



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**Item #16**  
**2/13/03**

**DATE:** February 7, 2002  
**TO:** Montgomery County Planning Board  
**VIA:** Joseph Davis, Chief, Development Review *JRQ*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To establish special optional method of development requirements for MPDU projects with fewer than 35 dwelling units.

**TEXT AMENDMENT:** No. 03-01  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmembers Praisner, Denis and Perez  
**INTRODUCED DATE:** January 21, 2003

**PLANNING BOARD REVIEW:** February 13, 2003  
**PUBLIC HEARING:** February 25, 2003; 7:30 PM

---

**STAFF RECOMMENDATION:** Text Amendment 03-01 is not needed and, therefore, it should not be enacted.

### **PURPOSE OF THE TEXT AMENDMENT**

To establish more restrictive optional method of development requirements for MPDU projects with fewer than 35 dwelling units. The Zoning Text Amendment proposes three new development standards in addition to the standards that normally apply to all projects developed under the MPDU method. These are 1) apply standard method development standards to any MPDU method lot adjoining or confronting existing single-family detached development, 2) require that the MPDU dwellings must be similar in style, size, and height to market rate dwellings in the development, and 3) limit townhouses to no more than 40 percent of the units in the development.

### **BACKGROUND**

On February 4, 2003, the County Council approved Bill 38-02 that clarifies that the moderately priced dwelling unit (MPDU) law, Chapter 25A, allows a developer to voluntarily build MPDUs

in developments with fewer than 35 dwelling units and to utilize the optional method MPDU standards. Several zoning issues were raised during discussion of Bill 38-02. The issues involved whether there should be additional limits placed on the use of townhouses, the location and size of MPDU units and compatibility of adjacent development consisting of one-family detached homes. Although relevant to the discussion of the Bill, the Bill could not amend zoning provisions. As such, the Council introduced ZTA 03-01, to address the number or percentage of townhouse units to be allowed, the size and style of MPDU dwellings and lot size compatibility with adjacent properties.

In the staff's opinion, the subject text amendment is not necessary to assure that smaller scale, MPDU optional method projects are compatible with surrounding areas. Several of the sixteen voluntary MPDU projects previously approved (Table 1, Attachment 3) are located in established neighborhoods and represent infill development. It is important to understand that the current Planning Board review process affords ample opportunity for all relevant issues affecting compatibility to be heard and be resolved one way or another by the Board. Nearby residents can identify issues and present their concerns to staff prior to staff preparation of the project technical staff report. In addition, citizens can provide testimony to the Planning Board at the scheduled public hearing for the preliminary plan and again at the public hearing for the site plan, if not processed concurrently. Citizens also have the right to appeal a decision of the Planning Board to the Circuit Court for judicial review.

Historically, the Planning Board and staff have provided careful review and consideration of all sides of arguments relating to a proposed project's compatibility. That is not to say that all participants leave happy, but a serious effort is made to assure that a proposed project is compatible with an adjacent community.

## ANALYSIS

Below is the proposed text amendment language, as introduced for Section 59-C-1.62, Development standards:

*"An applicant who voluntarily builds at least 12.5 percent MPDUs in a development with fewer than 35 but not less than 20 dwelling units may use the optional method development standards of Sec. 59-C-1.62, except: (1) any perimeter lot that is adjacent, abutting, or confronting one or more existing one-family detached dwellings must conform to the lot area and yard requirements of the standard method of development; (2) the MPDU dwellings must be similar in style, size, and height to the market rate dwellings in that development, and (3) the maximum percentage of townhouses must not exceed 40% of the total residential dwellings in that development."*

Note: The text amendment, as introduced, should have deleted the reference to 20 dwellings in order to conform to Bill 38-02. Staff understands that Council staff will clarify that the 20 dwelling unit minimum is not proposed in the text amendment

### Perimeter Lots

A requirement for perimeter lots of an MPDU method development that abut, adjoin or confronts one-family detached dwellings to conform to standard method lot area and yard requirements reduces the Planning Board's flexibility in siting dwelling units in a fashion that blends all unit types (including MPDUs) throughout the property. Staff believes that compatibility of MPDU developments (including smaller lot sizes) with standard method developments can be assured by using a variety of established techniques such as increased setbacks, landscaping, buffering, type of unit, unit location on a lot, etc., all of which can be addressed during the site plan review process.

#### Similar Style, Size and Height to Market Rate Units

Staff is concerned that this proposed requirement will severely limit the voluntary use of MPDUs in small subdivisions by substantially increasing costs. Smaller, simpler units of a variety of unit types are a major ingredient in the success of the MPDU program. They are one of the fundamental reasons why MPDUs are financially feasible to develop and to buy or rent. The Planning Board has established guidelines concerning the placement of MPDUs (see Attachment 4). The Board discourages developers from arbitrarily placing MPDU units in isolation and encourages integration of MPDU units within a site. Back-to-back townhouse MPDUs are specifically discouraged.

#### Maximum Percentage of Townhouses

The subject proposal proposes to limit the maximum percentage of townhouses to 40%. As mentioned above, staff believes that the Planning Board's ability to have flexibility in establishing unit types (as part of site plan and/or subdivision review) allows them to approve better designed developments by increasing tree save and by limiting encroachment into environmentally sensitive areas. The Zoning Ordinance currently has maximum percentage of one-family attached or semidetached dwelling units, townhouses, or a combination thereof, in any MPDU subdivision as follows:

- R-200 and R-150 Zones: 40%;
- R-90 Zone: 50%;
- R-60 Zone: 60%.

The balance must be one-family detached dwelling units. The Planning Board may, however, approve a development in which up to 100 percent of the total number of units consists of one-family attached dwelling units, one-family semidetached dwelling units, townhouses, or a combination thereof, upon a finding that a proposed development is (1) more desirable from an environmental perspective than development that would result from adherence to these percentage limits, and (2) the proposed development would be compatible with adjacent existing and approved development.

Since 1982, four of the sixteen voluntary MPDU projects approved by the Planning Board (see Table 1, Attachment 3 and the corresponding site maps in Attachment 5) have involved 100% townhouse development. These projects include the Brodsky Property (Site #3) located in Germantown; the Timberlawn Crescent Property (Site #11) located in

North Bethesda; the Sedgewick Property (Site # 12) located in Gaithersburg; and the Silverwood Property (Site#13) located in Fairland. In all likelihood, these projects would not have occurred if the 40 percent limit on townhouses proposed in the subject text amendment had been in effect. In each case, the use of 100% townhouses was fully justified by the nature of surrounding development and the opportunity to develop a more environmentally sensitive project. The four projects resulted in 37 affordable and MPDU units. These four projects are described in more detail as follows:

1. The Brodsky property is a 14 acre site developed with 32 townhouse dwellings developed under the MPDU method of development in the R-200 Zone. The project is developed at the eastern terminus of Broken Oak Road, in the South Germantown area. Development of the site with townhouses provided protection to the adjacent stream buffer and resulted in more "tree save area" on the property than could have been achieved under the standard method of development. The site adjoins detached homes on the west side. The setbacks for the townhouses range from 40 feet to over 200 feet from the west property line.
2. The Timberlawn Crescent property consists of 5.5 acres of land and is developed with 23 one-family attached dwellings developed by HOC in the R-90 Zone. Adjacent development on the west side consists of townhouses and the development on the east is a Marriott senior housing project. The site has frontage on both the I-270 Spur, on the south, and Tuckerman Lane, on the north. Over half of the site consists of wooded open space. The project does not adjoin any one-family detached homes.
3. The Sedgewick property consists of 8.3 acres of R-60 zoned land located in the Gaithersburg area. The project was approved for 49 townhouse units and is surrounded on three sides by other townhouse projects. The property is bounded on the north side by M-NCPPC parkland. The project does not adjoin any one-family detached homes.
4. The Silverwood property is a 3.5 acre site classified in the R-90/TDR Zone. The Fairland Master Plan identified the site as a TDR receiving area with a maximum density of 7 dwelling units per acre. The site was approved for 24 one-family attached homes. The site is bounded by townhouses on three sides and extensive M-NCPPC parkland on the north. The closest one-family detached home is located over 500 feet northeast of the nearest townhouse on the site.

Three of the sixteen projects identified in Table 1 (Attachment 3) were approved with a mix of townhouse units and one-family detached dwellings that resulted in more than forty percent of the units being townhouses. These projects include Olney Oaks (Site #14); Mill Creek South (Site #15) and Flower Hill North (Site #16). Forty-six percent of the units in Olney Oaks are townhouses. Some of the townhouses are internal to the site and the townhouses on the north edge of the project adjoin other townhouses on the north side that are part of a larger cluster development project. The Planning Board determined that this project was compatible with the surrounding area.

Mill Creek South is a 43 dwelling unit project that includes 33 townhouse units which represents 77 percent of the total units. As with Olney Oaks, some of the townhouses are internal to the site and those on the eastern edge abut townhouses in an adjacent development. The Planning Board found this project to be compatible with the surrounding area. In addition, the Board found that the number of townhouses proposed resulted in development that was environmentally better than strict adherence to the R-90 Zones normal limit of 50 percent townhouses under the MPDU method of development.

Flower Hill North is a 46-unit project with 20 townhouse units representing 43 percent of the total units. One row of townhouses is located adjacent to some detached homes in an adjacent development. Those townhouses are set back a minimum of 30 feet from the property line and are at least 100 feet from the nearest detached unit. Again, the Planning Board found this project to be compatible with the surrounding development.

In order to meet the 40 percent criteria of the proposed text amendment, units would have to have been deleted from each of those projects. Staff believes that compatibility with surrounding development was achieved in each of these projects. It is important to note that the Board's ability to address compatibility issues with the surrounding development through a number of techniques, including increased setbacks, landscaping, retention of trees and provision of more perimeter green space will better assure compatibility and environmental protection than a strict limitation on the number of townhouse units. As such, staff does not believe that the percent of townhouse units for voluntary MPDU developments (less than 35 units) should be limited beyond existing language in the Zoning Ordinance.

## RECOMMENDATION

Staff does not support the proposed text amendment to establish new limitations on small optional method of development MPDU projects because it is not warranted by past practice. The 16 projects approved by the Planning Board since 1982 are fully compatible with surrounding development and represent quality projects. Staff believes that sufficient safeguards are already in-place for all MPDU projects through existing Zoning Ordinance standards and the site plan review process.

Attachment 1 depicts the proposed text amendment as introduced. Underlining indicates text that is added to existing laws by the original text amendment. [Single boldface brackets] indicate text that is deleted from existing law by the original text amendment. Double underlining indicates text that is added to the text amendment by amendment (staff's changes). [[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment (staff's changes).

GR

### Attachments

1. Proposed Text Amendment 03-01

2. Memorandum from Sally Roman to Greg Russ
3. Table Showing Approved Preliminary Plans For MPDU Developments Less than 50 Units
4. Planning Board MPDU Guidelines
5. Site Maps for Approved Preliminary Plans For MPDU Developments Less than 50 Units

Zoning Text Amendment No: 03-01  
Concerning: MPDU – Special  
Development Requirements  
Draft No. & Date: 1 – 1/21/03  
Introduced: January 21, 2003  
Public Hearing: February 25, 2003; 7:30 PM  
Adopted:  
Effective:  
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

---

By: Councilmembers Praisner, Denis and Perez

---

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- establishing special optional method of development requirements for MPDU projects with fewer than 35 but not less than 20 dwelling units.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-1                      “RESIDENTIAL ZONES, ONE-FAMILY”  
Section 59-C-1.6                      “Development including moderately priced dwelling units”

*EXPLANATION: **Boldface** indicates a heading or a defined term.  
Underlining indicates text that is added to existing laws by the original text amendment.  
[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.  
Double underlining indicates text that is added to the text amendment by amendment.  
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.  
\* \* \* indicates existing law unaffected by the text amendment.*

*ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*





28 and height to the market rate dwellings in that development, and (3) the maximum  
29 percentage of townhouses must not exceed 40% of the total residential dwellings in  
30 that development.

31  
32 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
33 date of Council adoption.

34  
35 This is a correct copy of Council action.

36

37

38

39

---

40 Mary A. Edgar, CMC



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

## MEMORANDUM

**DATE:** January 30, 2002

**TO:** Greg Russ, Development Review

**FROM:** <sup>SR</sup> Sally Roman, Research and Technology Center

**SUBJECT:** Zoning Text Amendment 03-01 – Voluntary Use of MPDU Standards

Recommendation: Do not support approval of Zoning Text Amendment 03-01 that provides for special optional method of development requirements for MPDU projects of less than 35 units.

Zoning Text Amendment 03-01 proposes three new development standards for projects of less than 35 units that develop under the MPDU method of development, in addition to the standards that apply to all projects developed under the MPDU method. These are 1) apply standard method development standards to any MPDU method lot adjoining or confronting existing single-family detached development, 2) require that the MPDU dwellings must be similar in style, size, and height to market rate dwellings in the development, and 3) limit townhouses to no more than 40 percent of the units in the development.

Planning staff is concerned that the proposed requirements severely limit the voluntary use of MPDUs in small subdivisions by substantially increasing costs. Smaller, simpler units of a variety of unit types are a major ingredient in the success of the MPDU program. They are one of the fundamental reasons why MPDUs are financially feasible to develop **and to buy or rent**. Also, Montgomery County established that detached units and townhouses can be compatible in most cases long ago.

There will be cases where compatibility concerns dictate projects that would meet some, or all, of the proposed requirements. Planning staff believes that the site plan review process already offers the Planning Board the authority and opportunity to make such a determination. Site plan review also offers project neighbors a public forum to voice their concerns and point out particular compatibility issues. To our knowledge only one of the 16 small MPDU projects that have been approved has generated compatibility concerns beyond those of other housing projects.

If there must be a text amendment of this nature, staff is somewhat comfortable with the first requirement. We expect that lots in small MPDU subdivisions that adjoin or confront existing single-family detached houses will usually have lots and setbacks similar to their neighbors, unless the screening, topography, or some other feature of the area make this unnecessary. We strongly recommend addressing the issues raised by the other two proposed requirements during the site plan process.

TABLE 1

## Sixteen (16) Preliminary Plan Approvals With Less Than 50 Units Using the MPDU Development Option

Project Name/ Planning Area	Location	No. of Units/MPDU's Acreage	Zone	Year Approved	Comments*	Unit Mix
<b>1. Bonifant Park</b> (PA) Aspen Hill	North Side Bonifant Road east of Layhill Road, Aspen Hill	25 Units 6 MPDU's 11.17 Acres	R-200	2002		6 Single Family duplex and 19 single family detached
<b>2. Layhill Village East</b> (PA) Aspen Hill	East side of Layhill Road south of Bonifant Road, Aspen Hill	30 Units 6 MPDU's 15.81 Acres	R-200	2002		6 single family duplex and 24 single family detached
<b>3. Brodsky Property</b> (PA) Germantown	Hoyles Mill Road at Crossview Road, Germantown	32 Units 4 MPDU's 14.04 Acres	R-200	2001		All single family attached units
<b>4. Plantations II</b> (PA) Damascus	West Side MD 124, Damascus	20 Units 4 MPDU's 8.93 Acres	R-200	1993		4 single family duplex and 16 single family detached
<b>5. Wyndcrest</b> (PA) Sandy Spring-Ashton	South Side MD 108, west of New Hampshire Ave., Sandy Spring/Ashton	26 Units 4 MPDU's 6.2 Acres	R-90	1992		10 single family attached and 16 single family detached
<b>6. Fairland Square</b> (PA) Fairland	South Side Fairland Road nr. Fairridge Road, Fairland	39 Units 8 MPDU's 16.02 Acres	R-200	1992	AGP Affordable Housing	8 single family duplex and 31 single family detached
<b>7. Brooke Farm</b> (PA) Fairland	Extension of Lime Tree Road, Northeast of Randolph Road	34 Units 8 MPDU's 8.6 Acres	R-90	1992	HOC Project - AGP Affordable Housing	8 single family duplex and 26 single family detached
<b>8. Wexford</b> (PA) Germantown	North od Scottsbury Terr. And East of Scottsbury Drive	35 Units 7 MPDU's 10.0 Acres	R-200/TDR-3	1991	AGP Affordable Housing	All single family detached
<b>9. Naples Manor</b> (PA) Cloverly	North of Bonifant Road	20 Units 4 MPDU's 9.9 Acres	R-200	1991	AGP Affordable Housing	4 single family duplex and 16 single family detached
<b>10. Rebold Property</b> (PA) Fairland	East side of Columbia Pike, North of Blackburn Road	35 Units 8 MPDU's 3.8 Acres	R-90/TDR-7	1990	AGP Affordable Housing	29 single family attached and 6 single family detached
<b>11. Timberlawn</b> (PA) North Bethesda	South of Tuckerman Lane, East of Old Georgetwon Road	23 Units 23 MDPU's 5.5 Acres	R-90	1989	HOC Project	All single family attached units

\* No Density Bonus of Market Rate Units was Achieved in the Sixteen Plans Reviewed

Project Name/ Planning Area	Location	No. of Units/MPDU's Acreage	Zone	Year Approved	Comments*	Unit Mix
12. Sedgewick (PA) Gaithersburg	North of the intersection Woodfield Road and Emory Grove Road	49 Units 7 MPDU's 8.3 Acres	R-60	1987		All single family attached units
13. Silverwood (PA) Fairland	East of MD 29 and West of Blackburn Road kjkjkjfskjsafkjsdf	24 Units 3 MPDU's 3.5 Acres	R-90/TDR-7	1985		All single family attached units
14. Olney Oaks (PA) Olney	North of Headwaters Drive, West of Rt. 108 Olney-Laytonsville Road	45 Units 6 MPDU's 11.2 Acres	R-200/R-60	1984		21 single family attached and 24 single family detached
15. Mill Creek South (PA) Gaithersburg	Northwest side of Shady Grove Road, South of Briardale Road	50 Units 7 MPDU's 12.6 Acres	R-90	1983		32 single family attached and 18 single family detached
16. Flower Hill North (PA) Gaithersburg	South of Centerway Road, East of Strawberry Knoll Road	46 Units 6 MPDU's 19.0 Acres	R-200	1982		20 single family attached and 26 detached units

\* No Density Bonus of Market Rate Units was Achieved in the Sixteen Plans Reviewed

# SITE PLAN GUIDELINES FOR PROJECTS CONTAINING MPDUS

ATTACHMENT 4

Approved 6.1/92

## 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 and market rate 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, piggy-backs, quadriplexes, 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 piggy-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.
- (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 or all market rate units.
- (7) Encourage distribution of any MPDU-only apartment stairwells among 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 areas 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 and signature set drawings.
- (16) Clearly state on the record plat that the site provides MPDUs, the locations of which are shown on the site plan.