



Briefing on County's Draft Housing Policy

- Kim Colopinto, Senior Planner, Kimberly.colopinto@montgomeryplanning.org, (301) 650 - 5642
- Robert Ruiz, Research Manager, Roberto.ruiz@montgomeryplanning.org, (301) 650-5618
- Richard Debose, Chief of Research, Richard.debose@montgomeryplanning.org, (301) 650-5612
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Summary

PHED Committee will hold a meeting on February 11, 2013 at 2PM to discuss the County's Draft Housing Policy. A key component of the discussion is a DHCA recommendation to allow affordable housing built by private entities on County-owned land through the mandatory referral process. Staff does not support this for three reasons: (1) as discussed in detail in this memorandum, the mandatory referral process can and should only be used for public projects, (2) ~~the~~ significant time and cost savings suggested may not be realized because projectsthey are will still be subject to the forest conservation law and stormwater management, and (3) the downside to the public for loss of regulatory control is too great.

The Office of General Counsel has some concerns about the legality of the proposal. However, since this discussion is intended to explore the policy implications of allowing affordable housing built on County-owned land to go through the mandatory referral process, the necessary steps to implement such a policy, including a change in state law, must be explored if the Council accepts the DHCA recommendation. This memorandum does not address implementation of the proposal.

Planning Staff believes that the mandatory referral is not the appropriate mechanism to obtain the expedited review process for affordable housing projects that DHCA desires. We suggest proposing an alternative process that provides an avenue for less restrictive zoning and density requirements for construction of affordable housing on County-owned land. Staff recommends a change be made to the Zoning Ordinance that would allow affordable housing as a limited use on County-owned land in appropriate zones. This discussion should address the definition of affordability and the process for obtaining an additional density allotment. An expedited regulatory review process will also provide the appropriate level of regulatory oversight and community review.

A. Background

The Department of Housing and Community Affairs (DHCA) introduced the Draft 2012 Housing Policy to County Council on November 13, 2012 and Council held a hearing on the Draft document on December

4, 2012. The Housing Policy, updated every ten years, is a guide to the implementation of the County's housing programs and policies by providing recommendations for improvements and direction for the allocation of resources. If approved, the Draft Housing Policy will replace the County's 2001 Housing Policy titled "Montgomery County – The Place to Call Home."

In an effort to promote development of new affordable housing, the Draft Housing Policy urges the use of county-owned land for development of affordable housing by private developers, or possibly by a joint public-private partnership. Unless these projects are developed for public housing, under the current law, the mandatory referral process cannot be used. Applying the mandatory referral process to such projects would allow private developers to build affordable housing on county-owned land without the regulatory review associated with private development, including Adequate Public Facilities (APF) tests.

DHCA believes that the mandatory referral process will significantly reduce the time and cost of obtaining development approvals. Planning Staff believe that other regulatory requirements, such as forest conservation and stormwater management, may work counter to the suggested time savings.

The Planning Department already streamlines the process for private housing projects that include more than ~~the required~~ 20% affordable units through the Green Tape program. The program expedites the review process by placing the project first in line for review and giving it an earlier Board date.

B. Draft Housing Policy Excerpt, Page 49

The following excerpt is from Page 49 of the Draft Housing Policy regarding the use of the mandatory referral process for private affordable housing projects on County-owned land:

10. Use of county-owned land for affordable housing

Surplus public properties suitable for affordable housing have been made available to public and nonprofit agencies for assisted or below market housing. DHCA has worked on the following projects:

- *Victory Housing's Victory Court project on Fleet Street in Rockville: 86 total units providing mixed-income housing for seniors. The project is scheduled to be completed in April 2013.*
- *Bowie Mill: Montgomery Housing Partnership and Elm Street Development will be constructing 114 for-sale housing units serving a mix of incomes. The project is scheduled to be completed in 2014.*
- *Silver Spring Library: Montgomery Housing Partnership and Donohoe Company are partnering together to build up to 134 units of affordable rental housing next to the new Silver Spring Library. The project expects to be built in 2014.*

Issue: The high cost of land is a major cost in the development of new affordable housing and impedes the construction of affordable housing. Using available County land can reduce this cost factor in affordable housing. County-owned land often has low-density zoning

placed on it requiring a zoning change before the property can be used for affordable housing.

Recommendations

- *Include housing affordable for low, moderate, and middle-income households in all suitable public building projects in appropriate locations throughout the County. Projects involving the redevelopment of public land or facilities, such as parking facilities, must at least 30% of total units as affordable housing. Property that is designated as parkland is not considered surplus.*
- *Develop a database of County-owned land that indicates the current use of the site, the zoning, water and sewer classifications, master-planned and approved uses for the site, and that identifies which site should be looked at for possible affordable housing use. DHCA and Planning Department staff have assessed County-owned land several times over the past decade. Development of a database would improve the ability of staff to consider available sites*
- *Establish housing as a major preferred use when the County sells property. Achieving this objective should take precedence over receiving full market value for the property. The County should establish a price that permits a developer to provide a proportion of affordable housing that exceeds the 12.5% MPDUs now required of residential projects. Developers benefiting from below market pricing of county property should be required to provide at least 30% of the units at below market prices.*
- *Review the feasibility of establishing a more streamlined process for affordable housing projects on County-owned land where the subdivision of the land, and the overall land uses and densities, are established through the Mandatory Referral process, and the property then goes through normal site plan reviews. Property owned by Montgomery County that will be used for affordable housing should also have access to the mandatory referral process to establish the appropriate zoning and land uses for the site. Often, the zoning of County-owned land was not addressed in master plans, especially in plans that are more than fifteen years old, and the current zoning is not appropriate for the development of mixed uses on a site or for the construction of affordable housing. County property is a valuable resource from which the County should generate the maximum amount of housing in general and, particularly, affordable housing. The Mandatory Referral process is especially useful and appropriate when the affordable housing is being built next to County facilities and other County uses.*

C. Use of the Mandatory Referral Process on Affordable Housing Projects

According to Section 20-301 of the Land Use Article, Maryland Ann. Code, “a public board, public body, or public official” may not locate, construct or authorize “a public building or structure” in the regional district without referral to the Planning Board for comment.” In accordance with state law, the mandatory referral process and procedures have been established through the Uniform Standards for Mandatory Referral Review adopted April 2001, as amended. The comments and review by the Planning

Board are only advisory since the statute allows the submitting entity to overrule the Planning Board's disapproval, or any recommendations attached to the approval, and proceed.

Affordable housing projects may be a private use or a public use (if developed entirely by the County with public funds with continued public ownership). Examples of public uses that generally fall under the mandatory referral process are libraries, police stations, fire stations, and schools.

Privately built affordable housing on County-owned land is not generally a non-profit activity. For example, we are certain that the developer in the recent projects on the County-owned Bowie Mills Road site and the Silver Spring Library site received or are expected to receive some profit from the projects, particularly since a percentage of units were built as market rate units.

1. ~~Definition of a Public Project Subject to Mandatory Referral Reviews Zoning~~

DHCA asserts that the zoning on county land does not permit them to provide the density necessary for affordable housing projects. Staff notes that all public uses are permitted in any zone regardless of the zoning. ~~However, public-private development on public land is subject to existing zoning.~~

If it is a public use, multi-family housing is a permitted use in a single family zone. If the housing is also for private use, then the required use of the zone applies. If it is a project that includes both publicly subsidized and market rate units, the entire project would be subject to the standards of the zone.

It has been questioned whether a public use should be subject to the standards of the zone (i.e. setbacks, green space) in addition to the use of the zone. However, there is no doubt that private development is subject to both the use and the standards of the zone.

~~Therefore, there is no reason to request a zoning change if it is a public use. DHCA has obscured the difference between public and private projects.~~

2. Timeliness

DHCA argues that the lengthy review process inhibits development of affordable housing projects. DHCA cites three projects, which went through the standard review process.

The Planning Board must conduct the review of a mandatory referral project within 60 days of the submission of a complete application unless a longer period is granted by the applicant, or the application is deemed approved as submitted. By comparison, the normal review process typically takes over a year and requires the Planning Board to take action before the application can move forward.

The Green Tape program allows expedited review and processing for residential or mixed use developments that designate more than 20% of their total housing units to persons or families with incomes at or below the income eligibility level for MPDUs. For such projects, staff looks for additional ways to help the applicant reduce process time such as accepting the Site Plan and Project Plan together.

3. Submission Requirements

Submission requirements for a mandatory referral are not unlike that required by the standard review process and are established through the Uniform Standards. However, because the Board's recommendations are only advisory, the applicants often do not submit the material required under the Uniform Standards.

The mandatory referral process does not supersede other requirements. All projects, private or public, must submit a Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) and receive an approved Preliminary Forest Conservation Plan. The Planning Board is the statutory authority for approving these plans under Chapter 22A of the Montgomery County Code. The conditions of the Forest Conservation Plan are binding on all projects, public or private and whether reviewed under mandatory referral or the standard development review process.

4. Reducing Cost

If the DHCA recommendation is followed, affordable housing projects will be exempt from school and transportation impact fees as the normal analysis that determines these impacts will not be required under mandatory referral. Impact fees associated with schools and other infrastructure allows the county or MCPS to expand or increase capacity to handle additional residential units.

The Adequate Public Facilities Ordinance (APFO) is a County ordinance that requires LATR and TPAR tests to determine how development will impact existing road and transit infrastructure. For example, a building with 150 dwelling units will have more of an impact on infrastructure than a library, fire station or police station. If mandatory referral review is extended to affordable housing projects, impact fees under TPAR for schools and other infrastructure needs created as a result of road improvement requirements under LATR associated with traffic generated by the project will be not be collected from the project required and those costs must be borne by all taxpayers.

Removing these projects from preliminary plan review would eliminate the Planning Board's authority to review projects for master plan conformance. However, this authority will resume, in some zones, under the Zoning Ordinance Rewrite.

5. Community Engagement

In the standard review process, the applicant must interface with community members through a pre-submission public meeting, site postings, and an invitation to participate in the development review process. The Planning Board takes public testimony prior to acting on an application and it becomes part of the formal public record.

However, under the mandatory referral process, a project site is not posted and there is no requirement for a pre-submission public meeting. The Mandatory Referral Standards require that Staff notify the area civic association when the project is accepted as a complete application. The mandatory referral process is subject to a 60 day review period. Although recommended, the applicant is not required to

conduct adequate and timely community outreach and notification including notifying adjacent, abutting, and confronting property owners or even to attend the Board's hearing ~~if there is one~~.

More importantly, since the Planning Board's action in a mandatory referral review is merely advisory, ~~is~~ the community has no avenue for judicial review to challenge whether the Board's action was based on substantial evidence before it. In other words, not only ~~would is~~ there ~~be~~ a lack of administrative or regulatory control; there is no level of review by any party other than the developer.

Therefore, if there were an alternative regulatory process, it would still provide the community with an avenue for review.

D. Additional Items in Draft Housing Policy

1. Language Regarding Master Plans and Zoning

~~The Draft 2012 Housing Policy asks that Master Plans identify and designate parcels appropriate for affordable housing.~~ The Planning Staff recommended that the PHED Committee review the Draft 2012 Housing Policy in conjunction with the rewrite of the Zoning Ordinance. ~~The PHED Committee will table this discussion until the Zoning Rewrite.~~ The Planning Staff also recommends that DHCA consider participating in the recently proposed functional master plan that holistically addresses the colocation of County public facilities.

2. Project Requested of Planning Department

The Draft Housing Policy proposes that the Planning Department conduct the following studies or tasks:

- 1) *The Planning Department should update its 2008 Housing Supply & Demand Study, prepared by the Research Division (p.2, p.6, p.A-11).* The Planning Department supports this recommendation, as the housing study update is underway as part of our current forecasting effort targeted for FY14.
- 2) *Study the possibility of co-locating housing in existing office parks and other land uses that feature out-of-date or excessive parking and green space – as part of the recommendation to promote infill residential development and adaptive reuse (p.10).* The Planning Department feels this is addressed in the draft Zoning Ordinance, which proposes that housing be allowed, on a limited basis, in existing office park zones, including the CR Zone. Furthermore, the draft Code overhauls outdated parking and green space requirements, especially in the draft Commercial/Residential zones.
- 3) *Update the 1995 "Site Plan Guidelines for Projects Containing MPDUs" (exec summary p.10).* Planning Department supports this recommendation to update the guidelines.
- 4) *Conduct a study on accessory apartments and how they affect quality of life, neighborhood stability, or housing values (p.46).* The Planning Department supports this study. However, something of this scope would need special funding if the Council would like us to pursue the study. A similar study is being proposed for the FY14 budget that looks at how revitalization of garden apartments ~~and~~ will affect the supply of market affordable housing and the surrounding neighborhoods.