



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

MCPB
Item #6
06/5/08

DATE: May 29, 2008
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *Red K*
Ralph Wilson, Zoning Supervisor *RAW*
FROM: Greg Russ, Zoning Coordinator *SR*
REVIEW TYPE: Zoning Text Amendment and Subdivision Regulation
Amendment
PURPOSE: To amend the Zoning Ordinance and Subdivision
Regulations to remove the Alternative Review Committee
from the process of exceeding density or building height
limits to permit the construction of all MPDUs and bonus
units on-site.

TEXT AMENDMENT: 08-07
SUBDIVISION REGULATION: 08-02
REVIEW BASIS: Advisory to the County Council sitting as the District
Council, Chapter 59, the Zoning Ordinance and
Chapter 50, the Subdivision Regulations
INTRODUCED BY: The District Council at the request of the County
Executive
INTRODUCED DATE: April 29, 2008
PLANNING BOARD REVIEW: June 5, 2008
PUBLIC HEARING: June 17, 2008, 1:30 PM

STAFF RECOMMENDATION: Approve ZTA 08-07 and SRA 08-02, as
introduced.

Alternative Review Committee

On November 30, 2004, the District Council adopted Zoning Text Amendment (ZTA) 04-13 and Subdivision Regulation Amendment (SRA) 04-1. The purpose of the ZTA and SRA was to provide a process for any residential density or building height established in a master or sector plan to be exceeded in proportion to the number of MPDUs to be built on site, including any bonus density units. For a development plan, project plan, or preliminary plan that exceeds a master plan established density or building height limit to be approved, a finding was required by an Alternative Review Committee that the

project would not be financially feasible within the constraints of any applicable density or height limit. The ZTA and SRA provided measures that could be applied to accommodate the construction of all MPDUs on site, if the Alternate Review Committee found the development not to be financially feasible otherwise.

An amendment approved by the District Council in May, 2005, revised the membership of the Alternative Review Committee by replacing the Chair of the Planning Board with the Director of Park and Planning. The 2005 amendment also clarified that any residential density or building height established in a master plan or sector plan may be exceeded only up to the maximums of the zone.

ZTA 08-07 and SRA 08-02

ZTA 08-07 and SRA 08-02 were introduced by the District Council at the request of the County Executive. The amendments would remove the Alternative Review Committee from the development plan, project plan, and preliminary plan approval processes, but continue to allow master plan density and building height limits to be exceeded for projects in a zone with a maximum permitted density more than 39 dwelling units per acre or with a residential FAR more than 0.9. This mostly includes the residential high-rise zones, certain TDR zones, Transit Station zones, CBD zones, and TOMX zones.

Issues

In staff's view, eliminating the Alternative Review is a move in the right direction. The financial infeasibility standard for exceeding master plan density and height limits is problematic. A conflict exists between an applicant's interests in protecting financial records and open meetings laws. For this reason, the Alternative Review Committee is no longer considered workable. However, the amendments raise certain issues. The amendments track the workforce housing legislation to some extent, but where the workforce housing law requires the Planning Board to permit master plan limits to be exceeded, the proposed amendments make the decision discretionary by use of the word "may" on line 93 of the ZTA. A compatibility finding would still need to be part of the board's decision.

Although, the amendments retain a provision that in effect amends approved and adopted sector plans, the legislative judgment has been that the need for affordable housing takes precedence. The Workforce Housing legislation requires the density and height limitations of a sector plan to be overridden to accommodate needed housing. The proposed amendments provide a similar policy for the MPDU program.

RECOMMENDATION

Staff recommends approval of ZTA 08-07 and SRA 08-02, as introduced.

Attachments

1. Zoning Text Amendment No. 08-07 and SRA 08-02

ATTACHMENT 1

Zoning Text Amendment No: 08-07
Concerning: Alternative Review Committee
- Functions

Draft No. & Date: 1 – 4/17/08

Introduced: April 29, 2008

Public Hearing: June 10, 2008

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: The District Council at the request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- remove the Alternative Review Committee from the development plan and project plan approval processes;
- allow certain development plans or project plans to exceed density or building height limits to permit the construction of all MPDUs and bonus units on-site; and
- generally amend provisions relating to Development Plans and Project Plans.

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”
Section 59-D-1.61	“Findings”
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.

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:

Sec. 1. DIVISION 59-D-1 is amended as follows:

DIVISION 59-D-1. DEVELOPMENT PLAN.

* * *

59-D-1.6. Approval by district council.

59-D-1.61. Findings.

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

- (a) The [zone applied for] proposed development plan substantially complies with the use and density indicated by the master plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies. [However, to permit the construction of all MPDUs required under Chapter 25A, including any bonus density units, on-site, a development plan may exceed, in proportion to the MPDUs to be built on site, including any bonus density units, any applicable residential density or building height limit established in a master plan or sector plan if a majority of an 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 Director of Park and Planning, or their respective designees, find that a development that includes all required MPDUs on site, including any bonus density units, would not be financially feasible within the constraints of any applicable density or height limit. If the

28 Committee finds that the development would not be financially
29 feasible, the Planning Board must recommend to the District Council
30 which if any of the following measures authorized by Chapter 59 or
31 Chapter 50 should be approved to assure the construction of all
32 required MPDUs on site:

- 33 (1) exceeding an applicable height limit, lower than the maximum
34 height in the zone, that was recommended in a master plan or
35 sector plan,
- 36 (2) exceeding an applicable residential density limit, lower than the
37 maximum density in the zone, that was recommended in a
38 master plan or sector plan, or
- 39 (3) locating any required public use space off-site.]

40 However, to permit the construction of all MPDUs under Chapter 25A,
41 including any bonus density units, on-site in zones with a maximum
42 permitted density more than 39 dwelling units per acre or a residential FAR
43 more than .9, a development plan may exceed:

- 44 (1) any dwelling unit per acre or FAR limit recommended in a
45 master plan or sector plan, but not to exceed the maximum
46 density of the zone; and
- 47 (2) any building height limit recommended in a master plan or
48 sector plan, but not to exceed the maximum height of the zone.

49 The additional FAR and height allowed by this subsection is limited to the
50 FAR and height necessary to accommodate the number of MPDUs built on
51 site plus the number of bonus density units.

52 * * *

53 **Sec. 2. DIVISION 59-D-2 is amended as follows:**

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

56 * * *

57 **59-D-2.4. Action by planning board.**

58 * * *

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

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

65 (a) It would comply with all of the intents and requirements of the zone.

66 (b) It would conform to the applicable sector plan or urban renewal plan.

67 [However, to permit the construction of all MPDUs required under
68 Chapter 25A, including any bonus density units, on-site, a project plan
69 may exceed, in proportion to the MPDUs to be built on site, including any
70 bonus density units, any applicable residential density or building height
71 limit established in a master plan or sector plan if a majority of an
72 Alternative Review Committee composed of the Director of the
73 Department of Housing and Community Affairs, the Executive Director of
74 the Housing Opportunities Commission, and the Director of Park and
75 Planning, or their respective designees, find that a development that
76 includes all required MPDUs on site, including any bonus density units,
77 would not be financially feasible within the constraints of any applicable

78 density or height limit. If the Committee finds that the development
79 would not be financially feasible, the Planning Board must decide which
80 if any of the following measures authorized by Chapter 59 or Chapter 50
81 should be approved to assure the construction of all required MPDUs on
82 site:

83 (1) exceeding an applicable height limit, lower than the maximum
84 height in the zone, that is recommended in a master plan or
85 sector plan,

86 (2) exceeding an applicable residential density limit, lower than the
87 maximum density in the zone, that is recommended in a master
88 plan or sector plan, or

89 (3) locating any required public use space off-site.]

90 However, to permit the construction of all MPDUs under Chapter 25A,
91 including any bonus density units, on-site in zones with a maximum
92 permitted density more than 39 dwelling units per acre or a residential FAR
93 more than .9, a project plan may exceed:

94 (1) any dwelling unit per acre or FAR limit recommended in a
95 master plan or sector plan, but not to exceed the maximum
96 density of the zone; and

97 (2) any building height limit recommended in a master plan or
98 sector plan, but not to exceed the maximum height of the zone.

99 The additional FAR and height allowed by this subsection is limited to the
100 FAR and height necessary to accommodate the number of MPDUs built on
101 site plus the number of bonus density units.

102

103 * * *

104 **Sec. 3. Effective date.** This ordinance takes effect 20 days after the date of
105 Council adoption.

106

107 This is a correct copy of Council action.

108

109

110 Linda M. Lauer, Clerk of the Council

Ordinance No.:
Subdivision Regulation Amend. No.: 08-02
Concerning: Alternative Review
Committee - Functions
Draft No. & Date: 1- 4/17/08
Introduced: April 29, 2008
Public Hearing:
Adopted:
Effective:

**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: The District Council at the request of the County Executive

AN AMENDMENT to the Subdivision Regulations to:

- remove the Alternative Review Committee from the preliminary plan approval process;
- allow certain preliminary plans to exceed density or building height limits to permit the construction of all MPDUs and bonus units on-site; and
- generally amend provisions relating to preliminary plans.

By amending the following section of County Code Chapter 50:

Sec. 50-35. "Preliminary subdivision plans – Approval procedure."

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>

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. Section 50-35 is amended as follows:**

2 **50-35. Preliminary subdivision plans – 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
7 renewal plan. A preliminary plan must substantially conform to the
8 applicable master plan, sector plan, or urban renewal plan, including
9 maps and text, unless the Planning Board finds that events have
10 occurred to render the relevant master plan, sector plan, or urban
11 renewal plan recommendation no longer appropriate.

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

24 If the Committee finds that the development would not be financially
25 feasible, the Planning Board must decide which if any of the

26 following measures authorized by Chapter 59 or Chapter 50 should be
27 approved to assure the construction of all required MPDUs on site:

- 28 (1) exceeding an applicable height limit, lower than the maximum
29 height in the zone, that is recommended in a master plan or
30 sector plan,
31 (2) exceeding an applicable residential density limit, lower than the
32 maximum density in the zone, that is recommended in a master
33 plan or sector plan, or
34 (3) locating public use space off-site.]

35 However, to permit the construction of all MPDUs under Chapter
36 25A, including any bonus density units, on-site in zones with a
37 maximum permitted density more than 39 dwelling units per acre or a
38 residential FAR more than .9, a preliminary plan may exceed:

- 39 (1) any dwelling unit per acre or FAR limit recommended in a
40 master plan or sector plan, but not to exceed the maximum
41 density of the zone; and
42 (2) any building height limit recommended in a master plan or
43 sector plan, but not to exceed the maximum height of the zone.

44 The additional FAR and height allowed by this subsection is limited to the
45 FAR and height necessary to accommodate the number of MPDUs built on
46 site plus the number of bonus density units.

47 * * *

48 **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of
49 Council adoption.

50 *Approved:*

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Isiah Leggett, County Executive

Date

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

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55

Linda M. Lauer, Clerk of the Council

Date