

MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION8787 Georgia Avenue
Silver Spring, Maryland 20910-3760MCPB
October 11, 2001
Item #2**MEMORANDUM**

DATE: October 4, 2001

TO: Montgomery County Planning Board

FROM: Sally Roman, Research and Technology Center *SR*

SUBJECT: Recommendations to the PHED Committee – Proposed Amendments to the MPDU Law

Recommendations:

1. Support Bill 31-01 to restart the price control period when MPDUs are sold during the initial price control period and to expand the right of first refusal. Also, support the proposed technical amendments to the Bill.
2. Add the RNC Zone to the MPDU program, providing for greater specificity of the base density in the master plans. Also add RE-2C properties where sewer service is available. Do not include the remaining large lot zones but study each as a possible TDR receiving area as master plans are revised. TDR receiving areas generally produce densities that require MPDUs.
3. Include MPDUs in subdivisions of 35 to 50 units, guaranteeing that there will be, at least, one bonus market rate unit if the subdivision provides more than the minimum number of MPDUs and permitting more generous waivers than are currently available for small subdivisions that cannot achieve some level of density bonus.
4. Do not support lengthening the MPDU price control period from 10 to 15 years unless Bill 31-01 does not pass.
5. Permit rental MPDUs in multi-family condominiums.
6. Study townhouse community parking issues separately from the MPDU initiatives.

At its meeting of July 16, the PHED Committee requested additional study of several possible amendments to the MPDU law, Chapter 25A of the Montgomery County Code. The results of these studies are to be discussed at a Committee meeting on October 15. The issues include extending the MPDU program to large lot zones, applying the MPDU requirement to subdivisions of 35 to 50 units, lengthening the MPDU price control period

from 10 to 15 years, and allowing rental MPDUs in for sale subdivisions. The Planning Board discussed preliminary studies of these proposals on July 5. The packet from that meeting is attached. The research in that report is generally not repeated in this memorandum.

The PHED Committee also voted to introduce an amendment to Chapter 25A that would restart the price control period when an MPDU is sold during the price control period and allow both DHCA and HOC the right of first refusal for MPDUs sold both during and at the first sale after the price control period. This amendment to the MPDU law has been introduced and the public hearing has been held. The amendment will be discussed at the October 15 PHED Committee meeting.

Subsequent to the July meeting, the PHED Committee asked staff to add the Rural Neighborhood Cluster (RNC) and Rural Cluster (RC) Zones to the study of extending the MPDU program to large lot zones. The Committee also asked staff to assess the adequacy of parking for MPDUs in response to citizen correspondence. The correspondence is attached.

In addition to preparing various analyses, staff has met with the MPDU Steering Committee composed of members of the development community and affordable housing advocates, members of MNCBIA, HOC staff, and a wide range of Department staff. This project is a joint effort of Department and DHCA staff. A summary of the Steering Committee meeting and a memo summarizing MNCBIA's views are attached.

As the County becomes more built out, MPDU production is slowing. People involved with many different aspects of the program are struggling to adapt this national model to changing conditions, while still maintaining its strengths. The discussion below summarizes the current proposals, presents analysis prepared since the July meetings, and a recommendation for each item.

1. **Bill 31-01 Moderately Priced Dwelling Units – Amendments.** This bill is intended 1) to restart the price control period at 10 years if an MPDU is sold during the price control period and 2) to give both DHCA and HOC the right of first refusal to purchase MPDUs during or at the first sale after the end of the price control period. The Bill is attached.

The Planning Board supported this Bill in concept at your July 5 meeting. Four of the five speakers at the County Council's public hearing supported it with some recommendations for technical amendments. The exception was DHCA. DHCA would like the broader right of first refusal so that it and HOC can buy units for repair and resale with a new price control period but is concerned that restarting the price control period in all cases will make resale MPDUs more difficult to sell.

Staff continues to support this concept and the resulting Bill. We appreciate DHCA's concern but believe that the below market prices will continue to make these units desirable, even with a longer price control period for the new buyer. We understand

that the most likely difficulty is resale of garden apartment condominiums in some parts of the County. We believe that adoption of the recommendation to allow rental MPDUs in for sale subdivisions is a solution to this problem. In addition, if a unit does not sell because it is in poor condition, it seems appropriate for DHCA or HOC to buy and refurbish the unit for resale with a new price control period.

One technical amendment would add HOC to the 60-day period when resale units are offered exclusively to DHCA. This change seems consistent with the intent of the Bill. The other technical issue is the current right of the government to match a private buyer's price for a resale MPDU and purchase the unit. Several realtors pointed out that this can mean a tremendous hardship for potential buyers. Many will already have spent a significant amount of money toward buying the unit, for items such as home inspections, that would be lost if the County steps in and buys the unit.

MNCBIA expressed concern about the effect of multiple resales and many extensions to the price control period. They believe this could have a negative effect on the maintenance of the property and should only happen once. They do not want this law to apply to rental properties.

Recommendation: Support Bill 31-01 to restart the price control period when MPDUs are sold during the initial price control period and to expand the right of first refusal. Also, support the proposed technical amendments to the Bill.

2. **Apply the MPDU Program to RE-1, RE-2, RE-2C, RNC, and RC Zones.** This proposal would extend the MPDU program to these large lot zones. As staff research from last summer shows, most of the eligible properties in these zones are not designated for community sewer service.

The Planning Board did not support extending the MPDU program to the estate zones at your July 5 meeting. The hurdles included numerous environmental constraints, particularly lack of sewer service, the limited potential yield, and the distance from jobs, shopping, and other amenities and services. The PHED Committee expressed a continuing desire to pursue this option and asked staff to conduct further analysis. They particularly asked for information about the potential use of alternative sewage systems in these zones. The Committee also asked staff to add the Rural Cluster (RC) and Rural Neighborhood Cluster (RNC) Zones to the analysis.

Staff met with a representative of the Well and Septic section of the County's Division of Land Development Services to discuss this issue. While many innovative systems are becoming available, the State does not permit alternative sewer systems except to replace failing existing systems. The County, of course, abides by the State policy. Given this policy, the densest housing type that would be supportable on the well and septic systems of these zones appears to be the duplex. The requirements for septic fields preclude multiplexes or townhouses.

Staff also conducted additional research to better understand the environmental constraints on large lot properties of sufficient size to support MPDUs. This analysis revealed a number of properties that are designated as parkland or in other uses that will not realistically lead to redevelopment in the foreseeable future. As a result, the 62 parcels identified as having MPDU potential in the July study shrank to 40 parcels. Two parcels zoned RC and two zoned RNC raised the number to 44.

Staff then identified the percentage of each property with significant environmental constraints, primarily steep slopes, streams, and mandatory stream buffers. These percentages ranged from 14 to 76 percent. The average was about 32 percent.

The table shows the potential MPDU yields for these large lot properties. To adjust the yields for environmental constraints, MPDUs were calculated for the unconstrained land only for the RE-1 and RE-2 Zones. The cluster zones were not adjusted because it was assumed that their substantial open space requirements could accommodate typical environmental constraints of 35 percent or less. One RE-2C property with 76 percent of its area constrained was removed from the calculation. Even unadjusted, the yields from the new research are substantially below the range of 562 to 826 in the earlier, less site specific study.

Zone	Unadjusted		Adj. for Environmental Constraints	
	12.5% MPDUs	15% MPDUs	12.5% MPDUs	15% MPDUs
RC	12	17	12	17
RE-1	62	92	51	73
RE-2	128	183	90	123
RE-2C	83	114	76	83
RNC	9	12	9	12
Total	294	418	238	308

Only the properties in the RNC Zone¹ and 3 properties in the RE-2C Zone are designated for sewer service. These properties comprise 287 acres and could generate a maximum of 20 to 27 MPDUs. Another site may be designed for the RNC Zone in the proposed Potomac Master Plan and one RE-2 property is proposed for the PD Zone.

Observing that subdivisions often have difficulty reaching the potential zoned density because many parts of the County do not perk well for septic fields, staff compared the actual yields with the potential yields in the 21 large lot subdivisions approved from 1995 through 2000. All had zoned capacity of 35 or more units. This research showed that actual yields for projects with septic systems were 23 units below the zoned capacity. Projects with sewer service only averaged 8 units less than the zoned capacity. This finding would further reduce the potential yield of most large lot properties, many to densities below either the current or proposed MPDU thresholds.

¹ The RNC Zone is designated for sewer service.

The Steering Committee agreed that the MPDU program could work in the large lot zones with sewer, the ability to cluster in all cases, and the ability to achieve the MPDU density bonus. Members felt that the RNC Zone meets these conditions and would be a good addition to the MPDU program. The other cluster zones, RC and RE-2C, also have potential as future MPDU locations but would require sewer service to be successful. The group did not support adding the RE-1 and RE-2 Zones.

MNCBIA does not support this proposal. They believe that it could work in the RE-1 and RE-2 Zones if projects can achieve the zoned density and the MPDU bonus density and if they are provided with community water and sewer. MNCBIA expressed concern about the cluster zones, especially the RNC Zone, because the flexible base density, expressed as a range, complicates calculation of a bonus density.

Recommendation: Add the RNC Zone to the MPDU program, providing for greater specificity of the base density in the master plans. Also add RE-2C properties where sewer service is available. Do not include the remaining large lot zones but study each as a possible TDR receiving area as master plans are revised. TDR receiving areas generally produce densities that require MPDUs.

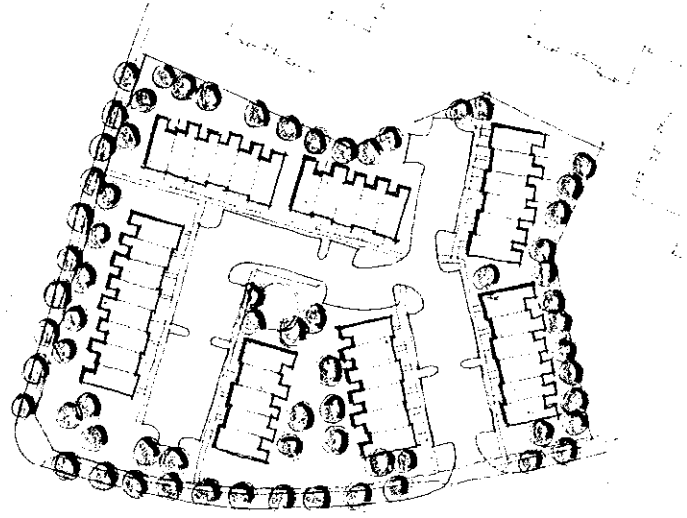
3. **Apply MPDU Requirement to Subdivisions of 35 or More Units.** This proposal would add these smaller subdivisions to the MPDU program. As the program is currently structured, most, if not all, subdivisions of this size would be unable to achieve a market rate density bonus unit. To achieve the maximum density, townhouses are likely to be the most prevalent unit type because they require less land.

The Planning Board did not take a position on this issue in July, choosing to wait for more study of design issues. As you may recall, staff analyzed the potential yield for subdivisions of 35 to 50 units approved from 1995 through 2000. Their yield would be slightly higher than previously reported if the Council decides to include the large lot zones in the program. Adding the RNC Zone would have had the greatest effect. It accounted for 3 of the 22 approved subdivisions and would have added a total of 18 to 24 MPDUs. The RC Zone would have added 12 to 16 MPDUs. Overall, the potential yield for these subdivisions increased from a range² of 93 - 136 MPDUs to 123 - 167 total, or 20.5 to 27.8 units per year, by adding large lot zones to the zones that currently require MPDUs to this analysis.

To better understand the effect of MPDUs on small subdivisions, possible layouts were developed that would accommodate maximum MPDUs on three of the sites from the list of approved plans. The drawings show that each site could accommodate MPDUs at the maximum density bonus, in most cases with additional landscaping.

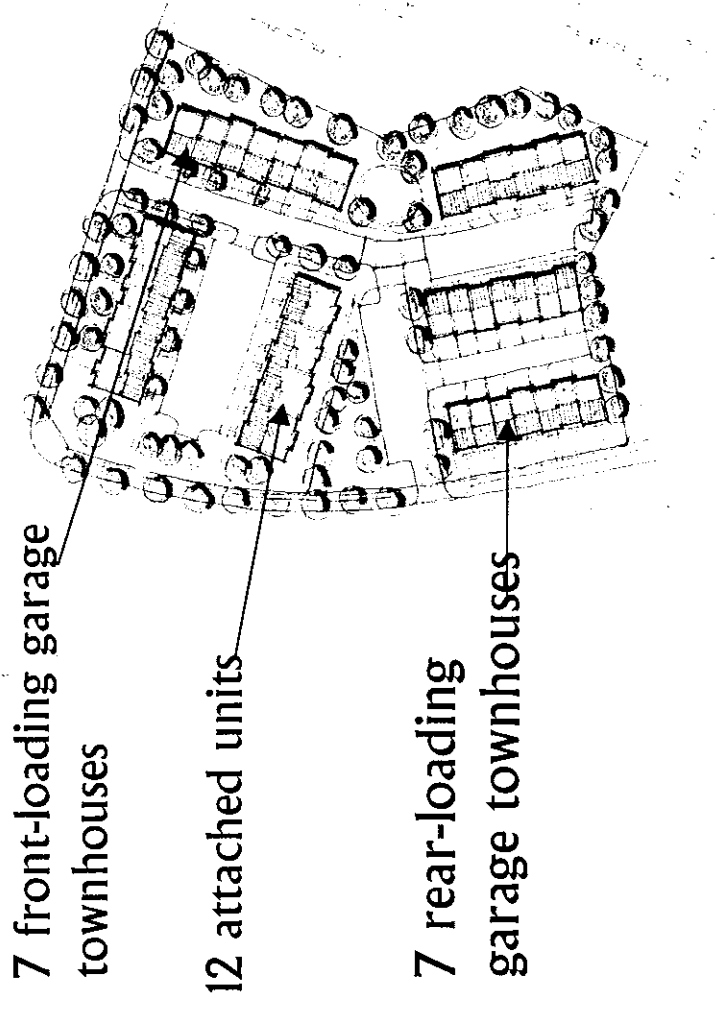
² The low end of the range represents the number of MPDUs if only 12.5 percent are built. The high end includes 15 percent MPDUs and a 22 percent density bonus.

Site A: RT-12.5 Zone



Existing Development:

42 Townhouses



Alternative Development:

51 units: 13 front-loading garage townhouses; 14 rear-loading garage townhouses; and 24 attached units including 6 MPDU's.

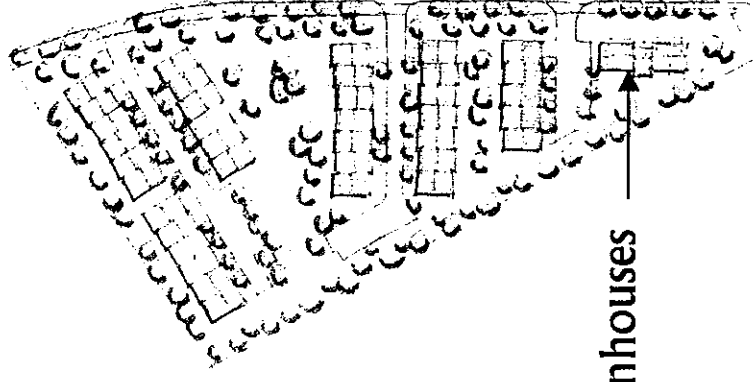
The additional density is achieved through the use of garage townhouses and attached units.

Site B: R90-TDR Zone



Existing Development:

37 garage townhouses



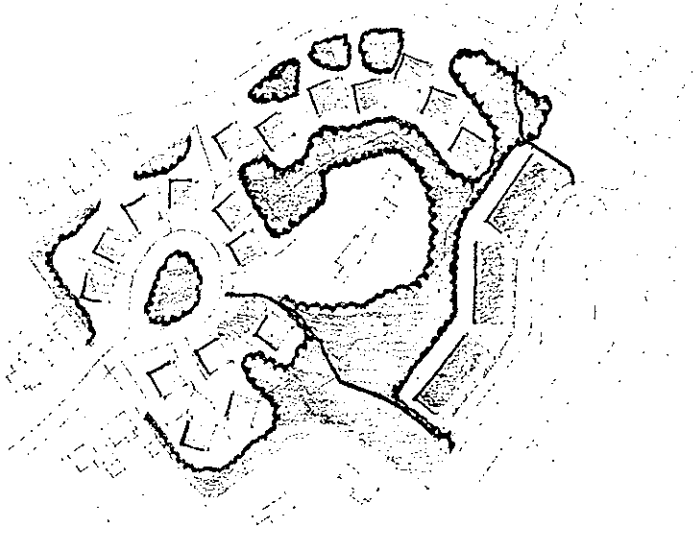
MPDU townhouses

Alternative Development:

42 townhouses: 37 garage townhouses and 5 MPDU townhouses.

The revised layout provides the additional MPDU units without the bonus density.

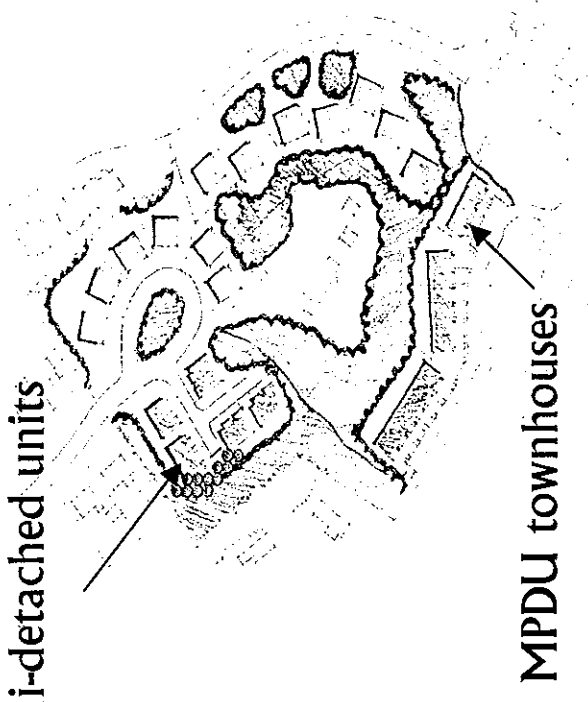
Site C: R-90 Zone



Existing Development:

35 units: 20 Single Family Detached and 15 Townhouses

Single family semi-detached units



MPDU townhouses

Alternative Development:

42 units: 15 single family detached; 10 single family semi-detached; 12 garage townhouses; and 5 MPDU townhouses.

The higher density is achieved by using single family semi-detached units.

The resulting plans are very tight, however, and there is a tendency toward increased townhouses. The MPDU Steering Committee suggested accessory apartments as an efficient way of achieving density in small subdivisions. The difficulty would be the administrative impact of requiring one private property owner to rent MPDU units to others.

The building industry position is basically opposed to this proposal. They indicate that it could be acceptable if the base density and a density bonus can be achieved and if a market rate bonus unit is included. The analysis of recent subdivisions was not definitive. There was no clear pattern demonstrating whether applicants usually achieve the zoned density in these subdivisions.

Staff is persuaded that small subdivisions face greater costs for the MPDU program than larger subdivisions. They are more likely to need to design a separate unit type for a small number of units and less likely to be able to interest the County's large builders of MPDUs in their small projects. Environmental constraints also appear to limit options more than in most larger subdivisions, since the amount of land for clustering is very limited. Therefore, it seems reasonable to consider some concessions for these subdivisions if this proposal is adopted. These might include more generous waivers of the MPDU requirement for environmental constraints and guaranteeing a market rate bonus density unit as part of the MPDU bonus density, even if the total number of MPDUs then falls to lower levels than the density bonus would normally require.

Recommendation: Include MPDUs in subdivisions of 35 to 50 units, guaranteeing that there will be, at least, one market rate bonus unit if the subdivision provides more than the minimum number of MPDUs and permitting more generous waivers than are currently available for small subdivisions that cannot achieve some level of density bonus.

4. Lengthen the MPDU Occupancy and Resale Price Control Period to 15 Years.

In July, the Planning Board agreed not to recommend a change from the current 10-year price control period to 15 years. You did not believe the value of any benefits from this change would outweigh the loss the some of the economic empowerment element of the program.

The research showed that more than one-third of MPDUs sold in 2000 after the end of the price control period were already at or below current prices for new MPDUs and almost 86 percent sold below \$150,000, a price affordable to a low-income family of four with good credit and some savings.

At Council request, staff determined the percentage of MPDUs sold between year 10 and year 15. The table below shows that only about one-third sold during that time period. The years were selected to assure that each unit was out of the control period for, at least, five years. A look at more recent sales shows a slowly increasing

percentage of sales. This may be due to the excellent real estate market of the last few years. In addition, MPDUs that were built with the improved facades permitted by changes in the law in 1989 are just starting to end their control periods, so the effects of that change are not yet known. It appears that a substantial number of households benefit from market rate sales at the end of the price control period but that there is no overwhelming rush to sell as soon as price controls end.

Percent of MPDUs Sold One to Five Years After Expiration of the Control Period (Years 11 - 15)						
End Control Period	Year 11	Year 12	Year 13	Year 14	Year 15	Sum Years 11 - 15
1990	11.8%	8.8%	14.7%	11.8%	0.0%	47.1%
1991	7.7%	3.8%	0.0%	3.8%	0.0%	15.4%
1992	5.3%	9.8%	3.8%	3.8%	6.8%	29.5%
1993	3.7%	6.3%	6.3%	3.0%	3.0%	22.1%
1994	7.1%	11.0%	4.8%	7.1%	6.7%	36.7%
1995	8.4%	8.4%	4.6%	8.4%	4.6%	34.4%
1996	8.1%	15.5%	9.7%	9.7%	7.4%	50.5%
Average	6.8%	10.2%	6.4%	6.8%	5.3%	35.5%

Source: Montgomery County Department of Park and Planning, DHCA, July 2001.

Both MNCBIA and the Steering Committee have stated that they would prefer passage of just one alternative, either the restart of the price control period in Bill 31-01 or this provision. Both prefer passage of the Bill and reliance on restarting controls during the initial 10 years or DHCA or HOC purchase and resale with a new control period. They expressed concern about the quality of maintenance and the impact on the neighborhood with very long potential price control periods and about the impact on the MPDU buyers.

Recommendation: Do not support lengthening the MPDU price control period from 10 to 15 years unless Bill 31-01 does not pass.

5. **Allow Developers the Option of Providing Rental MPDUs in for Sale**

Subdivisions. This proposal would permit an applicant to offer for rent all or some portion of MPDUs in a for sale subdivision. The rent would be controlled for 20 years similar to other rental MPDUs. Currently, MPDUs in for sale subdivisions must also be for sale. There is some concern about the quality of management and impact on the community of small numbers of rental units in a community not necessarily structured to manage them.

Condominium garden apartments are difficult to sell in some parts of the County. Condo fees are often a difficult burden for MPDU residents. Most condos already have some level of management in place. In addition, rental units remain affordable for 20 years rather than 10. For these reasons, permitting rental MPDUs in multi-family condos makes sense. This position is supported by the industry, the MPDU Steering Committee, and Park and Planning Department staff. Passage of this

alternative would remove some of the more difficult to sell MPDUs from the market and facilitate the success of Bill 31-01.

Permitting rental MPDUs in single-family subdivisions is not as clear-cut. The advantages would be the longer price control period and the addition of large, 3 to 4 bedroom, units to the County's very tight rental market. The major disadvantage is the difficulty of managing units in such scattered sites. DHCA reports that single-family rentals are one of the largest sources of housing code violations. The one exception may be back-to-back condominium townhouses. The MPDU site plan guidelines strongly discourage such units, and few, if any, have been built in recent years. If they are structured as condos, however, it might make sense to allow the MPDUs to be rental instead of for sale for the same reasons as garden condos.

Neither the industry nor the Steering Committee is supporting single-family MPDU rentals.

Recommendation: Permit rental MPDUs in multi-family condominiums.

6. **Modify the Parking Requirements for MPDUs.** In response to citizen correspondence, Councilmember Berlage asked staff to examine whether MPDU parking requirements provide sufficient parking.

The only unique MPDU parking provisions apply to high-rise multi-family zones near transit. These do not appear to generate community concern. Planning staff members report that Park and Planning is receiving complaints about insufficient parking from residents of a range of townhouse communities. Garage townhouses that convert garages to other uses especially put pressure on neighborhood parking lots. Most of these are not MPDUs. (The constituent writing to Mr. Berlage also lives in a townhouse community.) This issue does not appear to be directly related to the presence or absence of MPDUs.

The Steering Committee and Planning staff support studying this issue separately from the review of MPDU proposals.

Recommendation: Study townhouse community parking issues separately from the MPDU initiatives.

Attachments:

- 1) Memorandum to the Montgomery County Planning Board, July 5, 2001
- 2) Correspondence between Councilmember Berlage and Mr. Zilliacus regarding MPDU parking issue
- 3) Summary of MPDU Steering Committee September 19 meeting
- 4) Memorandum from Rick Sullivan, Jr. outlining MNCBIA position regarding MPDU issues
- 5) Bill 31-01, proposed amendments to the MPDU law.

**MEMORANDUM**

DATE: June 29, 2001

TO: Montgomery County Planning Board

FROM: Sally Roman, Research and Technology Center SK

SUBJECT: Potential MPDU Revisions Requested by the PHED Committee

Recommendations:

1. Further evaluate the financial feasibility and development standards necessary for expanding the MPDU program to subdivisions of 35 to 50 units.
2. Do not expand the MPDU program to the one- and two-acre zones in recognition of the environmental constraints, particularly lack of sewer, the limited potential yield, and the distance from jobs, shopping, public transportation and other amenities and services.
3. Expand the price control period for MPDUs from 10 years to 15 years, recognizing that although this would quickly expand the number of price controlled units, no new units would be produced, some of the economic empowerment element of the program would be lost, and most prices remain in the affordable range in any case.
4. Explore additional solutions to declining numbers of MPDUs, such as more design flexibility in Euclidean zones to increase yield.

The PHED Committee asked DHCA and Park and Planning staff to study several possible changes to the MPDU law in April. In the intervening period, staff has analyzed substantial data pertaining to these proposals. DHCA and Planning staff have also met twice with members of the development community and housing advocates¹ and once with senior members of the Planning Department's staff from a variety of disciplines. Finally, we have reviewed correspondence to the County Council that commented on MPDU issues as part of the Housing Policy review.

¹ Representatives of umbrella civic associations were also invited to these meetings. None attended the first meeting.

The three issues that the PHED Committee asked us to study are: 1) reducing the threshold for the MPDU program from 50 units to 35 or 40 units, 2) extending the program to the one- and two-acre zones, and 3) lengthening the price control period for MPDUs from 10 years to 15 years. The following discussion addresses the issues related to each of these proposals and staff findings for each.

Reduce the MPDU threshold from 50 to 35 or 40 units.

Issues:

1. Financial feasibility for the developer since market rate bonus units will not be possible in most cases without changes to the density bonus structure of the current law. With small numbers of units, rounding down for the density bonus and up for MPDUs almost always yields the same number of units.²
 - a. Guarantee at least one market rate bonus unit
 - b. Alter either the MPDU requirement or the corresponding density bonuses
 - c. Offer some other incentive
2. Good community design with the introduction of smaller, dense unit types in these smaller subdivisions
3. Is the yield likely to be sufficient to justify the change? Only 22 subdivisions were approved in this size range between 1995 and the present. Two of these were in the Rural Cluster Zone and three were in the RNC Zone. Neither zone requires MPDUs.

Findings:

1. The number of small subdivisions, 35 to 50 units, approved annually is not large and their potential MPDU yield is also limited.

Subdivisions of 35 to 50 Units 1995 Through 2000

Total Units and Total Cases by Year:

Year	Num. Subdivisions	Num. Units	Potential MPDUs	
			12.5%	15%
1995	2	71	10	14
1996	7	289	38	57
1997	4	179	17	25
1998	5	205	28	40
1999	1	44	0	0
2000	3	123	0	0
TOTALS:	22	911	93	136

² The density bonus is rounded down since the law allows no more than a 22 percent density bonus and the number of MPDUs is rounded up because it requires at least 12.5 percent MPDUs.

2. Small subdivisions are spread throughout the County. Although staff expected to find a preponderance of the smaller subdivisions in the down-County area, only 5 of the 22 approved in the last six years were located down-County. The following table shows the distribution by planning area.

Total Units and Total Cases by Planning Area:

Planning Area	Area Name	Num. Subdivisions	Num. Units
11	Damascus	3	120
23	Olney	3	135
13	Clarksburg	1	39
35	B-CC	2	74
19	Germantown	2	92
30	N. Bethesda	2	85
25	Travilah	2	79
24	Darnestown	1	40
14	Goshen	2	71
33	White Oak	1	49
34	Fairland	1	39
28	Cloverly	2	88
TOTALS:		22	911

3. Not all small subdivisions are in areas with public sewer.

Total Units and Total Cases by Water/Sewer Status:

Water / Sewer Status	Num Subdivisions	Num Units
Water & Septic	4	156
Water & Sewer	16	671
Well & Septic	2	84
TOTALS:	22	911

4. Small subdivisions exhibit a wide range of zones. Many are also TDR receiving areas. In fact, six of these projects include TDRs. Together, they provide 129 TDRs.

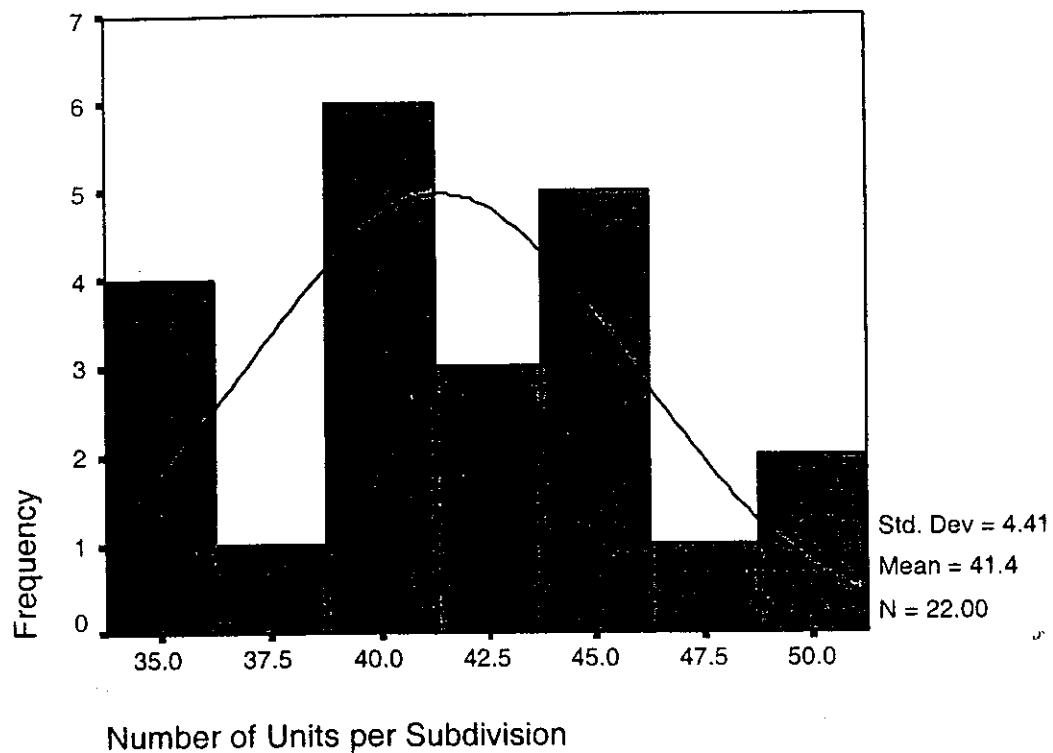
Total Units and Total Cases by Zoning:

Zoning	Num Subdivisions	Num Units	Potential MPDUs	
			12.5%	15%
RNC	3	132	0	0
R-90	2	84	12	16
R-90/TDR	2	85	11	16
R-200	2	79	10	16
R-200/TDR	3	125	16	25
RC	2	84	0	0
RE-2C	4	156	22	30
RMXZ	1	39	5	8
R-60T /TDR	1	39	5	8
RT-12.5	1	42	5	8
T-S	1	46	6	9
TOTALS:	22	911	93	136

Average Number of Units per Subdivision: 41.41 Median Units per Subdivision: 41.00

- There is a wide range of units per subdivision. Only two subdivisions had 49 units, one 48 and none 47. One of the 49 unit cases would not require MPDUs because of its zoning.

Number of Units per Subdivision



Conclusion:

The number of 35 to 50 unit subdivisions has been small in recent years. For this reason and because the zoning of several recent cases would not generate MPDUs under current law or this study, this change is not urgent. The numbers may grow in the future if infill development increases. Meanwhile, this proposal would benefit from further study of ways to increase its financial feasibility to provide market rate bonus units or an alternative incentive and urban design approaches to assure compatibility of unit types in these subdivisions. There is a possibility that without changes in development standards this revision to the law would make it more difficult to continue to build a reasonable share of market rate single-family detached housing. Changes in development standards that would offer more flexibility in lot sizes, setbacks, and even housing types could enhance the feasibility of this proposal. Such changes could also be valuable in larger subdivisions to maximize the MPDU yield. The development standard studies might be a logical addition to the review of residential zones in the Comprehensive Zoning Ordinance Review.

Include large lot zones, RE-1, RE-2, and RE-2C, in the MPDU program

Issues:

1. Environmental concerns – vast majority of these properties are not planned for sewer service and are in category S-6. Eighty-four percent of those where the sewer category is known were S-6
2. Appropriate unit types for MPDUs in large lot zones to ensure both affordability and compatibility
3. Convenience for residents to shopping, mass transit, and other services and amenities. The majority of properties identified in this study are located in the northeastern quadrant of the County which is comparatively distant from jobs and many services.

Findings:

1. About 84 percent of the 56 properties that are identified as being large enough to require MPDUs and for which the sewer category is known are not planned for sewer service. These properties are classified as Sewer Category 6. RE-1 Zone properties are most likely to be designated for sewer service as almost 36 percent are. Some of these, however, are 7 to 10 years or more away from service. Only 18 percent of RE-2 Zone properties and 6.5 percent of RE-2C properties are designated for sewer service.

The table shows the extent to which large RE-1 and RE-2 properties are outside the sewer envelope. The list was developed as part of staff efforts to identify parcels in the County that could accommodate projects large enough to require MPDUs. It contains all properties in the Tax Assessor's records of 25 acres or more in the RE-1 Zone and 50 acres or more in the RE-2 and RE-2C zones that

are not publicly owned. While these base parcel sizes are still too small to require MPDUs, they appear to create a critical mass that might generate additional assemblage. There may be smaller properties in a few places in the County that could also assemble but in staff's judgment, this is rarely realistic. One possible exception in Potomac is recommended for the RNC Zone in the draft Master Plan. This zone does not require MPDUs.

Parcels, Acres, and Units Sufficient for MPDUs by Sewer Category

Sewer Category	RE-1				RE-2				RE-2C			
	Parcels	Acres	MPDUs		Parcels	Acres	MPDUs		Parcels	Acres	MPDUs	
			12.5%	15%			12.5%	15%			12.5%	15%
S-1	2	86	11	16	2	179	12	17	1	91	6	9
S-3	0				0				1	55	4	5
S-5	3	151	20	23	0				0			
S-6	9	1,284	165	259	29	3,581	239	341	9	1,089	71	103
Unknown	4	193	25	34	1	60	4	6	1	68	5	7
Total	18	1,714	221	338	32	3,820	255	364	12	1,303	86	124

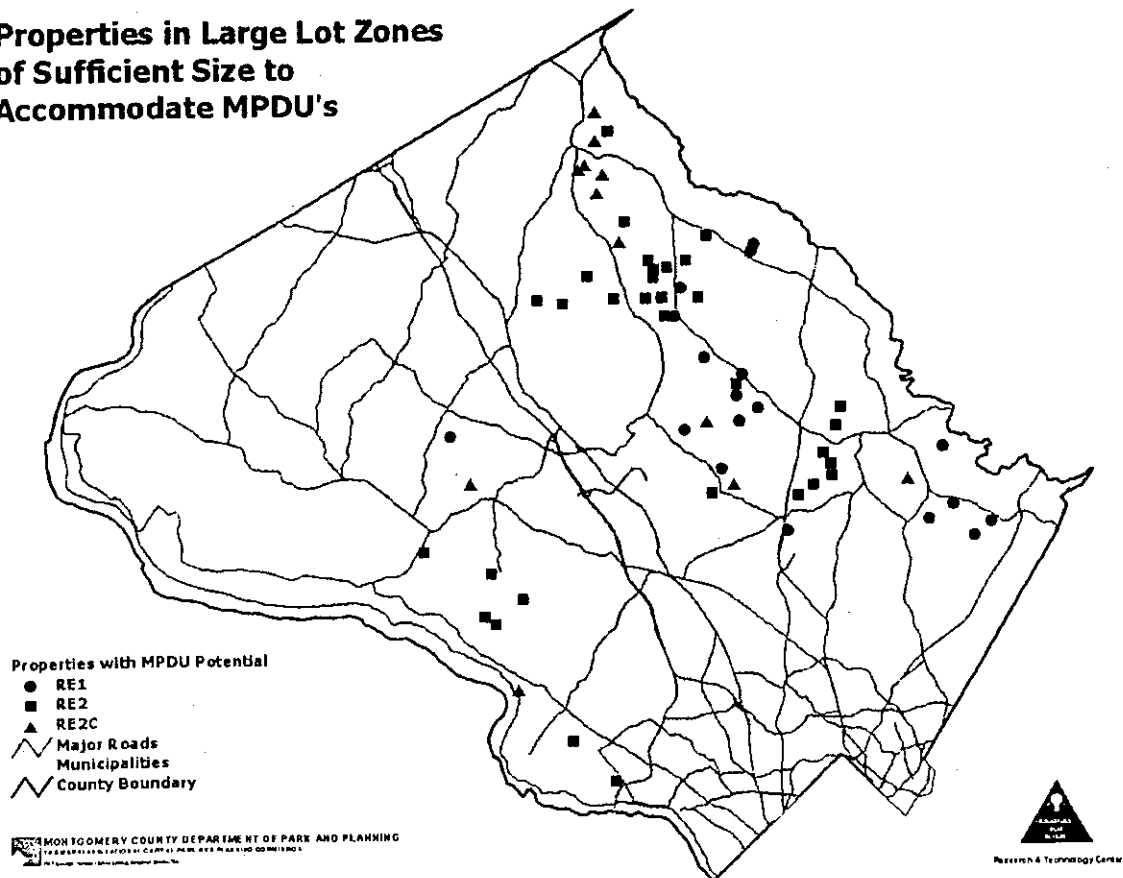
- The MPDU yield from these properties would be modest unless an economically feasible and environmentally sound way is found to extend sewer service to all of them, consistent with the sewer and water policies in each master plan and the Comprehensive Water and Sewer Plan. Properties in S-1 and S-3 could generate 33 to 47 MPDUs. Properties in S-5 and those with unknown sewer categories could add another 54 to 70 MPDUs. If all the RE-1, RE-2, and RE-2C properties were developed with MPDUs, 562 to 826 units would result.

At this time, however, parts of the large lot zoned areas of the County are difficult and expensive to provide with sewer service. The County is not approving innovative techniques and the topography and subsurface rock in many of these areas make traditional gravity sewers extremely costly if not impossible. Other methods of providing sewer service, such as low pressure, also have difficulties in implementation.

- The following map displays the distribution of large lot properties identified as having MPDU potential. Note that the majority of properties are in the northeastern quadrant of the County. Although much of the Potomac Subregion is in these zones, there are few remaining large parcels that are vacant or redevelopable. The two RE-2 properties in Potomac are parts of the Avenel Tournament Players golf course property and Congressional Country Club. The one RE-2C property has an approved site plan and preliminary plan. (It is currently asking for modifications to its site plan).

The County-wide list also contains two Legacy Open Space properties. Four of the six properties in S-1 or S-3, slated for near-term sewer service, have approved preliminary plans or site plans.

Properties in Large Lot Zones of Sufficient Size to Accommodate MPDU's



4. The large lot properties are generally located away from employment areas, mass transit, and commercial areas. At this time, transportation to major job centers from Cloverly, Goshen, and Upper Rock Creek, where many of these properties are located, is comparatively difficult. While MPDU households typically own cars, these distances can still represent a hardship. MPDU densities in many of these areas appears contrary to smart growth objectives.

Conclusion:

The large lot zones present major hurdles for the MPDU program. The most significant is the lack of sewer service in a large percentage of cases. Transportation to common destinations is also difficult. Integrating denser housing with large estate-style housing is also a challenge but one that could probably be met with creatively designed units, such as plexes. These creative housing types tend to be more expensive to design and build than the typical MPDU townhouse, however. For these reasons, staff does not support this proposal.

Lengthen the MPDU price control period for for sale housing from 10 years to 15 years

Issues:

1. Easiest to accomplish since it will only affect future buyers who are unlikely to object.
2. Will have the greatest yield in terms of the overall number of affordable units in the County (but will not add any new units)
3. Significantly delays the ability of MPDU buyers to realize the equity in their units which is the economic empowerment element of the program

Findings:

1. Most MPDUs remain affordable, even after the end of the price control period. Staff gathered sales and assessment data for more than 2,000 MPDUs for which the price control period ended in 1988 or later. For this study, staff analyzed 195 units which sold during 2000. This sizable sample offered an opportunity to judge how prices fared in a period of rising prices for all County housing.

The resulting data show that 37 percent, or 72 units, sold for prices that are at or below the current price of a new townhouse MPDU, currently about \$100,000 to \$110,000. These sales ranged from \$71,000 to \$110,000. Their distribution is displayed in the chart on the following page.

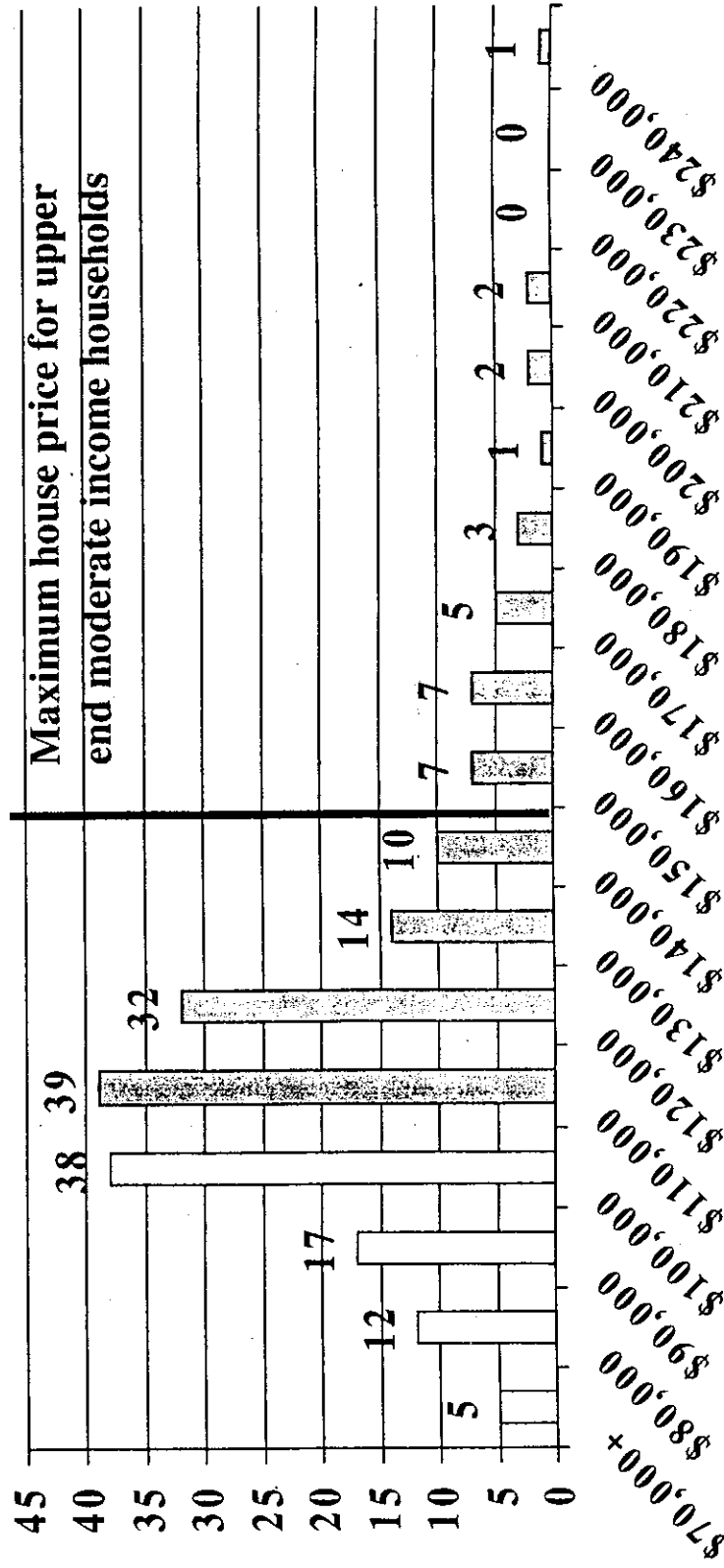
Only 14 percent of the MPDUs or 28 units sold for more than \$150,000. \$150,000 is about the maximum price that a low-income family of 4 or 5 with good credit could afford. This means that the vast majority of MPDU units remain in the reasonably affordable price range.

2. Even though they remained affordable, it appears that many of the units in this sample appreciated more than the amount permitted for resales during the price control period. (It is difficult to assess this precisely since a seller can recover improvement, closing cost, and real estate commission costs as well as the increase in the Consumer Price Index for the period of ownership.) This modestly larger growth in equity assists the MPDU seller to become competitive in the market rate housing market, while retaining prices affordable to lower income households in most cases.

Conclusion:

The proposed change will modestly improve the affordability of resale MPDUs that are 10 to 15 years old. It will not add any units to the overall housing supply but will add to the number of units whose affordability is controlled. While 15 years is a long period to wait for equity for a young or middle aged household, it is not prohibitive. (Fairfax County reduced its control period from 50 years to 15 years at least in part

Most MPDUs Remain Affordable



2000 Sales of MPDUs Past Price Control Period

Research & Technology Center
M-NCPPC, Montgomery Cty.

Sales portrayed by green bars are at or below current prices for new MPDUs

because of market resistance.) Staff struggled with this recommendation because there are real benefits to both alternatives and no overwhelming evidence in favor of either.

Other alternatives

Issues:

1. None of the current proposals appear to make significant inroads in the declining number of MPDUs, except lengthening the control period which does not create new units.
2. The MPDU program is a national model and its continued vitality is essential.
3. It would be valuable to find additional revisions to the program that would enhance its usefulness in a maturing County.

Findings:

1. Department of Park and Planning staff members suggest that there may be changes to development standards that would maximize MPDU yields while creating attractive, livable communities.
2. Affordable housing advocates suggest that MPDUs should be resold only to MPDU eligible households or recaptured by the County or nonprofit organizations. (The County currently has the right of first refusal at the end of the price control period. High per unit costs relative to other options, such as buying older multi-family buildings and the 33 percent per subdivision ownership limit for HOC constrain this option.)
3. Members of the development community suggest reexamining environmental standards, such as stream buffer areas and afforestation policies, for MPDU developments.
4. A number of people recommended review of height limits and other master plan guidelines during the discussions about achieving more MPDUs in high-rise housing.

Conclusion:

Staff recommends evaluating the proposed alternative methods of increasing the supply of MPDUs and continuing to search for new approaches.

List of Attachments:

1. Table of History of MPDU Offerings
2. Median Housing Sales Prices in Montgomery County
3. Summary of Meeting of Affordable Housing Advocates and Representatives of the Development Community
4. Housing Policy Correspondence to the County Council Pertaining to MPDUs



MONTGOMERY COUNTY COUNCIL

Derick Berlage

Councilmember - District 5

August 2, 2001

Mr. C. Patrick Ziliacus
2931 Shepperton Terrace
Silver Spring, Maryland 20904-6716

Dear Mr. Ziliacus:

Thank you for your thoughts on the Moderately Priced Dwelling Unit (MPDU) Program.

By copy of this letter, I have asked staff to address the parking requirement.

The "recycling" of MPDUs is under consideration and legislation is being drafted that might make such an effort a little easier.

Again, thanks for your thoughts.

Sincerely,

A handwritten signature in black ink, appearing to read "Derick", is written over a horizontal line.

Derick P. Berlage
Councilmember

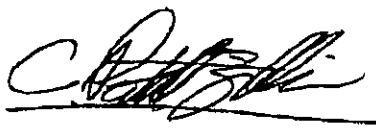
2001corr/scm/DHCA/Ziliacus

**2931 Shepperton Terrace
Silver Spring, Maryland 20904-6716
Phones - Home: 301/384-0972 Office: 202/962-3292
E-Mail: CPZ@OS2BBS.COM**

MEMORANDUM

DATE: 23 July 2001

TO: Hon. Derick P. Berlage
Chair, Planning, Housing and Economic Development
Committee
Montgomery County Council

FROM: C. Patrick Zilliacus 

SUBJECT: Moderately Priced Dwelling Unit Policy

[Disclaimer]

I am speaking on my own behalf, informed by many years' experience in a mostly fee-simple townhouse community constructed in the 1980's that once had a significant number of owner-occupied Moderately Priced Dwelling Unit (MPDU) homes that have since expired. However, I am not representing any board, committee or group, nor have I ever participated in the MPDU program personally.

[End Disclaimer]

It is my understanding that the Planning, Housing and Economic Development (PHED) Committee is undertaking a review of the MPDU program. Here are some comments that might be useful:

1. Please eliminate the reduction in the number of parking spaces that a developer must build for MPDUs, if it is still in force. Unless there is a proven and significant correlation between MPDU owners and the number of motor vehicles that their owners (do not) own, then this allowance, if still present, should be removed. Please consider that the MPDU restrictions do eventually expire, and future homeowners should not be punished because Montgomery County

Hon. Derick P. Berlage
Chair, Planning, Housing and Economic Development Committee
Montgomery County Council

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23 July 2001

policy hoped that MPDU owners in the past would own fewer motor vehicles. I have had to explain to residents of my community, over and over again, that the supply of parking spaces on our property is severely constrained in part because of a county policy that dates to the early 1980's, and even though all homes in my community, with the exception of those owned by the Housing Opportunities Commission (HOC), are now market-rate units.

2. The Council should consider a "recycle" program for MPDUs in planning areas where it might make sense, and to encourage *owner-occupied* homes. This would allow a developer building new units *in the same master plan area* to purchase and renovate homes in existing townhouse and condominium neighborhoods (perhaps limited to neighborhoods that have had MPDUs in the past) and place them in the MPDU program in exchange for some reduction in the number of new MPDUs that the builder must build. Obviously, there would have to be some ground rules for such a program, such as a limit on the number of MPDUs that a developer could avoid constructing through this type of program, and I am not suggesting this as a way for builders and developers to totally "opt out" of the requirement to incorporate MPDUs in developments over 50 units. Additionally, the Council might consider a "recycle" MPDU program for new developments with less than 50 units as a way to add more affordable homes to the housing stock of Montgomery County.

Councilmember Praisner recently reminded me that MPDUs can, under current policy, be purchased by the HOC for use as permanent rental units - there is at least one such "scattered site" unit in my community today - but I make these suggestions specifically to encourage owner-occupied MPDUs, not more rentals.

What would be the benefits of such a program? It would allow

Hon. Derick P. Berlage
Chair, Planning, Housing and Economic Development Committee
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23 July 2001

homeowners who are "accidental" landlords in a community such as mine (where real property values have declined since 1990) to dispose of their properties. MPDUs are, by definition, owner-occupied, which is a significant benefit to communities that have a high percentage of rental units, even though the intent when these communities were built was for them to be lived in by their owners. Many townhouse and condominium units in Montgomery County that were built between 1980 and 1990 suffer from an assortment of defective materials, including "FRT" plywood roof sheathing that has widely failed, polyvinyl chloride water supply lines, and heat pump units that are reaching the ends of their useful lives. Recycling these homes to MPDUs would allow these problems, and others, such as cheap, drafty windows, to be replaced. Each of these repairs costs thousands of dollars (based on my own personal experience) - repairs that may be beyond the means of residents living in these homes today.

How would MPDU units be acquired for a recycle program? In my own community, I can think of several sources:

- a. From the Departments of Housing and Urban Development and Veterans Affairs;
- b. From other financial institutions, including mortgage "wholesalers" such as Fannie Mae and Freddie Mac;
- c. From "accidental" landlords (not investors); and
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Hon. Derick P. Berlage
Chair, Planning, Housing and Economic Development Committee
Montgomery County Council

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23 July 2001

Please take my points into consideration. There may be benefit to everyone affected by the MPDU policy in these ideas.

I will be happy to answer any of your questions on these or related topics.

cc: Arthur Holmes, Jr., Chair, Montgomery County Planning Board, M-NCP&PC

Hon. Marilyn J. Praisner, District 4, Montgomery County Council

Dr. Stuart Rochester, Chair, Fairland Master Plan Citizens' Advisory Committee

Facsimile Information**C. Patrick Zilliacus****2931 Shepperton Terrace
Silver Spring, Maryland 20904-6716**Date: 23 July 2001

Time: _____

From: **C. Patrick Zilliacus**
FAX phone: **202/962-3202**
My home phone: **301/384-0972**
My office phone: **202/962-3292**
My E-mail address: **CPZ@OS2BBS.COM**

To: Hon. Derrick P. BerlageDepartment: Chair, PHED CommitteeOrganization: Montgomery County Council

City, State: _____

FAX phone: 240 777 7989Voice phone: 777 7967Comments: Thoughts on MDDUs.

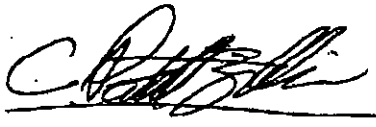
_____Number of pages (including cover page): 5

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MEMORANDUM

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Montgomery County Council

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Chair, Planning, Housing and Economic Development Committee
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4

23 July 2001

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cc: Arthur Holmes, Jr., Chair, Montgomery County Planning Board, M-
NCP&PC
Hon. Marilyn J. Praisner, District 4, Montgomery County Council
Dr. Stuart Rochester, Chair, Fairland Master Plan Citizens'
Advisory Committee

MPDU Steering Committee Summary of September 19 Issues Discussion

Twelve members of the MPDU Steering Committee met on September 19, 2001. The purpose of the meeting was to discuss the proposed Amendment to Chapter 25A and the possible changes to the MPDPU law that the PHED Committee will be discussing on October 15. The list of attendees is attached. The results of the discussion are summarized below.

1. Bill 31-01 Moderately Priced Dwelling Units – Amendments. This bill is intended 1) to restart the price control period at 10 years if an MPDU is sold during the price control period and 2) to give both DHCA and HOC the right of first refusal to purchase MPDUs during or at the first sale after the end of the price control period.

The group did not reach consensus on these amendments. Several participants are concerned that this change would make older price controlled MPDUs more difficult to sell and that, without the motivation of realizing increased equity, units will not be well maintained. Other members of the committee believe that this would be an effective tool for retaining more price controlled MPDUs that should not have negative impacts on residents, neighbors, and developers.

One suggestion that the Council might consider is to limit the restart of price controls to the first resale rather than permitting it if there are multiple resales.

The Committee will not have a recommendation on this amendment. Instead, members will comment separately. Members did note one technical issue. As written, the amendment only gives the 60 day exclusive review period to the Department for sales during the price control period. The Commission should also be permitted to act during this period. A member also suggested that nonprofit housing providers should be notified and allowed to consider the property when the Department has the right of first refusal. There appeared to be support for this proposal.

2. Apply MPDU Program to RE-1, RE-2, RE-2C, RNC, and RC Zones. This proposal would extend the MPDU program to these large lot zones. As staff research last summer shows, most of the eligible properties in these zones are not designated for public sewer service. Subsequent discussions with DEP staff indicate that alternative sewer systems that would permit greater density in these areas are generally not permitted by the State or, as a result, by the County. Rare exceptions are made for failing existing systems.

The Committee agreed that the MPDU program would work in the large lot zones with sewer, the ability to cluster, and the ability to achieve the density bonus. The RNC Zone appears able to meet these conditions now and would be a good addition to the MPDU program. With sewer, RE-2C and RC should also be potential candidates. The RE-1 and RE-2 Zones would require major changes to accommodate

MPDUs. There was not support for including them. Members also expressed interest in designating appropriate large properties as TDR receiving areas which would add an MPDU requirement in most cases.

Committee members noted concerns about the impact of MPDUs on environmentally fragile land and the expense to residents of maintaining large lots and conducting daily life in comparatively remote areas.

3. Apply MPDU Requirement to Subdivisions of 35 or More Units. This proposal would add smaller subdivisions to the MPDU program. As the program is currently structured, most, if not all, subdivisions of this size would be unable to achieve a market rate density bonus unit. To achieve the maximum density, townhouses are likely to be the most prevalent unit type because of the limited land area in these subdivisions.

There was general agreement that this modification to the law would be acceptable if builders can be assured at least one market rate density bonus unit and if they are able to achieve the zoned density for the property. Many participants said that if the base density was not possible, a project should be excused from the MPDU program. There appeared to be an underlying belief that many small, often infill, properties are particularly likely to have environmental or compatibility constraints that preclude them from reaching full density.

Accessory apartments were suggested as one way to achieve sufficient density and still produce the detached housing much of the market wants.

4. Lengthen the MPDU Occupancy and Resale Price Control Period to 15 Years.

Committee members do not support this change combined with the proposal to restart the price control period for resales during the period contained in Bill 31-01. They suggested either lengthening the control period or restarting it for resales but not both. They expressed concern about the quality of maintenance and impact on the neighborhood with very long potential price controls and about the impact on MPDU buyers.

5. Allow Developers the Option of Providing Rental MPDUs in for Sale Subdivisions. This proposal would permit an applicant to offer for rent all or some proportion of MPDUs in a for sale subdivision. The rent would be controlled for 20 years similar to other rental MPDUs. Currently, MPDUs in for sale subdivisions must also be for sale. There is some concern about the quality of management and impact on the community of small numbers of rental units in a community not necessarily structured to manage them.

Committee members support permitting this option for multi-family condominiums. Most condos already have some management resources, and MPDU condos are sometimes difficult to sell making this an attractive option.

6. Modify the Parking Requirements for MPDUs. In response to citizen correspondence, Councilmember Berlage asked staff to examine whether MPDU parking requirements provide sufficient parking.

The only unique MPDU parking provisions apply to high-rise multi-family zones near transit. Planning staff members report that Park and Planning is receiving complaints about insufficient parking from residents of a range of townhouse communities. (The constituent writing to Mr. Berlage also lives in a townhouse community.) This issue does not appear to be directly related to the presence or absence of MPDUs.

Committee members support studying this issue separately from the review of MPDU proposals.

Name

Organization

Phone #

Sally Roman	MNCPPC	301-495-4723
Peggy Roman	MC L W V	301-774-8935
Katherine Nelson	MNCPPC	301-495-4622
John Clarke	ELM STREET DEV.	703-734-9730
Silvia Silverman	LSA	301-948-2750
Melpi Jeffries	LWVMC	301-530-5452
Norman M. Dreyfuss	IDI-Md	301-598-2100
Roy L. Appeltree	HCA	301-929-2358
Rick Sullivan, Jr.	Classic Community Grp.	301-913-0404 X305
Elizabeth B. Darden	DHCA	240 777 3605
Eric Larsen	DHCA	3713
Robert Goldmen	MHO	301-946-0882 ext 14

8120 Woodmont Avenue
Suite 300
Bethesda, Maryland 20814
Phone (301) 913-0404
Fax (301) 913-5482

**CLASSIC
COMMUNITY
CORPORATION**

Memo

To: Sally Roman – MNCPPC
Elizabeth Davidson – DHCA
Eric Larsen – DHCA

From: Rick Sullivan, Jr. 

CC: Norman Dreyfuss
John Clarke

Date: September 27, 2001

Re: MPDU Task Force

On behalf of MNCBIA, we appreciate the opportunity to provide input pertaining to possible changes to the MPDU law. As you know, we are strong advocates for affordable housing. However, I want to make sure that I clarify MNCBIA's position regarding the items we discussed at the Task Force meeting.


1. Bill No. 31-01. We are in favor of creating an additional 10 year control period on resales of homes within the original 10 year control period. However, this additional control period should only occur one time and should not apply to rental units. The Bill in its current form needs to be modified.
2. Apply the Program to RE-1, RE-2, RE-2C, RNC and RC zones. We are not in favor of this item. We would not be opposed to applying the program to RE-1 and RE-2 provided that the applicant received the zoning density and bonus density and that water and sewer was available. Regarding clustering zones, we would not be in favor of applying the program due to the uncertainty of base density within the zones.
3. Reduce the threshold to 35 units. We are not in favor of this item. Again, we would not be opposed if there was a guarantee that the applicant would receive the base zoning density for market units and at least one bonus market unit in addition to the MPDUs. If these criteria were not possible, the applicant would receive a waiver.
4. Lengthen the control period to 15 years. We are not in favor of this item because we believe Item #1 is a better way to increase the number of units in the program.
5. Allow the applicant the option of providing rental MPDUs in multi-family subdivisions rather than selling them through the program. We are in favor of this item.

Please let us know how we can be of more assistance in your preparation for the October 15th meeting.

MEMORANDUM

September 28, 2001

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney

SUBJECT: **Public Hearing:** Bill 31-01, *Moderately Priced Dwelling Units - Amendments*

Councilmembers Berlage, Silverman, Denis, and Praisner introduced Bill 31-01, *Moderately Priced Dwelling Units - Amendments* on September 11.

Bill 31-01 would restart the price control period for moderately priced dwelling units (MPDUs) if a sale unit is resold during the original 10-year control period and expand the ability of the Department of Housing and Community Affairs (DHCA) to buy MPDUs during and after the control period. The bill results from a worksession the Planning, Housing, and Economic Development Committee held on July 16 where the Committee reviewed a number of suggestions for changes in the MPDU program. The public hearing will be advertised broadly enough to cover any other amendments to the MPDU law.

Committee members have indicated that they may consider further changes to the MPDU law. At a worksession tentatively scheduled for October 15, the Committee expects to receive more information on the following issues.

- extending the MPDU program to apply to subdivisions in the RE-1, RE-2, RE-2C, RNC, and RC zones;
- extending the MPDU control period from 10 to 15 years;
- extending the MPDU requirement to subdivisions of 35 or more units;
- permitting developers to meet MPDU requirements in for-sale subdivisions by providing rental units with 20-year price controls; and
- modifying parking space requirements for subdivisions with MPDUs.

This packet contains:

Bill 31-01

Legislative Request Report

Circle #

1

8

Bill No. 31-01
Concerning: Moderately Priced
Dwelling Units - Amendments
Revised: 9-6-01 Draft No. 2
Introduced: September 11, 2001
Expires: March 11, 2003
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers, Berlage, Silverman, and Denis

AN ACT to:

- (1) revise certain provisions of law regulating the sale and resale of moderately priced dwelling units; and
- (2) generally amend the law governing moderately priced dwelling units.

By amending

Montgomery County Code
Chapter 25A, Housing, Moderately Priced
Sections 25A-3, 25A-8, and 25A-9

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:

Sec. 1. Sections 25A-3, 25A-8, and 25A-9 are amended as follows:

25A-3. Definitions.

The following words and phrases, as used in this Chapter, have the following meanings:

* * *

(g) *Control period* means the time an MPDU is subject to either resale price controls and owner occupancy requirements or maximum rental limits, as provided in Section 25A-9. The control period is 10 years for sale units and 20 years for rental units, and begins on the date of initial sale or rental. If a sale or rental MPDU is sold to an eligible person within 10 years after its initial sale or rental, the unit must be treated as a new sale MPDU and a new control period must begin on the date of the sale.

* * *

25A-8. Sale or rental of moderately priced dwelling units.

* * *

(b) Department of Housing and Community Affairs, Housing Opportunities Commission or other designated housing development agency or corporation.

(1) In view of the critical, long-term public need for housing for families of low and moderate income, the Department, the Commission, or any other housing development agency or nonprofit corporation designated by the County Executive [has the option to] may buy or lease, for its own programs or programs administered by it, up to 40 percent of all MPDUs which are not sold or rented under any other federal, state, or local program. The Department or Commission may buy or lease [upon] up to 33 percent of the MPDUs not sold or rented under

any other federal, state, or local program. Any other designated agency or corporation may buy or lease (A) any MPDU[s] in the first 33 percent that HOC has not bought or leased, and (B) the remainder of the 40 percent. This option may be assigned to persons of low or moderate income who are eligible for assistance under any federal, state, or local program identified in regulations adopted by the [County] Executive. The [County] Executive must, by regulation, adopt standards and priorities for designating nonprofit corporations under this subsection. These standards must require the corporation to demonstrate its ability to operate and maintain MPDUs satisfactorily on a long-term basis.

- (2) The Department must notify the Commission or other designated agency or corporation promptly after receiving notice from the applicant under subsection (a) of the availability of MPDUs. If the Department, the Commission, or any other designated agency or corporation exercises its option, it must submit to the applicant, within 21 calendar days after the Department notifies the Commission under subsection (b), a notice of intent to exercise its option for specific MPDUs covered by this option. Any MPDUs not bought or leased under this subsection must be sold or rented only to eligible persons under subsection (b) during the priority marketing period for eligible persons to buy or lease.
- (3) In exercising this option, the Department, the Commission, and any designated agency or corporation must designate the units by reference to number, type, size and amenities of the units selected if the designation does not result in any [one] type of unit

55 exceeding by more than 40 percent the total units of that type
 56 which are sold or rented under this Section, unless the applicant
 57 agrees otherwise. The notice required under subsection (b)(2)
 58 must state which MPDUs are to be offered for sale and which are
 59 to be offered for rent, and the Department, the Commission, and
 60 any designated agency or corporation may buy only units which
 61 are offered for sale and may lease only units which are offered
 62 for rent. The Department, the Commission, and any designated
 63 agency or corporation must decide whether it will exercise its
 64 option within 45 days after it receives the original notice.

65 **25A-9. Control of rents and resale prices; foreclosures.**

66 * * *

67 (b) *Resale requirements during the control period.*

68 (1) Any MPDU offered for resale during the control period must first
 69 be offered exclusively for 60 days to the Department. The
 70 Department may buy a unit when funds are available and the
 71 Director finds that the Department's buying and reselling the unit
 72 will increase opportunities for eligible persons to buy the unit. If
 73 it does not buy the unit, the Department must notify eligible
 74 persons and the Commission of the availability of a resale
 75 MPDU. The unit may be sold through either of the following
 76 methods:

- 77 (A) The Department may by lottery establish a priority order
 78 under which eligible persons who express interest in
 79 buying the unit may buy it at the approved resale price.
 80 (B) The Department may notify the MPDU owner that the
 81 owner may sell the unit directly to any eligible person

under the resale provisions of this Chapter.

(2) A resale MPDU may be offered for sale to the general public only after:

(A) the priority marketing period expires; and

(B) all eligible persons who express an interest in buying it have been given an opportunity to do so.

(3) The Executive by regulation may adopt requirements for reselling MPDUs. The regulations may require a seller to submit to the Department for approval:

(A) a copy of the proposed sales contract, including a list and the price of any personal property included in the sale;

(B) a signed copy of the settlement sheet; and

(C) an affidavit signed by the seller and buyer attesting to the accuracy of all documents and conditions of the sale.

(4) A transfer of an MPDU does not comply with this Chapter until all required documents and affidavits have been submitted to and approved by the Department.

(c) *First sale after control period ends.*

(1) If an MPDU originally offered for sale or rent after March 21, 1989, is sold or resold after its control period ends, upon the first sale of the unit the seller must pay to the Housing Initiative Fund one-half of the excess of the total resale price over the sum of the following:

(A) The original selling price;

(B) A percentage of the unit's original selling price equal to the increase in the cost of living since the unit was first sold, as determined by the Consumer Price Index;

(C) The fair market value of capital improvements made to the unit between the date of original sale and the date of resale; and

(D) A reasonable sales commission.

The Director must adjust the amount paid into the fund in each case so that the seller retains at least \$10,000 of the excess of the resale price over the sum of the items in (A)--(D).

(2) The Director must find that the price and terms of a sale covered by subsection (c)(1) are bona fide and accurately reflect the entire transaction between the parties so that the full amount required under subsection (c)(1) is paid to the fund. When the Director finds that the amount due the fund is accurate and the Department of Finance receives the amount due, the Department must terminate the MPDU controls and execute a release of the restrictive covenants.

(3) The Department and the Commission, [has] in that order, have the right for 30 days after the offer is made to match any bona fide offer to buy an MPDU the first time the MPDU is offered for sale after 10 years after the original sale or rental.

(4) The Commission and any partnership in which the Commission is a general partner need not pay into the Housing Initiative Fund any portion of the resale price of any MPDU that it sells after 10 years after the original sale or rental.

* * *

133 *Approved:*

134

Blair G. Ewing, President, County Council

Date

135 *Approved:*

136

Douglas M. Duncan, County Executive

Date

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

138

Mary A. Edgar, CMC, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 31-01

Moderately Priced Dwelling Units - Amendments

DESCRIPTION: Restarts the price control period for moderately priced dwelling units (MPDUs) if a sale unit is resold during the original 10-year control period. Expands the ability of the Department of Housing and Community Affairs (DHCA) to buy MPDUs during and after the control period.

PROBLEM: Need to maintain and increase the availability of MPDUs.

GOALS AND OBJECTIVES: Retain the moderately priced character of MPDUs that are sold during the initial control period. Allow government agencies, subject to funding, to buy more MPDUs when circumstances warrant.

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

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905

APPLICATION WITHIN MUNICIPALITIES: Affects only County MPDU program, which applies in municipalities where County zoning authority is in effect.

PENALTIES: Not applicable

