION WITHIN MUNICIPALITIES:** Applies only to County MPDU program, which is effective in all municipalities except those with planning and zoning authority.
- PENALTIES:** Not applicable.



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Isiah Leggett  
County Executive

MEMORANDUM

February 28, 2007

TO: Marilyn J. Praisner, President  
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: 2006 Annual Report on the Moderately Priced Dwelling Unit (MPDU) Program

In accordance with Sec. 25A-12 of Chapter 25A of the Montgomery County Code 2004, as amended, following is a report on the Montgomery County MPDU program for the period January 1, 2006 through December 31, 2006.

**THE NUMBER OF MPDUS APPROVED**

For the purposes of this report, the number of MPDUs approved is represented by the number of MPDUs agreed to be built through executed Agreements to Build Moderately Priced Dwelling Units ("Agreements to Build"). DHCA executed ten (10) Agreements to Build during the calendar year 2006. The total number of dwelling units represented by these new agreements are 2,956, with 399 (or 13.5 percent) required to be MPDUs. A list of the Agreements to Build can be found in Attachment A.

**THE NUMBER OF MPDUS BUILT**

For the purposes of this report, the number of MPDUs built is represented by the number of for sale and rental MPDUs offered for sale or rent to eligible MPDU certificate holders through executed Offering Agreements. DHCA approved eighteen (18) MPDU Offering Agreements in calendar year 2006 for seventeen (17) different developments (there were two separate offerings in the Regency at Leisure World). These Offering Agreements represented 396 total MPDUs, all of which were for sale units. The numbers shown for the particular development may not represent the development's full MPDU requirement because in larger developments there may be more than one offering over time. Also, the list of offerings is not necessarily related to the list of Agreements to Build since those agreements are executed before the first building permit for the development is obtained, and it can take several years for a development to build out. The specific Offering Agreements approved, by development, can be found in Attachment B.

#### **ALTERNATIVE PAYMENT OR LOCATION AGREEMENTS**

In calendar year 2006, DHCA did not enter into any new Alternative Agreements to Build Moderately Priced Dwelling Units.

#### **RENTS IN HIGH-RISE DEVELOPMENTS**

The Department is required to report on rental MPDUs in which the rents were calculated based on 70 percent of the area median income. No Offering Agreements were signed for developments with rental MPDUs in the calendar year.

#### **THE USE OF FUNDS IN THE HOUSING INITIATIVE FUND**

During the calendar year covered by this report, \$1,043,900 was collected in Alternative Payments (\$755,900 for the Gallery at White Flint, and \$288,000 for the Wheaton Forest Apartments). These funds were combined with other funds in the Housing Initiative Fund ("HIF") to assist developments with affordable housing units located in the same respective planning areas from which the funds were collected. A complete list of payments received and funds expended for specific housing projects can be found in Attachment C.

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#### **Attachments:**

- A. MPDUs Approved for Construction – Executed Agreements to Build MPDUs between 1/1/2006 and 12/31/2006
- B. MPDUs Built and Offered to MPDU Certificate Holders (for Sale or Rent) between 1/1/2006 and 12/31/2006
- C. Alternative Payments Received between 1/1/2006 and 12/31/2006

New Agreements to Build MPDUs Executed Between 1/1/2006 and 12/31/2006

Project Name	AKA	Site Plan #	Date Executed	Total Units	Total MPDUs	Estimated Completion	Developer
Silver Spring Gateway		8-2005001A	19-Jan-06	457	58	Dec-08	JBG/Silver Spring Gateway Residential LLC
Eton Square		8-20040330	23-Jan-06	122	16	Dec-08	Eton Square, LLC
Jefferson at Inigo's Crossing	Georgetown Preparatory School	8-20040230	03-Feb-06	473	53	Nov-07	Jefferson at Inigo's Crossing LP
Woodcrest		8-20050090	02-Mar-06	86	11	Oct-07	Miller and Smith at Woodcrest LLC
National Park Seminary		8-20050240	04-May-06	280	56	Jul-08	Forest Glen Main LLC
1200 Blair Mill Road		8-20060280	21-Jul-06	96	12	Jan-10	1200 BMR Member LLC
Fairland View		8-20060140	31-Jul-06	247	31	Dec-08	East West at Silver Spring, LLC
North Bethesda Center	Bethesda Center North	8-2005007A	31-Jul-06	39	5	tbd	Hailey Development LC
Arora Hills	Greenway Village (Phases 3, 4 and 5)	8-20050340	07-Aug-06	312	39	Jun-08	LCOR North Bethesda Residential I
		8-2004022A	01-Nov-06	844	118	tbd	Clarksburg Skylark LLC
<b>Total</b>				<b>2,966</b>	<b>399</b>		
					<b>13.5%</b>		

MPDUs Offered Between 1/1/2006 and 12/31/2006

Attachment B

Project Name	Market	Gain/Rentals	Site/Plan	Builder	Name	No. of Units	Offering Date	Description
Highlands at Clarkburg		SALE	8-2002022A	Centex Homes		8	1/4/2006	3 BR, 1 1/2 ba dup with lng brmt
Park Pointec	Fortune Park	SALE	8-20040150	Eakin/Young/Job/F.P. Homes		9	2/1/2006	2 bedroom, 1 1/2 bath th w/gar on slab
Meadows at Hurley Ridge	Clarkburg Heights	SALE	8-20030100	Toll Brothers		41	2/3/2006	3 br 1 1/2 ba th with gar and some bermts
Regency at Leisure World		SALE	8-2001015A	Classic Communities Corp.		11	3/9/2006	3 bedroom, 1 1/2 bath townhouses
Ashmore at Germantown	Fairfield at Germantown, Phase I	SALE	8-20030050	Fairfield Germantown Farms LP		61	3/9/2006	1, 2 and 3 bedroom 1 and 2 bath garden
The Crescent	930 Wayne Avenue	SALE	8-20050040	930 Wayne Avenue LP/Patriot Gr		18	3/21/2006	1 bedroom, 1 bath hi-rise condos
Summerfield Crossing		SALE	8-20030340	Pulte Homes		4	4/3/2006	3 br, 1 1/2 bath th
Montrose Crossing	Alexan Montrose Crossing	SALE	8-20040130	KSI Services, Inc.		15	4/17/2006	1 bedroom, 1 bath hi-rise condos
Whitehall Square	White Oak - Montgomery	SALE	8-20050180	Ryan Homes		16	4/20/2006	3 bedroom, 1 1/2 bath th bermts sm gar
Kings Overlook	Kings Crossing, Vistas at Woodcliff Park	SALE	8-19950110	J. Kirby Development, LLC		102	4/26/2006	2 BR 2 Bath Age-Restricted Garden
Bethesda Crest	Goodwill Property	SALE	8-20030050	Craftstar Homes		4	5/17/2006	3 bedroom, 1 1/2 ba pb th
White Flint Station	Windsor Villas	SALE	Conversion	Toll Brothers		33	6/27/2006	1 & 2 bedroom garden condos
Eton Square	Mary Boland Subdivision	SALE	8-20040330	Eton Square LLC (Porten Homes)		10	8/8/2006	5 - 3 BR, 1.5 Ba w/Eng. Base.; 5 - 3 BR
Orchard Run	Mary Boland Subdivision	SALE	8-20040110	U.S. Home Corporation		6	8/24/2006	2 BR, 1 BATH TH Walkout basmt and
Regency at Leisure World		SALE	8-2001015A	Classic Communities Corp.		6	9/26/2006	1 and 2 BR garden condos
Buckingham Station	Fairfield at Germantown, Phase II	SALE	8-20030030	Centex Homes		6	9/26/2006	3 BR, 2 1/2 Ba TH
Aura Hills	Greenway Village	SALE	8-2004022A	Ryan Homes		19	11/26/2006	3 BR, 2 1/2 Ba TH
Lionsgate at Woodmont Corner	Woodmont Corner	SALE	8-20040250	Duball Woodmont LLC		27	12/15/2006	1 BR condos, hi-rise, 610 sq. ft.
<b>TOTAL</b>						<b>398</b>		
Sale =						398		
Rental =						0		

**MPDU Alternative Payment Tracking - Calendar Year 2006**

**Payments Received:**

Date of Agreement	Date Payment Received	Project Name	Planning Area	Amount of Payment
2/28/2002	1/3/2006	Wheaton Forest Apartments	Wheaton	\$288,000
12/20/2001	1/13/2006	Gallery at White Flint	North Bethesda/Garrett Park	\$755,900
<b>Subtotal</b>				<b>\$1,043,900</b>

**HIF Funds Expended:**

Date Expended	Project Name	Planning Area	Amount	Purpose
7/21/05	HOC Wheaton Metro Site	Wheaton	\$3,850,000	Pre-development
8/22/05	Gallery at White Flint	North Bethesda/Garrett Park	\$299,857	Purchase MPDUs - Non-Profit Set Aside
11/2/05	Gallery at White Flint	North Bethesda/Garrett Park	\$297,248	Purchase MPDUs - Non-Profit Set Aside
<b>TOTAL</b>			<b>\$4,447,105</b>	

**MPDU Alternative Payment Tracking - Calendar Year 2006**

Attachment C

**Payments Received:**

Date of Agreement	Date Payment Received	Project Name	Planning Area	Amount of Payment
2/28/2002	1/3/2006	Wheaton Forest Apartments	Wheaton	\$288,000
12/20/2001	1/13/2006	Gallery at White Flint	North Bethesda/Garrett Park	\$755,900
<b>Subtotal</b>				<b>\$1,043,900</b>

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11/2/05	Gallery at White Flint	North Bethesda/Garrett Park	\$297,248	Purchase MPDUs - Non-Profit Set Aside
<b>TOTAL</b>				<b>\$4,447,105</b>



**County Council**  
Montgomery County, Maryland

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## **Councilmember Leventhal to Propose Ending MPDU Buy-outs in Montgomery**

- Release ID: 07-063
- Release Date: 6/25/2007
- Contact: Walt Harris 240-777-7945
- From: Office of George Leventhal

### **Councilmember Leventhal to Propose Ending MPDU Buy-outs in Montgomery**

*Legislation To Be Introduced on Tuesday, June 26, Also Would Set Aside Specially Equipped MPDUs for Disabled*

ROCKVILLE, Md., June 25, 2007—Montgomery County Councilmember George Leventhal on Tuesday, June 26, is scheduled to introduce a bill that would eliminate the ability of developers to “buy out” of the County requirement that a certain percentage of units in new developments be set aside as “Moderately Priced Dwelling Units” (MPDUs). The legislation also would call for certain specially equipped MPDUs to be set aside for eligible disabled persons.

The legislation is scheduled to be introduced during the afternoon portion of the County Council’s legislative session that will begin at 1:30 p.m. in the Seventh Floor Council Hearing Room in the Council Office Building at 100 Maryland Ave. in Rockville. The session will be televised live on County Cable Montgomery (CCM).

The bill, which would amend the current MPDU law, is scheduled for a public hearing at the Council Office Building at 1:30 p.m. on Thursday, July 19.

The last time the County Council considered significant amendments to the MPDU program was in fall 2004. At that time, Councilmember Leventhal proposed an amendment to ban “buy-outs,” but the amendment was not adopted by the Council. The Council did restrict the possibility of buy-outs only to those circumstances where the condominium or homeowners’ association fees were so high that the units would become unaffordable for MPDU buyers or where environmental constraints at a particular site would render the building of all required MPDUs at that site unfeasible.

Although dozens of buy-outs had been approved each year prior to the 2004 changes, the County’s Department of Housing and Community Affairs (DHCA) has approved only one buy-out in the last 12 months.

“I believe the time is right to totally repeal the buy-out provision altogether,” said Councilmember Leventhal. “The law allows a developer to build the required MPDUs at a separate location, and I believe this provision will address the potential problems posed by excessively high condo or homeowners association fees as well as the possibility of environmental constraints at a particular site.

Elimination of the buy-outs will help strengthen our commitment to make sure affordable housing continues to be built everywhere in Montgomery County.”

The Montgomery County MPDU law requires that a minimum 12.5 percent of new housing units be set aside for moderate- or low-income potential buyers. In some circumstances, developers have been granted permission to make alternative payments to the County’s Housing Initiative Fund in lieu of building MPDUs.

The law allows a developer to build less than the number of required MPDUs in a new subdivision if the Alternative Review Committee—composed of the director of DHCA, the Housing Opportunities Commission executive director and the director of the Planning Department (or their respective designees)—finds special circumstances relating to high homeowners’ association fees or environmental constraints. This requirement replaced a provision in the pre-2004 MPDU law that had been implemented more liberally.

Councilmember Leventhal said he proposed the set aside for disabled-accessible MPDUs at the suggestion of the Commission for People with Disabilities.

“My intent is to give disabled residents the ability to buy or rent a specially fitted-accessible unit if it becomes available, rather than see the unit go to a non-disabled person who may be higher on the MPDU waiting list,” said Councilmember Leventhal.

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