

M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

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PARK AND PLANNING COMMISSION

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November 9, 2005

Memorandum

To: Montgomery County Planning Board
Via: Karl Moritz, Chief, and Research & Technology Center
From: Sharon K. Suarez, AICP, Housing Coordinator, Research & Technology Center
Subject: Council Bill 30-05 and Zoning Text Amendment 05-16 – Workforce Housing

Background

The Planning Board has been asked to review Council Bill (CB) 30-05 and Zoning Text Amendment 05-16, both of which have been proposed to increase the production of new housing units affordable to working households earning between 80 and 120 percent of the Area Median Income (AMI). This body of proposed legislation seeks to complement the Moderately Priced Dwelling Unit (MPDU) program, the Productivity Housing Program, and other County affordable housing programs.

The purpose of this memo is to provide comments on the bill and ZTA introduced by the County Council in October, as well as to introduce the staff's workforce housing policy proposal, technical supplement, and related memos to Council. Copies of Bill 30-05, Zoning Text Amendment (ZTA) 05-16, the latest version of staff's Workforce Housing Policy proposal and related technical supplement, and the various related memos are attached.

Council Bill 30-05

As proposed, Council Bill 30-05 creates "Article 5: Workforce Housing" and in doing so:

- Defines a workforce housing project as one with ten percent of the dwelling units –not counting any MPDUs or any resulting bonus density units—are sold or rented to households with incomes at or below 120 percent of the AMI.
- Requires that a developer of any subdivision with 35 or more dwelling units at one location to build the number of workforce housing units required under Chapter 59.

- States that the program’s administration will be similar to or at least consistent with the regulations that govern the MPDU program.
- Requires the developer of a workforce housing project, together with the Department of Housing and Community Affairs (DHCA), to execute an agreement to build workforce housing units. This agreement must address staging, mix, and sales prices or annual rents.

Zoning Text Amendment 05-16

As proposed, ZTA 05-16 defines a workforce housing unit, stipulates the applicable zones, and provides standards for the development of workforce housing units, as follows:

- Defines a workforce housing unit as one that is subject to rent limits or sales controls under Chapter 25B, and states that a workforce housing unit is not an MPDU or a Productivity Housing Unit.
- Defines a workforce housing development as one located in a zone with a maximum permitted residential density at or above 40 dwelling units per acre AND located in a Metro Station Policy Area. The applicable zones include R-10, R-H, C-2, CBD-.0.5, CBD-R1, CBD-1, CBD-2, CBD-3, and CBD-R2.
- Requires workforce housing for any preliminary plan of subdivision that proposes the development of 35 or more dwelling units, not counting any MPDU bonus density units.
- The R-10 and R-H zones require workforce housing in developments stipulates that the number of workforce housing units will be based on the total number of dwelling units – including TDRs—but not counting any MPDUs or resulting Bonus Density units.

Workforce Housing Policy Proposal

Staff proposes that the County consider a comprehensive approach to the provision of workforce housing. Staff has prepared a proposed amendment to the County’s housing policy. Staff is not sure that there is sufficient time on the Board’s November 17 agenda to review this proposed policy, but staff would like to review the main elements of our proposed policy with the Board to determine if the Board would like to schedule a work session on this matter.

Summary of Recommendations

The Department’s staff agrees that there is a pressing need to increase the supply of housing affordable to Montgomery County’s workforce households and applauds the intent of the initiative encompassed in Bill 30-05 and ZTA 05-16. Staff agrees that this program will indeed complement the County’s other affordable housing initiatives. With that in mind, staff submits the following three recommendations to the Planning Board.

1. *Approve Bill 30-05 with the following modifications:*

- Define “Planning Board” in Section 25B-23 (Definitions).
- Cap workforce incomes at 100 percent of AMI, instead of at 120 percent of AMI. (See 25B-23 (j), 25B-24(b), 25B-27(a), and elsewhere.)
- Clarify in 25B-24(c) that the intent to complement the MPDU program means that there will be no gap between the upper income limits of the MPDU program and the lower limits of the workforce housing program.
- Clarify in 25B-24(d) that the requirement to build workforce housing units is not yet expressly required in any zone under the current version of Chapter 59. ZTA 05-16 is being introduced to provide that expression. Rewrite the sentence as follows: “A developer of any subdivision with 35 or more dwelling units, excluding any MPDU bonus density units, at one location must build the number of workforce housing units...”
- Add a numbered subparagraph under 25B-25(a) (Agreement) (1) to indicate that the DHCA Director will provide a copy of the original agreement to build workforce housing and any subsequent modifications of that agreement to the Planning Board, and the Planning Board will, in turn, notify the Director of any and all amendments to the approved site plan. In (2) provide relief from escalating construction costs and housing valuations, so that there can be anticipated adjustments to the sales prices for units built several years after the agreement to build is executed. Staff recommends using the Consumer Price Index (CPI).
- In paragraph (25B-25(b) (Issuance of building permit), make the Article more enforceable by providing clear guidance as to what percentage of the workforce housing units must be constructed or approved in comparison to a percentage of market rate units. Staff recommends using 50 percent, as is done in for MPDUs.
- Add a numbered subparagraph under 25B-26(a) (Alternative location agreement) to indicate that the Director provide a copy of the intent to execute an alternative location agreement to build workforce housing to the Director of the Maryland-National Capital Park and Planning Commission (M-NCPPC) (or the Director’s designee) for review and comment.
- Consider setting an upper limit for the “reasonable sales commission” referred to in 25B-27(b)(5) and 25B-27(c)(1)(D).
- Provide language in section 25B-28(c)(2) similar to the specific and clear language used in the MPDU ordinance to require that 50 percent of the workforce housing units be built or under construction before building permits for the last half market rate units are granted. Also strike the last sentence: ~~...The Planning Board may revoke any previously approved preliminary plan of subdivision, site plan, or development plan, if the Board finds a violation of this Article.~~

2. ***Approve Zoning Text Amendment (ZTA) 05-16 with the following modifications:***

- In section 59-A-6.1.7.2, 59-A-6.1.7.2 (d), and elsewhere, state that calculation of the workforce housing requirement is 10 percent of the base number of dwelling units, excluding MPDUs or MPDU bonus units.
- In section 59-A-6.1.7.2, reword line 28 to read “...percent of the ~~total~~ base number of dwelling units in the development, ~~not counting~~ excluding any MPDUs or ~~resulting~~ MPDU bonus density units...This workforce housing requirement applies...~~35~~ 20 or more dwelling units, ~~not counting~~ excluding any MPDU bonus density units...”
- Because Chapter 25A already allows an developer to achieve over 22 percent density, staff is unclear about the impact of the last sentence in section 59-A-6.1.7.2. Staff is not sure whether this language could reduce the production of MPDUs and/or whether it would remove the requirement to produce workforce housing units, if the MPDU density bonus units were to exceed 10 percent of the maximum density allowed in the zone.
- Stipulate clearly whether the calculation of workforce housing shall be rounded down in situations where the calculation of 10 percent does not yield a whole number.

3. ***Review Park and Planning staff’s proposed amendment to the County’s existing Housing Policy, which was adopted in 2001.*** (Attached)

Following a period of research and analysis this spring, Park & Planning staff prepared a workforce housing policy proposal and distributed it to a review team comprising staff from the County Council, the Department of Housing and Community Affairs (DHCA), and the Housing Opportunity Commission (HOC). Concurrent with this effort, County Council sought specific answers to certain issues, which staff did answer with memos on topics such as profitability of workforce housing and housing sales near transit zones, to name a few. Staff’s intent is to introduce the attached policy proposal and supporting data to you at this time. Without going into great detail, the big concepts in the proposed Workforce Housing Policy include:

- Ensuring that there is no gap between the workforce housing program and the County’s Moderately Priced Dwelling Unit (MPDU) program. That is, the lower limits of the workforce housing program should be the upper limits of the MPDU program.
- Targeting households earning 100 percent of the Area Median Income (AMI) or less. In 2004, over 40 percent of the homes sold at prices affordable to households earning 100 percent of less of the AMI. Staff determined that those households earning more than 100 percent of AMI had many housing choices available to them in the market.
- Treating workforce housing as market rate housing. Staff believes that workforce housing can be profitably developed. It may be at the low end of the market rate prices, but it can be market-rate, nonetheless, and profitable enough to not require a subsidy, density bonus, or other incentive.

Discussion

Bill 30-05

- In 25B-23 (j) workforce housing projects are defined as those with at least 10 percent of the dwelling units, exclusive of MPDUs and MPDU bonus units, are sold or rented to workforce households, but the Article does not address the methodology of calculation of the 10 percent nor does it explain whether the workforce housing units will be in addition to the base units, MPDUs, and any MPDU density bonus units; or whether the workforce housing units will affect 10 percent of the base units, without adding any additional density. *Staff supports the provision of workforce housing as 10 percent of the base units only, because workforce housing units will sell for market rate prices – albeit at the lower-end of what is considered market rate, and, as such, there will be enough profit to the developer without giving any additional density bonus. In the attachments to this memo, staff includes research performed to determine that (1) new market rate construction targeted for workforce incomes could be profitable and (2) the marketplace currently produces housing units at this price range- over 8,300 units – well over a third of all units sold – sold for less than \$300,000 in 2004, and households earning 100 percent of the 2004 AMI (\$85,400) could afford up to approximately \$325,000. New single-family attached units and condominium units were available in this price range, depending on the location of the unit, as well as existing detached and attached housing, and condominiums.*
- Cap workforce incomes at 100 percent of AMI, instead of at 120 percent of AMI. (See 25B-23 (j), 25B-24(b), 25B-27(a), and elsewhere.) *Park and Planning staff determined that a household earning above the Area Median Income (AMI) could already afford many of the houses offered for sale in the county in 2004. (Tables 1 and 2) While the selection tightened up below AMI, nearly a half of the housing units sold last year were affordable to households earning at or below AMI.*

Washington, DC--MD--VA--WV PMSA									
Number of Persons in Family		1	2	3	4	5	6	7	8
Percentage of AMI Per Family Size		70%	80%	90%	100%	108%	116%	124%	132%
HUD Program Limits									
30% of Median	30.0%	\$18,750	\$21,450	\$24,100	\$26,800	\$28,950	\$31,100	\$33,200	\$35,350
Very Low Income (50%)	50.0%	\$31,250	\$35,700	\$40,200	\$44,650	\$48,200	\$51,800	\$55,350	\$58,950
Low-Income (65%)	65.0%	\$40,600	\$46,400	\$52,200	\$58,000	\$62,650	\$67,300	\$71,900	\$76,550
2005 MPDU Limits									
Renters	65.0%	\$41,000	\$47,000	\$52,000	\$58,000	\$63,000			
Buyers	73.5%	\$46,000	\$53,000	\$59,000	\$66,000	\$71,000			
Workforce Housing - 80% AMI	80.00%	\$50,008	\$57,152	\$64,296	\$71,440				
Workforce Housing - 90% AMI	90.00%	\$56,259	\$64,296	\$72,333	\$80,370				
Workforce Housing - 100% AMI	100.00%	\$62,510	\$71,440	\$80,370	\$89,300				
Workforce Housing - 120% AMI	120.00%	\$75,012	\$85,728	\$96,444	\$107,160				

Sources: HUD and DHCA.

Table 2. 2004 SALES Number of Units by Type of Unit Ranges	New SFD	% of Total Sales in County	Exist SFD	% of Total Sales in County	New SFA	% of Total Sales in County	Exist SFA	% of Total Sales in County	New Condo (all types)	% of Total Sales in County	Exist Condo (all types)	% of Total Sales in County	Line Total	Line % of Total Sales in County	Cumulative % of Total Sales in County
\$0 to \$99,999	0	0.00%	2	0.0%	14	0.1%	7	0.0%	60	0.3%	138	0.6%	221	1.0%	1.0%
\$100,000 to \$149,999	1	0.00%	13	0.1%	30	0.1%	98	0.4%	53	0.2%	647	2.8%	842	3.7%	4.7%
\$150,000 to \$199,999	0	0.00%	54	0.2%	0	0.0%	497	2.2%	180	0.8%	1,104	4.9%	1,835	8.1%	12.7%
\$200,000 to \$249,999	0	0.00%	257	1.1%	0	0.0%	1,243	5.5%	401	1.8%	670	2.9%	2,571	11.3%	24.0%
\$250,000 to \$299,999	1	0.00%	751	3.3%	5	0.0%	1,427	6.3%	299	1.3%	419	1.8%	2,902	12.8%	36.8%
\$300,000 to \$349,000	0	0.00%	1,290	5.7%	64	0.3%	931	4.1%	251	1.1%	265	1.2%	2,801	12.3%	49.1%
Subtotals < \$350,000	2	0.01%	2,367	10.4%	113	0.5%	4,203	18.5%	1,244	5.5%	3,243	14.3%	11,172	49.1%	49.1%
Sub Totals -Over \$350,000	894	3.9%	7,734	34.0%	552	2.4%	1,561	6.9%	414	1.8%	430	1.9%	11,585	50.9%	100.0%
Totals	896	3.9%	10,101	44.4%	665	2.9%	5,764	25.3%	1,658	7.3%	3,673	16.1%	22,757	100.0%	

Source: STAR data for 2004. Preliminary, July 2005.

- Clarify in 25B-24(d) that the requirement to build workforce housing units would be triggered in the same way MPDUs are triggered: “A developer of any subdivision with 35 20 or more dwelling units, excluding any MPDU bonus density units, at one location must build the number of workforce housing units...” *As discussed earlier, staff’s research indicates that workforce housing is market rate housing and, as such, is profitable. Workforce housing should be required as part of the base number of units provided.*
- Add a numbered subparagraph under 25B-25(a) (1) (Agreement) to indicate that the Director will provide a copy of the original agreement to build workforce housing and any subsequent modifications of that agreement to the Planning Board, and the Planning Board will, in turn, notify the Director of any and all amendments to the approved site plan. *This type of cooperation is currently being considered for the MPDU program and will allow both agencies to better monitor compliance with their respective programs and regulations.* Under 25B-25(a)(2), anticipate requests for adjustments to the sales prices for units built several years after the agreement is executed. *Staff recommends using the Consumer Price Index (CPI) to cap allowable increases in the sales price portion of the agreement.*
- In paragraph (25B-25(b) (Issuance of building permit), make the Article more enforceable by providing clear guidance as to what percentage of the workforce housing units must be constructed or approved in comparison to a percentage of market rate units. *Staff recommends stipulating that by the time 50 percent of the market rate units are constructed, fifty percent of the workforce housing units must also be constructed, and until 50 percent of the workforce housing units are constructed no more building permits may be issued for the second half of the other market rate units.*

- For 25B-26(a) (Alternative location agreement), *staff recommends specifying that the Director of DHCA provide copies of requests for alternative location agreements to the Planning Board for review and comment .*
- Increase the control period in 25B-27(a) (Sales, control period) from 10 years to 30 years, which is comparable to the MPDU control period. *Staff recommends keeping the control periods for rental AND sales workforce housing units consistent with the MPDU control periods.*
- Consider setting an upper limit for the “reasonable sales commission” referred to in 25B-27(b)(5) and 25B-27(c)(1)(D). *“Reasonable” is subjective. Staff points out that the surging price of homes also is pressuring the industry to rethink its commissions. As reported in the Wall Street Journal this spring, “The average level of commissions has gradually fallen in recent years as more sellers -- spurred by publicity about discounters -- haggle with their agents. In areas with high home prices, agents tend to be more willing to shave the percentage. Real Trends, an industry publication, last year estimated that the average commission was 5.1%, down from 6% in the early 1990s.”¹ Staff recommends capping the commission rate at five percent or less.*
- In section 25B-28(c)(2), staff recommends language similar to the specific and clear language used in the MPDU ordinance: *require that 50 percent of the workforce housing units be built or be under construction before building permits for the last half market rate units are granted. With regard to the last sentence of this paragraph, staff recommends striking the last sentence: ~~...The Planning Board may revoke any previously approved preliminary plan of subdivision, site plan, or development plan, if the Board finds a violation of this Article.—The planning board does not have an enforcement role per Chapter 25A.~~² The Planning Board already has the right to revoke plans if the applicant does not comply with the requirements of the Board’s approval.*

ZTA 05-16

- In section 59-A-6.1.7.2, 59-A-6.1.7.2(d), and elsewhere, state that calculation of the workforce housing requirement is described consistently throughout the ZTA as being 10 percent of the base number of dwelling units, excluding MPDUs or MPDU bonus units. *As discussed in greater detail in the attachments, staff recommends that workforce housing units be considered units targeted to the middle-income market. As such, there will be enough profit to the developer without giving any additional density bonus. Staff recommends that a table be included in the ZTA, as an example, that will provide transparency to the calculation of workforce housing, as well, that shows how the workforce housing units are provided as compared with the MPDUs for certain size developments.*

¹James R. Hagerty and Ruth Simon, “Realtor Commissions Face New Pressure,” [The Wall Street Journal Online](http://www.wsj.com), May 11, 2005.

² See discussion provided in Attachment 3 of Item 11 on the Planning Board Agenda for October 6, 2005, at the following link: <http://insite.mncppc/Search/SearchAgenda1.htm?AgendaLinks=1>

- In section 59-A-6.1.7.2, reword line 28 to read “...percent of the ~~total~~ base number of dwelling units in the development, ~~not counting~~ excluding any MPDUs or ~~resulting~~ MPDU bonus density units...This workforce housing requirement applies...~~35~~ 20 or more dwelling units, ~~not counting~~ excluding any MPDU bonus density units...” *This would mean that a developer of 100 units who does not seek any additional MPDU density bonus would provide the following: 13 MPDUs, 8 workforce housing market-rate units (assuming that workforce housing calculations are “rounded down,” and 79 other market rate units. The reduction from 35 to 20 units is consistent with our recommendation in CB 30-05.*
- Because Chapter 25A already allows an developer to achieve over 22 percent density, staff recommends striking the last two sentences in section 59-A-6.1.7.2, which prohibit ANY residential density or FAR from exceeding 10 percent of the maximum density allowed in the zone. *As before, staff is unclear as to the intent of the prohibition of any residential density or FAR from exceeding 10 percent of the maximum density allowed in the zone. The MPDU ordinance allows up to 22 percent more density than is allowed in the zone. Staff wonders what would happen if the MPDU bonus density exceeds the maximum allowed in the applicable zone by more than 10 percent? Would the language in this Article undermine the already allowable MPDU bonus density? Staff believes it could, as written, and recommends striking this language wherever it occurs in this ZTA, such as in 59-C-6.215 (a) and (b). Staff recommends striking all other references to an additional density bonus for the provision of workforce housing throughout this ZTA. As stated earlier, staff supports the provision of workforce housing as 10 percent of the base units, only, because workforce housing units will profitably sell for market rate prices – albeit at the lower-end of what is considered market rate. Also, to require workforce housing units as bonus units, while capping the additional bonus by 10 percent, seems as if it would undermine the MPDU program, which can already provide up to 22 percent additional density bonus.*
- Stipulate that results of the calculation of workforce housing shall be rounded down in situations where 10 percent does not yield a whole number. *Staff noticed that the ZTA cover memo from Mr. Silverman provided an example in which the workforce housing percentage was rounded down to eight, even though the result was clearly more than eight ($87 \cdot .1 = 8.7$). Staff notes that in the MPDU program, the calculations of MPDUs are rounded up.*
- In section 59-A-6.1.7.2, 59-A-6.1.7.2(d), and elsewhere, state that calculation of the workforce housing requirement must described consistently throughout the ZTA as being 10 percent of the base number of dwelling units, excluding MPDUs. *If workforce housing is provided as part of the base number of units, there is no need to mention MPDU bonus units, because the workforce housing calculation will only be determined by the base number of units, which does not, by definition, include density bonus units.*
- In section 59-A-6.1.7.2, reword line 28 to read “...percent of the ~~total~~ base number of dwelling units in the development, ~~not counting~~ excluding any MPDUs or ~~resulting~~ ~~MPDU bonus density units~~...This workforce housing requirement applies...~~35~~ 20 or more dwelling units, ~~not counting~~ excluding any MPDU bonus density units...*The reference to*

MPDU bonus units is valid here, because it is possible to reach the number “35” through the provision of MPDUs density bonus units. Staff does recommend using 20 units as the threshold for the provision of workforce housing, especially because much of the redevelopment/infill opportunities in the transit areas may involve smaller unit yields.

- In the last sentence of 59-C-2.44(d), staff recommends adding “or permit” as follows: “...The MPDU density [increase provided by Section ...] bonus does not require or permit the acquisition of additional development rights.”
- In 59-C-6.23, proposed footnote 4, staff recommends adding “a substantial” as follows: “the proposed development will provide a substantial amount...” Under footnote 11(1), in the next to the last new sentence (“...a revitalization area designated in the applicable sector plan and is located fully or partially within 800 feet of an entrance to a metro station.”), staff would like to know how the “800 feet” was determined.
- In 59-C-10.3.7 (Maximum residential density), add the RMX zones, because 59-C-10-3.7 of the Optional Method provisions for the RMX zone allow a maximum residential density of 40 dwellings per acre where residential development is proposed within a proposed commercial area.

Workforce Housing Policy Proposal

In the spring of 2005, housing staff began a concerted research and analysis effort to develop a workforce housing policy proposal, because the County’s Housing Policy does not address Workforce Housing, per se. During the summer, drafts were reviewed by a working team consisting of staff from DHCA, HOC, and the County Executive. The draft policy and technical supplement were shared with the County Councilmember Steve Silverman and his staff, as well. Subsequently, Councilmember Silverman requested additional information, which was provided. This information is provided in the attachments. *Staff recommends that the Planning Board approve our request to forward this Workforce Housing Proposal to the County Council for their consideration. We realize that the proposal will likely be significantly modified, but we believe that it will get the ball rolling, nevertheless.*