



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

**MCPB**  
**Items 4, 5 & 6**  
**04/21/05**

**DATE:** April 15, 2005  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review *RKX*  
Carlton Gilbert, Zoning Supervisor *CG*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment and Subdivision Regulation Amendment  
**PURPOSE:** To clarify Zoning Ordinance and Subdivision Regulation language pertaining to the process for allowing an exception for reasons of financial infeasibility to certain conformity requirements regarding residential density or building height in certain zones for a development that includes MPDUs on-site.

**TEXT AMENDMENT:** No. 05-04  
**SUBDIVISION REGULATION AMENDMENT:** No. 05-1  
**BILL:** Expedited Bill 4-05  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59, the Zoning Ordinance and Chapter 50, Subdivision Regulations  
**INTRODUCED BY:** Councilmember Silverman  
**INTRODUCED DATE:** March 22, 2005  
**PLANNING BOARD REVIEW:** April 21, 2005  
**PUBLIC HEARING:** April 26, 2005, 11:00 am

---

**STAFF RECOMMENDATION:** APPROVAL

**PURPOSE OF THE TEXT AMENDMENT**

- To clarify Zoning Ordinance and Subdivision Regulation language pertaining to the process for allowing an exception for reasons of financial infeasibility to certain conformity requirements regarding residential density or building height in certain zones for a development that includes MPDUs on-site.

## BACKGROUND/ANALYSIS

On November 30, 2004, the District Council adopted Zoning Text Amendment No. 04-13 and Subdivision Regulation Amendment 04-1 as part of a series of amendments, including changes to Chapter 25A of the County Code, directed toward increasing the supply of Moderately Priced dwelling units (MPDUs) in the County. These amendments specifically clarified (at preliminary plan, development plan or project plan) that any increase in residential density or building height above a master or sector plan limit must be in proportion to the number MPDUs provided on site. In addition, permission to exceed these limits will require a finding by the Alternative Review Committee (ARC) that it would be otherwise financially infeasible to provide the required MPDUs on site. Under the financial infeasibility process, the Alternative Review Committee, composed of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunities Commission and the Chair of the Planning Board must, by majority vote, find that construction of all required MPDUs on site, including any bonus density units, would not be financially feasible. If a finding of MPDU financial infeasibility is made, the Planning Board would be authorized to allow a preliminary plan, development plan or project plan to exceed any residential density or building height limit established in a master or sector plan to accomplish the construction of MPDUs, including any density bonus, provided on site.

The Planning Board legal staff expressed concern that the Planning Board Chair acting in this role might be presented with *ex parte* information that he could not then consider in any land use decision for the same development. The proposed Zoning Text Amendment, Subdivision Regulation Amendment and accompanying Bill 4-05 (proposal to make similar changes in Chapter 25A, MPDU Law) would modify the Alternative Review Committee (ARC) created in last year's bill, ZTA and SRA replacing the Chair of the Planning Board with the Director of Park and Planning and by allowing the three members to be represented by designees. Staff believes that the language change is appropriate and is consistent with Planning Board policies and procedures. Allowing the principals to designate a substitute representative would permit the ARC to continue to function effectively in the case of an extended absence of one of its members.

The ZTA and SRA also propose minor modifications to the financial infeasibility provision to further clarify the intent and effect without altering the substance. The specific language changes are depicted on Attachments 1, 2 and 3.

## RECOMMENDATION

The staff recommends that the proposed amendments to clarify Zoning Ordinance and Subdivision Regulation language pertaining to the process for allowing an exception for reasons of financial infeasibility to certain conformity requirements regarding residential density or building height in certain zones for a development that includes MPDUs on-site be approved as submitted and included in Attachments 1 and 2. Staff further recommends approval of the language included in Expedited Bill 4-05 (Section 25A-5A(a) of the County Code) that coincides with the proposed language in the aforementioned ZTA and SRA.

GR

**Attachments**

1. Proposed Zoning Text Amendment
2. Proposed Subdivision Regulation Amendment
3. Expedited Bill 4-05