

ATTACHMENT 1

Ordinance No:
Zoning Text Amendment No: 05-04
Concerning: MPDUs –finding of financial
infeasibility
Draft No. & Date: 2 – 3/16/05
Introduced: March 22, 2005
Public Hearing:
Adopted:
Effective: April 1, 2005

**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: Councilmember Silverman

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

- Clarifying 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.

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

DIVISION 59-D-1	“DEVELOPMENT PLAN”
Section 59-D-1.6	“Approval by district council”
DIVISION 59-D-2	“PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES AND RMX ZONES”
Section 59-D-2.4	“Action by planning board”
Section 59-D-2.42	“Findings required for approval.”

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.*

OPINION

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:

1 **Sec. 1. Division 59-D-2 is amended as follows:**

2 **DIVISION 59-D-1. DEVELOPMENT PLAN.**

3 * * *

4 **59-D-1.6. Approval by District Council.**

5 **59-D-1.61. Findings.**

6 Before approving an application for classification in any of these zones, the
7 District Council must consider whether the application, including the
8 development plan, fulfills the purposes and requirements [set forth] in
9 Article 59-C for the zone. In so doing, the District Council must make the
10 following specific findings, in addition to any other findings which may be
11 necessary and appropriate to [the evaluation of] evaluate the proposed
12 reclassification:

- 13 (a) [That the] The zone applied for [is in substantial compliance]
14 substantially complies with the use and density indicated by the
15 master plan or sector plan, and [that it] does not conflict with the
16 general plan, the county capital improvements program, or other
17 applicable county plans and policies. However, to [accommodate]
18 permit the construction of all MPDUs required under Chapter 25A,
19 including any bonus density units, on-site, a development plan may
20 exceed, in proportion to the MPDUs[, provided under Chapter 25A]
21 that would be built on site, including any bonus density units, any
22 residential density or building height limit established in a master plan
23 or sector plan if a majority of the Director of the Department of
24 Housing and Community Affairs, the Executive Director of the
25 Housing [Opportunity] Opportunities Commission, and the [Chair of
26 the] Director of Park and Planning [Board], or their respective
27 designees, find that [construction of] a development that includes all

1 required MPDUs on site, including any bonus density units, would not
2 be financially feasible within the constraints of any applicable density
3 or height limit. If a finding of financial infeasibility is made, the
4 Planning Board must [determine] decide which if any of the following
5 measures authorized [under] by Chapter 59 or Chapter 50 should be
6 approved to [accomplish] assure the construction of [the] all required
7 MPDUs on site:

- 8 (1) exceeding a master plan or sector plan height limit,
- 9 (2) exceeding a master plan or sector plan residential density limit,
- 10 or
- 11 (3) locating any required public use space off-site.

12 * * *

13 **Sec. 2. Division 59-D-2 is amended as follows:**

14 **DIVISION 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD OF**
15 **DEVELOPMENT, CBD ZONES AND RMX ZONES.**

16 * * *

17 **59-D-2.4. Action by Planning Board.**

18 * * *

19 **59-D-2.42. Findings required for approval.**

20 The fact that an application complies with all of the specific requirements
21 and intent of the applicable zone does not create a presumption that the
22 application must be approved. The Planning Board can approve, or approve
23 subject to modifications, an application only if it finds that the proposed
24 development meets all of the following requirements:

25 * * *

- 26 (b) It would conform to the applicable sector plan or urban renewal plan.
27 However, to [accommodate] permit the construction of all MPDUs

1 required under Chapter 25A, including any bonus density units, on-
2 site, a project plan may exceed, in proportion to the MPDUs [provided
3 under Chapter 25A] that would be built on site, including any bonus
4 density units, any residential density or building height limit
5 established in a master plan or sector plan if a majority of the Director
6 of the Department of Housing and Community Affairs, the Executive
7 Director of the Housing [Opportunity] Opportunities Commission,
8 and the [Chair of the] Director of Park and Planning [Board], or their
9 respective designees, find that [construction of] a development that
10 includes all required MPDUs on site, including any bonus density
11 units, would not be financially feasible within the constraints of any
12 applicable density or height limit. If a finding of financial
13 infeasibility is made, the Planning Board must [determine] decide
14 which if any of the following measures authorized [under] by Chapter
15 59 or Chapter 50 should be approved to [accomplish] assure the
16 construction of [the] all required MPDUs on site:

- 17 (1) exceeding a master plan or sector plan height limit,
- 18 (2) exceeding a master plan or sector plan residential density limit,
- 19 or
- 20 (3) locating any required public use space off-site.

21 **Sec. 2. Effective date.** This ordinance takes effect as of April 1, 2005.

22 This is a correct copy of Council action.

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Elda M. Dodson, CMC

26 Acting Clerk of the Council

ATTACHMENT 2

Ordinance No:
Subdivision Regulation Amendment: 05-01
Concerning: MPDUs – finding of financial
infeasibility
Draft No. & Date: 2 – 3/16/05
Introduced: March 22, 2005
Public Hearing:
Adopted:
Effective: April 1, 2005

**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: Councilmember Silverman

AN AMENDMENT to the Montgomery County Code for the purpose of:

- Clarifying the process for a finding of financial infeasibility with respect to moderately priced dwelling units in certain subdivisions.

By amending the following section of the Montgomery County Subdivision Regulations, Chapter 50 of the County Code:

Section 50-35 “Preliminary subdivision plan — Approval procedure”

*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:

1 **Sec. 1. Chapter 50 is amended as follows:**

2 **50-35. Preliminary subdivision plan — Approval procedure.**

3 * * *

4 (1) *Relation to Master Plan.* In determining the acceptability of a
5 preliminary plan submitted under this Chapter, the Planning Board
6 must consider the applicable master plan, sector plan or urban renewal
7 plan. A preliminary plan must substantially conform to the applicable
8 master plan, sector plan or urban renewal plan, including maps and
9 text, unless the Planning Board finds that events have occurred to
10 render the relevant master plan, sector plan or urban renewal plan
11 recommendation no longer appropriate.

12 However, to [accommodate] permit the construction of all
13 MPDUs required under Chapter 25A, including any bonus density
14 units, on-site, a preliminary plan may exceed, in proportion to the
15 MPDUs [provided under Chapter 25A] that would be built on site,
16 including any bonus density units, any residential density or building
17 height limit established in a master plan or sector plan if a majority of
18 the Director of the Department of Housing and Community Affairs,
19 the Executive Director of the Housing [Opportunity] Opportunities
20 Commission, and the [Chair of the] Director of Park and Planning
21 [Board], or their respective designees, find that [construction of] a
22 development that includes all required MPDUs on site, including any
23 bonus density units, would not be financially feasible within the
24 constraints of any applicable density or height limit.

25 If a finding of MPDU financial infeasibility is made, the
26 Planning Board must [determine] decide which if any of the following
27 measures authorized [under] by Chapter 59 or Chapter 50 should be

28 approved to [accomplish] assure the construction of [the] all required
29 MPDUs on site:

- 30 (1) exceeding a master plan or sector plan height limit,
- 31 (2) exceeding a master plan or sector plan residential density limit,
- 32 or
- 33 (3) locating public use space off-site.

34 **Sec. 2. Effective date.** This ordinance takes effect as of April 1, 2005.

35 This is a correct copy of Council action.

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38 Elda M. Dodson, CMC

39 Acting Clerk of the Council

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41 Approved

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43 _____

44 Douglas M. Duncan, County Executive

_____ Date

Expedited Bill No. 4-05
 Concerning: Moderately Priced Dwelling
Units -Amendments
 Revised: 4-1-05 Draft No. 3
 Introduced: April 5, 2005
 Expires: October 5, 2006
 Enacted: _____
 Executive: _____
 Effective: April 1, 2005
 Sunset Date: None
 Ch. _____, Laws of Mont. Co. _____

**COUNTY COUNCIL
 FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Silverman

AN EXPEDITED ACT to:

- (1) modify the membership of the MPDU Alternative Review Committee, and allow the members to be represented by designees; and
- (2) generally amend County law governing the moderately priced dwelling unit program.

By amending

Montgomery County Code
 Chapter 25A, Housing, Moderately Priced
 Section 25A-5A

Boldface	<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:

1 **Sec. 1. Section 25A-5A is amended as follows:**

2 **25A-5A. Alternative payment agreement.**

3 (a) The Director may approve an MPDU agreement that allows an
4 applicant, instead of building some or all of the required number of
5 MPDUs in the proposed subdivision, to pay to the Housing Initiative
6 Fund an amount computed under subsection (b), only if an Alternative
7 Review Committee composed of the Director, the Commission's
8 Executive Director, and the [Chair of the] Director of Park and Planning
9 [Board], or their respective designees, by majority vote finds that:

10 * * *

11 **Sec. 2. Expedited Effective Date.**

12 The Council declares that this legislation is necessary for the immediate
13 protection of the public interest. This Act takes effect as of April 1, 2005.

14 *Approved:*

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Thomas E. Perez, President, County Council Date

17 *Approved:*

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Douglas M. Duncan, County Executive Date

20 *This is a correct copy of Council action.*

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Elda M. Dodson, CMC, Acting Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 4-05

Moderately Priced Dwelling Units - Amendments

DESCRIPTION: Modifies the Alternative Review Committee (ARC) created in last year's MPDU revisions (Bill 24-04/25-04/27-03) by replacing the Chair of the Planning Board with the Director of Park and Planning, and by allowing the 3 members (the others are the Director of the Department of Housing and Community Affairs and the Executive Director of the Housing Opportunities Commission) to be represented by designees.

PROBLEM: Planning legal staff had expressed concern that the Board Chair acting as a member of the ARC might be presented with *ex parte* information that he could not then consider in any land use decision for the same development. Also, extended absence of one of the principals without the ability to designate a substitute could render the ARC unable to function.

GOALS AND OBJECTIVES: To allow the ARC to function effectively.

COORDINATION: Department of Housing and Community Affairs, Housing Opportunities Commission, Planning Board

FISCAL IMPACT: Minimal.

ECONOMIC IMPACT: Minimal.

EVALUATION: Not needed.

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.

PENALTIES: Not applicable.

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