



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

Memorandum

To: Karl Moritz, Chief, Research & Technology Center

cc: Roselle George, Research Manager
Jacob Sesker, Planner Coordinator

Date: April 18, 2008

From: Sharon K. Suarez, AICP, Housing Coordinator

Re: Siting and Dispersal of Moderately Priced Dwelling Units

Background

The issue of MPDU dispersal was examined during the 2005 audit of the Clarksburg Town Center and again in the fall of 2007, as part of the review of amendments still under consideration by the PHED. As part of those discussions, your staff undertook a relatively thorough examination of the regulatory basis for the siting and dispersal of MPDUs. For this memo, staff revisited and updated that research, including the affordable housing and MPDU ordinances and regulations, the Planning Board's formally approved MPDU Site Plan Guidelines (Appendices "A" and "B"), current Chapters 25A and B of the Montgomery County Code, the current Montgomery County Housing Policy document, the Montgomery County *General Plan*, and *General Plan Refinement*.

Recommendation

Staff determined that the Planning Board's MPDU Site Plan Guidelines offer the County's only siting guidance for dispersal and concentration of MPDUs within site plans. While the Planning Department was wise to initiate a broad community effort to develop these guidelines, they were conceived within a suburban development model, not an urban infill model. Staff recommends that the Planning Board open the guidelines to review and comment, so that they may be of greater benefit during the design and review of more urban development.

Discussion

- **The 1969 *Montgomery County General Plan Elements: A Summary*** predated the MPDU program, and it did have something to say about locating housing. One of the four policies addresses the importance of locating housing near jobs: "To integrate housing with employment opportunities, housing should be located convenient to job-producing centers, and the availability and economic feasibility of providing housing for all wage levels should be promoted."

- **The 1993 General Plan Refinement** has a housing section, with goals, objectives, and strategies. The housing goal is to “Encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles, and physical capabilities at appropriate densities and locations.”¹ None of the objectives or strategies listed in the General Plan Refinement require that MPDUs be distributed “equitably” at either the County or the subdivision level. The six objectives and those strategies that could influence MPDUs or the co-location of MPDUs and retail include:
 - Objective 1. Promote variety and choice in housing of quality design and durable construction in various types of neighborhoods. *Two strategies are worth mentioning:*
 - A) *Permit increased flexibility in residential development standards to meet a broader range of needs and to foster more creative design.*
 - B) *Expand opportunities for a variety of housing densities within communities to offer more choice to a broader range of households.*
 - Objective 2. Promote a sufficient supply of housing to serve the County’s existing and planned employment and the changing needs of its residents at various stages of life. *Key strategies include:*
 - A) *Provide adequate zoning capacity to meet the current and future housing needs of those who live or work in the County.*
 - D) *Develop additional techniques to provide housing opportunities to meet the special housing needs of young workers, the elderly, and persons with disabilities.*
 - E) *Encourage employer assistance in meeting housing needs.*
 - F) *Develop new techniques to provide housing, including incentives.*
 - Objective 3. Encourage housing near employment centers, with adequate access to a wide variety of facilities and services. Support mixed-use communities to further this objective. *Nearly all the strategies encourage and seek to expand the integration of employment and housing:*
 - A) *Assure the availability of housing near employment centers.*
 - B) *Integrate housing with employment and transportation centers.*
 - C) *Examine County regulations and policies for opportunities for mixed-use development; develop additional options.*

¹ M-NCPPC, *General Plan Refinement of the Goals & Objectives for Montgomery County*, 1993, pp. 52 and 53. Approved and adopted.

D) Ensure a reasonable distribution of residential and commercial uses in mixed-use zones.

E) Explore changing development standards to allow the closer integration of employment and housing within mixed-use development.

- Objective 4. Encourage an adequate supply of affordable housing throughout the County for those living or working in Montgomery County, especially for households at the median income and below. *Many of the strategies that apply here apply to government-assisted (government-subsidized) housing. Typically these do not apply to MPDUs, because MPDUs are provided by the developers and are not subsidized by government. On the other hand, these regulations would apply to the Housing Opportunities Commission (HOC), for example, if it purchased MPDUs for reuse as public housing. Strategy B under Objective 4 is to “Distribute government-assisted housing equitably throughout the County.” The strategies that do apply to MPDUs include:*

A) Encourage the provision of low-, moderate-, and median-income housing to meet existing and anticipated future needs.

C) Plan affordable housing so that it is reasonably accessible to employment centers, shopping, public transportation, and recreational facilities.

E) Strategy E is specific for MPDUs: Assure the provision of low- and moderate-income housing as part of large-scale development through a variety of approaches, including the Moderately Priced Dwelling Unit program.

F) Preserve existing affordable housing where possible.

K) Develop zoning policies that encourage the provision of affordable housing while protecting the Wedges and Corridors concept.

- Objective 5. Maintain and enhance the quality and safety of housing and neighborhoods. *The strategies listed are directed at ensuring that redevelopment or infill development is compatible with existing neighborhoods.*
- Objective 6. Concentrate the highest density housing in the Urban Ring and the I-270 Corridor, especially in transit station locales. *All the strategies here support higher density housing and mixed-use development within the I-270 Corridor, especially in the vicinity of transit. There is nothing specific to MPDUs.*
- **In the current Montgomery County’s MPDU Ordinance 25A**, no policy or rule dictates that MPDUs should be dispersed equally throughout the subdivision or development. In Sec. 25A-2. (3) It is the public policy of the County to “Assure that moderately priced housing is dispersed within the County consistent with the General Plan and area master

plans.”² *No mention is made of concentration or dispersion with regard to MPDUs. The MPDU ordinance anticipates that master plans, in compliance with the General Plan, will put in place the type of zoning necessary to implement this policy at the master plan level—not at the subdivision level. In response to an amendment to the MPDU program last fall, the Planning Board reaffirmed its opinion that siting of MPDUs within subdivisions should be taken on a case by case basis.*

- **The Montgomery County Housing Policy Regulations 25B clearly state that affordable housing should be dispersed on a countywide basis and that assisted-housing be dispersed at the community level.** *A hallmark of the MPDU program is that it is developer-funded; MPDUs are not typically considered “assisted” housing. Only if the MPDUs in Clarksburg Town Center are considered “assisted-family” units would they be subject to a community-level dispersal/concentration” test under 25B, as follows.*
 - **Section 25B-1(e):** “Wide distribution of affordable, including assisted-family, housing throughout the County is a desirable objective of public policy in order to provide for a balance of housing choices in any one community to avoid over concentration of **assisted-family** housing in any community, and because communities that are racially, ethnically, chronologically, and economically heterogeneous are preferable to those which do not reflect the broad diversity of the people who live in the County.
 - **Section 25B-2 (c): “Assisted-family housing” is defined** as “Those units of affordable housing which consist of privately or governmentally owned rental units for which the owners receive subsidies from the federal, state, or local government in the form of rent supplements or mortgage interest subsidies, except (1) units designated for occupancy by persons 62 years old or older; and (2) units which benefit from tax-exempt financing but receive no other government subsidy.” *Even if developers receive tax-exempt financing, the MPDUs they construct would not be considered assisted-family housing unless they receive some other form of government subsidy, as well.*
- **Executive Regulation 13-05 AM, Requirements for the Moderately Priced Housing Program.** On September 27, 2005, the County Council adopted **Executive Regulation 13-05 AM**. This regulation incorporates the recent changes to the MPDU ordinance and addresses the responsibilities and role of the Executive Branch. It does not include a section for the Planning Board’s review of development plans, nor does it mention dispersal or concentration of MPDUs.

Additionally, **Section 25A.00.11** of this new Executive Regulation for the MPDU program tasks the DHCA and DPS with the enforcement of the provisions of Chapter 25A. Specifically, it states that “The Department and DPS are responsible for enforcing the provisions of Chapter 25A. Complying with Chapter 25A and an approved MPDU Agreement to Build is the responsibility of the applicant; revisions or amendment should

² Section 25A-2(3).

be requested as soon as the applicant recognizes that meeting the terms of an approved MPDU Agreement to Build may not be feasible...”

- **The Planning Board’s 1995 *Site Plan Guidelines for Projects Containing MPDUs* conveys the Planning Board’s guidance to Department staff regarding the location of MPDUs within subdivisions, among other things. Of the 16 guidelines (Attachments A and B), five deal with MPDU issues of concentration or dispersal:**
 - Guideline #4: Discourage location of more than 16 back-to-back MPDUs or 30 non-garage townhouse MPDUs adjacent to or confronting each other. Quantities larger than this should be separated from other MPDUs of these two types by market rate buildings. Garage townhouse, duplex, and detached MPDUs would be exempt from limits on aggregation.
 - Guideline #5: Permit townhouse-type buildings containing only MPDUs.
 - Guideline #6: Encourage, but do not require, MPDUs and market rate units on a single garden apartment stairwell. If an individual stairwell has only MPDUs, then the remainder of the building must contain some or all market rate units.
 - Guideline #7: Encourage distribution of any MPDU-only apartment stairwells among the market rate stairwells.
 - Guideline #9: Permit enough clustering of single-family detached and duplex MPDUs to take advantage of production and marketing efficiencies.

Appendix A:**Planning Board's Site Plan Guidelines For Projects Containing MPDUs (Approved 1995)**

Guidelines For Unit Types	
1.	Encourage a variety of MPDU unit types. Promote, but do not require, duplexes or single-family detached MPDUs in a single-family-detached-only section of a subdivision. Encourage more than one MPDU unit type in subdivisions with three or more market rate unit types. MPDU unit types need not be the same.
2.	Prohibit back-to-back townhouse MPDUs unless it can be demonstrated that no other unit type is suitable to the site, that the disadvantages associated with that unit type are eliminated in the site design, and the MPDUs are scattered among market rate back-to-back units.
3.	Encourage innovative site and building configurations for townhouses, piggybacks, quadraplexes, triplexes, duplexes, small-lot detached units, and apartments. Solicit comments from agencies most familiar with the market, delivery, and life of MPDUs prior to preparation of site plans for review.
Guidelines For MPDU Locations And Site Plan Features	
4.	Discourage location of more than 16 back-to-back or piggyback MPDUs OR 30 non-garage townhouse MPDUs adjacent to or confronting each other. Quantities larger than this should be separated from other MPDUs of these two types by market rate buildings. Garage townhouse, duplex, and detached MPDUs would be exempt from limits on aggregation.
5.	Permit townhouse-type buildings containing only MPDUs.
6.	Encourage, but do not require, MPDUs and market rate units on a single garden-apartment stairwell. If an individual stairwell has only MPDUs, then the remainder of the building must contain some of all market rate units.
7.	Encourage distribution of any MPDU-only apartment stairwells amount the market rate stairwells.
8.	Continue to advocate siting of MPDUs to facilitate access to public facilities.
9.	Permit enough clustering of single-family detached and duplex MPDUs to take advantage of production and marketing efficiencies.
10.	Continue to give special attention to site plans for MPDUs in order to provide usable open space, play and congregating area near units, age-appropriate recreation, adequate parking for residents and guests, and adequate provision for storage and garbage collection.
11.	Ensure that open space and recreational facilities, which are required for site plan approval, are equally available to all residents, regardless of income or unit type.
12.	Continue to require close proximity for MPDUs to open space and recreation facilities required for site plan approval; where off-site recreation facilities are allowed, locate MPDUs nearby unless additional, age-appropriate facilities are located near the MPDUs.
13.	In townhouse and garden apartment areas where residents lack individual private and defensible yards, continue to require open space areas, which are adjacent and useable; steep slope and inaccessible open space areas are insufficient.
14.	Require phasing plan contained in site plan to conform to Section 25A-5(i) of the Montgomery County Code.
15.	Clearly identify MPDUs on all site plan applications set drawings
16.	Clearly state on the record that the site provides MPDUs, the locations of which are shown on the site plan.

Appendix B: Brief History of the Planning Board's MPDU Site Plan Guidelines

The history of the formal approval of the Moderately Priced Dwelling Unit (MPDU) Site Plan Guidelines on June 1, 1995, has been assembled from housing files in the Research & Technology Center and from the microfiche meeting minutes of the Montgomery County Planning Board (MCPB).

1. November 1994 through February 1995. Several months of focused interagency and development community input preceded the preparation of the March 1995 staff report. Such well-considered input included memos or papers entitled: "Moderately Priced Housing Law" by Norman L. Christeller, Stephen Z. Kaufman, and William Sher; "Staff Perspective" from Housing Opportunity Commission (HOC) staff; "MPDU Site Plan" from Eric Larsen, MPDU Program Manager at the Department of Housing & Community Affairs (DHCA); "MPDU Program Issues" from Steve Eckert of Classic Communities; and "MPDU Location Guidelines" from David Flanagan of Elm Street Development.
2. March 9, 1995. Sally Roman (M-NCPPC) prepared a memo to the MCPB. The subject of the memo was "MPDUs: Site Plan Issues and Proposed Guidelines." In the memo, five issues were discussed: (1) dispersing MPDUs to achieve economic integration, (2) concentrating MPDUs, especially when they are also subsidized, low-income housing units, (3) requiring construction of duplex MPDUs, (4) locating MPDUs in enclaves, and (5) phasing construction of MPDUs. In her concluding statements, Ms. Roman explained "...The proposed guidelines are intended as a beginning to address these issues in a way that is acceptable to MPDU buyers, sellers, and regulators." She included the items listed in paragraph #1, above, in appendices to her memo. The MCPB complimented staff on the memo and unanimously agreed to schedule a public hearing on the recommended site plan guidelines.
3. May 4, 1995. The MCPB agenda for May 4th indicated that the public hearing on the proposed MPDU site plan guidelines was to be held that evening at 7:30 in the MRO Auditorium.
4. May 26, 1995. Ms. Roman recapped the public hearing comments in a second memo to the Planning Board, in preparation for the June 1st MCPB meeting. In the memo, Ms. Roman noted that very few changes were needed to the draft guidelines, based upon the comments received.
5. June 1, 1995. The MCPB approved the proposed guidelines and adopted the language as proposed in the May 26th staff memo. Some of these guidelines made room for Department staff discretion. On page 10 of the minutes the MCPB discussed guideline #16: "In response to a query from Vice Chairman Baptiste, regarding the intent of guideline 16, Development Review staff said that there were rare instances where enforcement staff wanted to make minor adjustments to a unit here or there without requiring further action on the part of the Planning Board. In those instances, enforcement staff would review any changes with site plan staff and, if the change was consistent with Planning Board review, they could make minor adjustments." This guideline was discussed and approved, with the Planning Board feeling it was important **not** to have each and every site plan change brought to the Planning Board.