



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

September 3, 2004

**Memorandum**

To: Montgomery County Planning Board

Via: Karl Moritz, Acting Chief, Research & Technology Center *KLM*

From: Sharon K. Suarez, AICP, Housing Coordinator, Research & Technology Center

Subject: Council Bills 24-04 and 25-04

---

**Summary**

Council Bills (CBs) 24-04 and 25-04 have been proposed to augment the functionality of the current MPDU ordinance. The proposed legislation would:

- Reduce the number of buyout agreements, by providing creative off-site alternatives for production of MPDUs on the one hand and significantly higher per unit alternative agreement amounts on the other;
- Preserve existing MPDUs and other affordable market stock, through longer control periods, rehabilitation, and maintenance; and
- Ensure that General Fund transfers to the Housing Initiative Fund are not reduced by MPDU alternative agreements.

After comparing Council Bills 24-04 and 25-04, staff recommends approving CB 24-04 (Corrected Copy) with revisions and with the following sections from CB 25-04 added to it, as follows:

- Import the last sentence from 25A-5(b)(3): "The Director must not approve an MPDU agreement that reduces the number of bedrooms required by this subsection in any MPDU."

- Import the section on high rises (lines 90 through 97) from 25A-5(c)(3): “...However, with respect to a high-rise building located in an zone where the height of such buildings is limited by a master or sector plan below the maximum height otherwise applicable in the zone...the Director may reduce the required number of MPDUs to not less than 10 percent of the total number of dwelling units in that building.”
- Import section 25A-5(n) Mandatory recurring fees;
- 25A-5A(a)(1) to (3) “...the subdivision consists entirely of senior citizens and special needs housing...” en toto, replacing the CB 24-04 version of 25A-5A(a) entirely;
- Import 25A-5B(a)(1) and (2), “The Director may approve an MPDU agreement that allows an applicant for development of a high-rise residential building...” Change the location requirement from “within ½ mile” to “in the same planning policy area,” in order to be consistent with the requirements of CB 24-04 section 25A-5B (a) (“in the same planning policy area”).
- While staff supports the concept in Bill 24-04 of “alternative location agreements” in limited cases, staff does not support the method proposed in Bill 24-04 because it provides overlapping jurisdiction between the DHCA Director and the Planning Board, creating an implementation conflict.

Additionally, staff believes that the MPDU alternative payments should yield the same percentage of MPDUs for MPDU wait list applicants as for constructed MPDUs. In order to ensure that this occurs, staff recommends the following new section be added: 25A-5A(d). Not less than 60 percent of the total amount of alternative payments received each year shall be used to construct MPDUs to meet the demands of the MPDU wait list.

Staff recommends that DHCA create a preservation and rehabilitation program using HIF funds to make low-interest loans available to owners of un-expired MPDUs, and report the use of the program (number of loans made, amount of money loaned) in the annual HIF report.

Regarding Subdivision Regulation Amendment 04-01 and Zoning Text Amendments 04-11, of-12, 04-13, and 04-14; these amendments are the direct results of recommendations from

Department staff to the County Council staff, and so staff recommends that the Planning Board approve all of these amendments without modification.

### **Discussion of the Council Bills 24-04 and 25-04**

#### ***Similarities***

The Council Bills 24-04<sup>1</sup> and 25-04 are similar in many ways, in that they both would:

- Apply the MPDU requirement to subdivisions 20-units or greater;
- Lengthen the control periods for both owned and rented MPDUs;
- Direct the County Executive to annually update the MPDU eligibility requirements;
- Not change the 12.5% MPDU requirement for single family units and for most multi-family units (CB 25-04 does propose reducing the requirement to 10% for high rise construction—more on that, below);
- Prohibit the County from reducing the amount of money transferred from the General Fund to the HIF by the MPDU buyout payments received;
- Prohibit the DHCA Director from considering contributions from other sources in the calculations of alternative agreement amounts;
- Provide additional relief to the alternative agreement section in the form of off-site options.

---

<sup>1</sup> In this memo, all references to CB 24-04 refer to the corrected copy.

## *Differences*

The CBs differ significantly in the following areas of the ordinance: control periods, MPDU requirements, alternative agreements (conditions, locations, and payment amounts (buyouts)), and additional funds for rehabilitation loans and equity payments during the control periods.

### Chapter 25A-3. Definitions. (g) Control Periods.

Council Bill 24-04 proposes a 30-year control period for both owned and rented MPDUs. This differs significantly from the 99-year control period proposed by CB 25-04.

Problems with the longer 99-year control period center around administration of the program and maintenance of the MPDU resources over the nearly century-long control period. While administration of such a long control period will fall to future generations, and though there are many unknowns and uncertainties associated with that issue, staff is most concerned about building and maintenance of MPDU resources over that period. Ensuring that a structure can endure a 99-year life cycle will require a significant departure from the methods and materials currently used for today's 20-year life-cycle construction.

Current construction materials offer a good example of the some of the problems we will face. Current construction depends heavily upon materials invented in the last three or four decades--materials that have not stood the test of time. Contrast those with the construction materials used in the early 1900s: brick; stone; mortar, solid hardwood beams, glazed clay pipe; glazed ceramic tiles; heart wood floor planks copper, brass, etc. The materials used in the early 1900s were the same materials as had been used for thousands of years. Some modern materials may prove to be long-lived, but many may prove to be maintenance nightmares, such as the maintenance-intensive T-111 plywood exterior of the 1970s, among others. Without a change in construction and maintenance requirements, one can only speculate whether many of the newly invented materials will survive the 99-year control period.

Assuming that current MPDU buildings can survive the next century, their building systems are likely to be quite different in 99 years. Who is to say how much space those systems will need or how they will affect the need and frequency of major building rehabilitation.

Additionally, staff noted an irony in section 25A-5B(b)(3). Implementation of a 99-year control period would result in the public benefit of 25A-5B(b) being essentially limited to those existing MPDUs whose control periods will expire within the next 20 years. Because the rest of the new and newly rehabbed MPDUs will be controlled for 99 years, there would effectively be a moratorium on the section for nearly eight decades, at which time the first of the 99-year control periods would expire.

For all the reasons stated above, staff believes that the 99-year control period proposed by CB 25-04 is too long to ensure the viability of the MPDU resources and recommends the approval of the 30-year control period proposed by CB 24-04, instead.

25A-5. Requirement to Build MPDUs, (b)(2). Number of Bedrooms in single-family dwelling unit subdivisions.

*Council Bill 24-04* proposes to change the current requirement for two bedrooms to the mix as can be found in the market rate portion of the subdivision. For example, if there is one market rate 3-bedroom unit for every four market rate 2-bedroom units (a 1:4 ratio of 3-bedroom to 2-bedroom units), then that subdivision must have one 3-bedroom MPDU for every four 2-bedroom MPDUs. In contrast, *Council Bill 25-04* would require that all MPDUs in all single family subdivisions be 3-bedroom units, regardless of what might be the bedroom mix in the market rate units.

A one-size fits all MPDU seems counter to a housing policy that seeks to provide variety in housing choice to meet the needs of a diverse population.<sup>2</sup> Staff recommends having the MPDUs following the market mix, as suggest by CB 24-04.

25A-5. Requirement to Build MPDUs, (b)(3). Number of bedrooms in multi-family dwelling unit subdivisions.

The existing text that requires the same ratio of efficiency and one-bedroom MPDUs as is found in the market rate units is not been changed in either bill, but *Council Bill 25-04* provides extra assurance that this ratio will be maintained, by adding language that prohibits the Director

---

<sup>2</sup> *Montgomery County Housing Policy, updated 2001, available on the internet at [http://www.montgomerycountymd.gov/dhctmpl.asp?url=/Content/DHCA/housing/housing\\_P/policy/policy\\_new.asp](http://www.montgomerycountymd.gov/dhctmpl.asp?url=/Content/DHCA/housing/housing_P/policy/policy_new.asp)*

of DHCA from approving any MPDU agreement that reduces the number of bedrooms required by the subsection. Staff recommends adding the last sentence in section 25A-5(b)(3): The Director must not approve an MPDU agreement that reduces the number of bedrooms required by the subsection in any MPDU.

#### Chapter 25A-5A. Alternative Payment Agreements

##### *Circumstances for approval*

Council Bill 24-04 permits the Director of DHCA to approve an agreement “only if” the Director finds that:

- an indivisible package of services and facilities it would render the MPDU unaffordable.
- the public benefit of additional affordable housing outweighs the value of locating MPDUs in the subdivision.

CB 25-04, like CB 24-04, includes the finding for the indivisible package of services. Then it takes an entirely distinct turn. CB 25-04 allows a payment agreement for only two other circumstances:

- If the subdivision consists only of senior citizens and special needs housing; and
- If the public benefit of additional affordable senior and special needs housing outweighs the value of locating MPDUs in each subdivision throughout the County...

Staff recommends the CB 25-04 version of Section 25A-5A(a).

##### *Payment amounts*

Currently, DHCA insists that the small payments to the HIF are actually made whole because they are leveraged at a ratio of 1:7 with funds from other sources. The 1:7 ratio is clearly discussed in the background to the HIF funding resolution of 2003, as well.<sup>3</sup> In other

---

<sup>3</sup> Charles H. Sherer, Legislative Analyst, Montgomery County Council. Memorandum. March 20, 2003. Sherer’s memo includes a copy of the HIF resolution, which includes “Background.” The 1:7 leverage is discussed in Background item #7: “The Montgomery Hosing Initiative is the foremost funding mechanism for County

words, DHCA says that every dollar from the developers can leverage seven dollars from other housing funding sources. With buyout amounts averaging around \$20,000, that would require around \$140,000 from other sources for each MPDU constructed.

Last year 39 MPDUs were bought out. Assuming that DHCA received at least \$20,000 per unit, then DHCA would have needed to obtain approximately \$5.5 million from other sources to accomplish a 1:7 leverage. That did not happen. Instead, according to the HIF report for FY 2003, DHCA purchased only eight expired MPDUs to renovate them and to sell them to households on the MPDU waiting list or to non-profit providers that year.

What seems to be happening is a kind of programmatic bait-and-switch. MPDU money goes into the HIF, but units for the MPDU wait list are not the result. Instead, money from the HIF builds or purchases affordable housing for lower income households or for other special needs populations. While those income groups are deserving of housing, MPDU applicants are deserving as well.

The MPDU program was established to meet the needs of those households earning up to 65% of Area Median Income, and ensured that at least 60% of all MPDUs constructed would be used for MPDU eligible households. The program is set up to allow for up to 40% of the units constructed to be purchased by HOC or other non-profit housing groups, who will put the units in service for households eligible for lower-income housing or public housing. As a matter of fact, HOC's Public Housing program comprises over 1,500 units originally built as MPDUs.

Staff believes that the MPDU alternative payments should yield the same percentage of MPDUs for MPDU wait list applicants as constructed MPDUs. Specifically, staff believes that alternative payment agreements should guarantee that at least 60% of the units constructed or purchased with the buyout contributions to the HIF should be for the MPDU wait list applicants. That would still allow up to 40% of the buyout contributions to be used for other affordable housing programs. Neither CB 24-04 nor CB 25-04 addressed this specific issue, even though such a strategy could have a significant effect on the number of MPDUs produced for eligible MPDU applicants.

---

participation in the financing of needed affordable housing, and has leveraged other public and private financing at a ratio of seven dollars for every Housing Initiative dollar spent.”

Council Bills 24-04 and 25-04 both aggressively attacked the amount of payments made to HIF and both would prohibit the small payments made by developers today. Both CBs scratch the convoluted discussions of “significantly more” found in the existing language of Chapter 25A, and both bills insist on buyout amounts that will actually build MPDUs without considering other funding sources.

CB 24-04 would require a payment to the HIF in the amount of 125% of the developer’s profit on the substituted market units. Profit is the difference between the actual selling price of the market unit that is substituted for the MPDU and the maximum allowable sales price of the MPDU that would have been built. In the example below, the developer would have to pay the HIF nearly \$2-million, instead of \$200,000 (assuming \$20,000 per unit), in order to buyout of building 10 one-bedroom high-rise condo units.

|   |                     |
|---|---------------------|
| Actual sales price of market rate unit: | \$300,000.00        |
| Minus Max. Allowable MPDU Sales Price:  | - <u>166,185.00</u> |
| Profit:                                 | \$133,815.00        |
| Multiplied by 125%:                     | <u>x1.25</u>        |
| Per unit buyout amount:                 | \$192,268.75        |
| Number of units in the agreement:       | <u>x10</u>          |
| Developer payment to the HIF            | \$1,922,687.50      |

Calculation of Alternative Agreement Amount for Typical 1-Bedroom Highrise Condo per CB 24-04

In contrast, CB 25-04 would simply require an amount equal to the cost of producing all the MPDUs on site, without considering any contributions from any other sources

The alternative agreement conditions in both bills would require that developers pay substantially more than is currently the case. The increased payments seem high enough to ensure that the MPDUs are built somewhere. Clearly, these bills both attempt to divert the development community away from buyouts and toward the newly created off-site rehabilitation and conversion options, which are discussed in greater detail below.

The better version of Section 25A-5A(b), then, is proposed by Council Bill 24-04, because it requires a significantly higher payment to the HIF and, in doing so, is more likely to



make buyouts the choice of last resort.

Chapter 25A-5B. Alternative Agreement Locations.

Both Council Bills 24-04 and 25-04 encourage creative ways to satisfy the alternative location agreements, such as conversions and rehabilitations. These options would use developer dollars to rehabilitate the naturally occurring single-family and multifamily affordable housing of many older neighborhoods. Also, the bills propose that the developer may satisfy the MPDU requirement through rehabilitating and returning to service those MPDU resources for which control periods have expired. These methods are very creative ways to generate more affordable housing.

The differences between the bills are found in the area of implementation in the scope of Planning Board concurrence with the findings.

- Area of implementation. CB 24-04 stipulates that the implementation of the alternate location agreement must provide at least the same number of MPDUs at another location in the same planning policy area, while CB 25-04 requires that the MPDUs be provided within ½ mile of the project site.
- DHCA Director and/or Planning Board findings. CB 24-04 stipulates that the location agreement depends upon findings by either the Director of DHCA or the Planning Board:
  - The Director must find that “an indivisible package of services...would cost MPDU buyers or tenants so much that it is likely to make MPDUs unaffordable...” *or*
  - The Planning Board must find that limits on development at the site would not allow the applicant to achieve the otherwise allowable density (the 20% density bonus test is no longer required); *and*
  - Either the Director or the Planning Board must find that public benefit of locating MPDUs at the proposed alternative location outweighs the value of locating MPDUs in each subdivision throughout the County and building the MPDUs at

the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the County.

While staff supports the concept in Bill 24-04 of “alternative location agreements” in limited cases, staff does not support the method proposed in Bill 24-04. The “either/or” structure of the provision creates a situation of overlapping jurisdiction between the DHCA Director and the Planning Board, which could result in an implementation conflict.

Chapter 25B-23. MPDU Preservation Fund and 25B-24 Rehabilitation Fund.

Only CB 25-04 proposes to establish these funds from funds allocated from the HIF, in order to offer some aid to MPDU owners during the 99-year control period. Both funds would be crucial for the sale and maintenance of MPDU stock.. Yet it is only the owner of a rental MPDU would be entitled to the benefit of low-interest rehabilitation loans in CB 25-04 (25B-24). If the MPDU program’s goal is to continue to provide and convey an affordable and habitable unit throughout the 99-year control period, then the regularity and cost of home maintenance and rehabilitation must be considered and planned for in law for the individual home owner, as well as for the owner of rental units.

While staff does not recommend providing equity assistance and low-cost rehabilitation loans for any MPDU owner (home owners as well as owners of rental units), staff believes that the program can be created within the HIF, without creating the additional administrative layers necessary for separate funds.

**LIST OF ATTACHMENTS**

**ATTACHMENT A:** Council Bills: 24-04 (circle 2) and 25-04 (circle 15)

**ATTACHMENT B:** HIF Resolution with Worksheet (Charles H. Sherer, Legislative Analyst),  
March 20, 2003 (circle 32).

**ATTACHMENT C:** Memo to M. Wellington regarding age restricted MPDUs, August 17, 2004  
(circle 41).