MCPB
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Briefing on Proposed Amendments to Chapter 25A, Housing, Moderately Priced

LG Lisa Govoni, Planner, Research and Special Projects, lisa.govoni@montgomeryplanning.org, 301-650-5624
RL Rick Liu, Supervisor, Research and Special Projects, rick.liu@montgomeryplanning.org, 301-650-5641
Caroline McCarthy, Chief, Research and Special Projects, caroline.mccarthy@montgomeryplanning.org, 301-495-4506

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Overview

The purpose of this briefing is to provide the Planning Board with a summary of and analysis of testimony received related to bills 34-17 and 38-17 that propose amendments to Chapter 25A. It is a follow up to the briefing held on January 11, 2018.

The testimony on the proposed changes to Chapter 25A focused on several key recommendations including:

- Adding language that offers flexibility for a developer to comply with the law by contributing to the Housing Initiative Fund (HIF)
- Requiring 15% affordable units in developments, provided the requirement is offset by appropriate incentives
- Proposing as an alternative to the density bonus, the developer provide units at different Area Median Income (AMI) levels
- Allowing a reduction in impact taxes when developers are unable to take advantage of the density bonus
- Permitting decreased unit sizes for affordable units, including studios and 1-bedroom dens
- Allowing for reduced or no parking for affordable units in metro accessible locations
- Allowing for alternative unit types by mixing 100% affordable multi-family flats into market rate townhome communities
- Incentivizing the production of 3-bedroom affordable units by allowing flexibility in MPDU square footage
- Setting a standard formula for the calculation of payments in lieu

Background Recap: The Council enacted the County's Moderately Priced Dwelling Unit (MPDU) law in 1973 with the aim of furthering the objective of providing a full range of housing choices. The MPDU law requires the construction of affordable housing with market rate housing to meet the existing and anticipated needs for low and moderate-income housing while ensuring that moderately priced housing is dispersed throughout the County consistent with the General Plan and Master Plans. The law also provided incentives to encourage the construction of moderately priced housing by allowing optional increases in density including MPDU density bonus to offset the cost of construction.

The most recent amendments to the MPDU law were made in 2004, which extended the control period for for-sale units from 10 to 30 years, and for rental MPDUS from 20 years to 99 years. The amendments also allowed for different income eligibility standards in recognition of the higher cost of construction of certain types of housing, and increased the number of developments required to provide MPDUs by lowering the base requirement from any development with 35 or more units to 20 or more units.

We expect the PHED Committee to begin discussions of both bills in March 2018.

CM/RL/LG/aj

ATTACHMENT A

Summary of Public Hearing Testimony

Bill 34-17

EYA

- Revise current methodology for setting sales prices/rents through AMI so its consistent (currently, different jurisdictions result in different prices at same AMI)
- Support allowing alternative payment into HIF for for-sale townhome and condos
- While altering bedroom mix is laudable (i.e. MPDU based on square footage, rather than units), it will not incentive developers to provide larger units since a 3 bedroom is generally less valuable – on a per square foot basis – than a studio or 1 to 2 bedroom.
- Single Family Homes should be exempted from 15% MPDU requirement.
- Successful projects of 100% affordable buildings next to 100% market rate buildings have been built by EYA. This type of flexibility could be considered, rather than mandating affordable and market rate housing in the same structure.
- EYA supports requiring 15% MPDU in new developments, provided this is offset by appropriate economic incentives.
- Reasons why relatively few developers have taken advantage of the 22% bonus density provision in exchange for providing 15% MPDU are as follows: (**note: testimony was incorrect: MPDU bonus density is 15% rather than 22%**)
    - Civic opposition to height, density, traffic and schools - greater risk of project denial
    - The bonus density could force a change into a more expensive construction type, which would negate the benefits of additional density
    - Not all sites are large enough or can be reconfigured to accommodate additional FAR (such as many townhomes built by EYA).
- Recommendations
    - Support 15% MDPU bill, but should be allowed to increase BOTH height and density by 22% (note: should be 15%). Additionally, EYA supports an optional payment in lieu of for-sale MPDUs in the amount of 3% gross sale price of project, as not all developers can take advantage of bonus density.
    - Support option to provide affordable units at different AMIs as an economic incentive (e.g. some at 80% AMI, some at 65% AMI) in lieu of 15% MPDUs.
    - Rental projects unable to take advantage of density could be eligible for a 50% reduction in impact fees.
    - Affordable unit sizes could be decreased on average as an economic incentive.
    - Reduction in parking for affordable units could be an economic incentive
    - Consider alternative unit types for MPDUs that blend well into the project or community (e.g. EYA claims to have blended in affordable flats with market-rate townhomes before)
    - To encourage 3-bedrooms, need to provide additional economic incentive to developer, such as reducing number of size of units, or reducing impact fees or taxes.

Maryland Building Industry Association

- Should provide greater flexibility for DHCA to utilize their "toolkit" for housing production on case-by-case basis
    - Particularly with different product types (for-sale and rental), there is no one size fits all.
- Support using floor area (SF) to calculate MPDU requirement
- Support using alternative payments in lieu of MPDUs
- Reinsert clause asserting that builders and developers should incur no loss of penalty and have reasonable prospect of realizing profit on MPDUs (original intent of MPDU law included incentives for builders of affordable housing)
- Do not support idea that small volume builders (under 20 units) provide payment to the HIF.
- Important that Council set simple and streamlined policy on affordable housing (different MPDU requirements in master plans create different advantages for projects)

Custom Builders of Montgomery County

- Do not support idea that small volume builders (under 20 units) provide payment to the HIF. Many small custom home builders may only build 3-4 homes a year – additional fees of an unknown amount can have a significant impact on the viability of their business.

Montgomery County Chamber of Commerce

- Provide flexibility on relief and incentives as different projects have different needs (analogous to Subdivision Staging Policy treating areas throughout the County differently).
- Be cautious of overburdening MPDU program with unattainable goals.

Greater Bethesda Chamber of Commerce

- Reinstate references of ability of builders to make profit with the program.
- Reinstate language offering flexibility for developer to comply with MPDU law by contributing to HIF
- Remove suggested language that master plans should be used as the vehicle to pick and choose percentage of MPDUs.
- Consider impact tax waivers in areas, particularly orange and yellow areas of the SSP. Bonus density and height incentives are not always useful in delivering more MPDUs, given site constraints, cost constraints, community desires.
- Codify language for density/height bonuses for some high-rise rental properties in CR zones, and/or modify language to state that MPDUs are highest priority benefit for those new multifamily projects (thereby exempting THs and SFH units where bonus density doesn't work).
- Revise bill to recognize challenges to uniform regulations on different housing product types across different locations.

- Consider automatic (not discretionary) alternative payments for SFH units, where bonus density can't be used.
- Consider automatic (not discretionary) alternative payments for for-sale condos, particularly if cost of monthly expenses are projected to exceed a certain percentage of income or fixed amount.
- Remove payment of payment into the HIF fund for projects under 20 units, especially if proposed amount is undetermined for future regulation.

Coalition for Smarter Growth

- Believes the bill overprioritizes offsite development of affordable units, and payments into the HIF – counter to spreading economic diversity.
    - Need to ensure that alternative location or alternative payments foster affordable housing in highly desirable neighborhoods. This has not always been the case in other cities, such as Seattle, where developers chose the fee every single time between 2002-2013.
- Suggestions for amendments for Bill 34-17
    - Require offsite payments be used to provide housing in same policy area
    - Set a standard formula for how alternative payments are calculated
    - Alternative payments must be used to produce more MPDUs than otherwise provided onsite
    - Retain ban on bonus densities for offsite development
    - Draft regulations to allocate and spend collected payments
- Implement land-use recommendations from Rental Housing Study such as:
    - Reduced parking minimums for more affordable units
    - Use publicly owned land to subsidize affordable units
    - Review bonus density program

Bill 38-17

Greater Bethesda Chamber of Commerce

- FARMS bill (15% MPDU in any cluster with 15% or less FARMS) is difficult to use given that FARMS changes quickly across schools, and development projects occur over a long period of time. Will also bring school choice into the fold which is more appropriate for next round of SSP. Be brave and simply require MPDUs if its desired, rather than linking it to FARMS.

Maryland Building Industry Association

- Concerned that bill does not provide incentives to build affordable housing; original intent of MPDU law was such that builders and developers should have reasonable prospect of realizing profit on MPDUs.

- FARMS bill does not provide predictability because it constantly changes. A developer at project inception may only be subject to a 12.5% requirement, but could change to 15% at preliminary plan.

Coalition for Smarter Growth

- Supports FARMS bill as it promotes economic diversity.
  - Large East-West County divide in terms of race, ethnicity and income
  - FARMS bill can help educational disparity for lower income children, due to the school their attend and neighborhood they live in.

THE NEIGHBORHOODS OF EYA

December 5, 2017

Montgomery County Council President Roger Berliner
Members of the County Council
100 Maryland Avenue
Rockville, MD 20850

RE: Bill 34-17, Housing – MPDU Amendments EYA TESTIMONY

Dear Council President Berliner and Members of the Montgomery County Council,

EYA is a Bethesda based business and is one of the largest home builders in Montgomery County. While our company's primary mission is delivering cutting edge urban infill market rate housing, over the past fifteen years we have developed an expertise in developing mixed income communities ranging from 12.5% MPDU's to 66% affordable in the case of our Capital Quarter project near the ballpark in downtown DC. Over the course of our 25 year history we have built both market rate and affordable homes in all of the major counties surrounding the District and we are happy to share lessons learned and best practices from each in an effort to improve upon the Montgomery County MPDU program.

EYA supports the idea of updating Chapter 25A in order to encourage more affordable housing in the County. The MPDU program is laudable but if the County wants to make a dent in its affordable housing crisis, modifications, both minor and major should be considered. Below is a summary of our key thoughts in response to the legislation proposed by Bill 34-17. In addition, we have highlighted some alternative ideas and recommendations which we believe would incentivize the desired behavior from the development community and increase the pace of delivery of affordable units in the County. In order to assemble the recommendations below, we conducted two analyses. First we performed a sensitivity analysis on 4 current EYA projects in the County to determine which factors would lead to either an increase in affordable housing delivered or a payment in lieu which would enable the County to develop additional housing. Second we reached out to our partners at NAHB as they are currently producing an inclusionary zoning tool, and we brainstormed internally about best practices that we have encountered throughout the region. Both of these sources produced some creative ideas that could be put to use in the County to take the affordable housing program to the next level.

RESPONSE TO BILL 34-17:

- 25A – 4b: EYA supports the idea that AMI should be the primary driver of setting sales prices and rents for affordable units in the County. Based upon our experience, the current methodology is not consistent with best practices elsewhere in the region and underestimates what a purchaser can afford to pay. For example, in 2017 EYA has sold 3 Bedroom MPDU townhomes in Montgomery County for $208,000. The same house in Washington, DC would sell for $232,000 at the same level of income. We believe it is important to include in the new legislation the methodology for calculating minimum sales prices so that the development community can better predict sales prices from year to year in a dependable fashion.

- 25A-5: EYA strongly supports the idea of allowing developers of for sale townhome and condominium communities to make a payment in lieu into a Housing Initiative Fund. The legislation needs to be more specific about the methodology for determining the payment. We do not believe that a payment in lieu is appropriate for multi-family apartment projects as these units are more in demand.
- 25A-5D: The idea of altering bedroom mix is laudable. As proposed it will not act as an incentive for the developer to provide the desired larger units because providing the larger units in the same square footage as the base case will negatively, not positively impact the proforma and the value of the building. See Exhibit 1 for a chart that demonstrates the impact. We studied the revenue impact that this provision would have on a fictitious 96 unit rental building. Holding the square footage of MPDU's constant, we modified the unit mix from 8 one bedroom and 4 two bedroom affordable units to 7 three bedroom and 2 one bedroom affordable units. Because revenue per square foot is lower the larger the unit gets, the change results in an approximately $300,000 decrease in building value. The goal of this provision is worthwhile, but it is important for the Council to understand that it won't incentivize the desired behavior from an economic perspective and thus will likely never be utilized by the developer. In order to incentivize larger units, see RECOMMENDATION 7 outlined below for a list of potential incentives.
- 25A-5e,3: EYA supports the concept of setting the MPDU requirement at 15% for all new construction with the exception of single family detached homes. This increase in affordable housing would have to be accompanied by the appropriate economic incentives to make it feasible. In the recommendation section below we outline some ideas for implementing this change.
- 25A-5o: While it is generally a good practice to mix affordable and market rate housing in the same condominium association, some of EYA's most successful affordable housing projects in the region have been mixed income sites that include small 100% affordable buildings that look identical to the market rate housing next door and down the street. In these cases the best structure might be a 100% affordable HOA or condominium association so this language would need to be modified to allow these types of projects. EYA partnered with the DC Housing Authority and the Alexandria Redevelopment Housing Authority on these projects and we are happy to share best practices during PHED's review of the bill.

RECOMMENDATIONS FOR ACHIEVING AN INCREASE IN AFFORDABLE HOUSING:

Based upon conversations with Councilmembers, Staff and other key stakeholders it seems that the County would like to encourage or require 15% affordable units in new developments in order to increase the stock of affordable housing in the County. EYA supports this goal ***PROVIDED THE INCREASED AFFORDABLE HOUSING REQUIREMENT IS OFFSET BY APPROPRIATE ECONOMIC INCENTIVES***. The current legislation allows for an increase in FAR if the developer provides additional affordable housing. Based upon our analysis of four projects within the County, the current 22% bonus density provision is accretive and thus should incentivize more developers to take advantage of the provision. So, why is it so uncommon? We believe there are three major impediments to developers who are interested in taking advantage of the density incentive.

ISSUE 1: In many areas of the County, well organized civic opposition to height, density, traffic and school over-crowding make a project less attractive to local residents from a micro perspective even though the goal of additional affordable housing provides a great benefit to the County from a macro perspective. If a developer is not fairly certain that they will receive approval for increased height and density, the developer is not likely to spend the money and time necessary to design a larger project that may increase the likelihood of denial from the Planning Board or County Council and increase costs by delaying approvals.

ISSUE 2: The 22% density bonus is only accretive if it does not require a change in construction type in order to include the additional FAR in the project. For example, if the developer is building a wood frame multi-family condominium that is already four stories without the density bonus, the bonus might force the developer into a five story pressure treated lumber building at a 20% premium in construction costs. Likewise, if the additional FAR would require the developer to build more than 5 stories, the construction type would change again from pressure treated lumber to metal stud construction. Above eight stories the construction type would change again to concrete. The construction types outlined above become increasingly more expensive on a per square foot basis. The FAR density incentive works best when the developer can utilize the entire 22% bonus without having to change the structural design of the building.

ISSUE 3: Finally, as is the case with most EYA townhome communities, many sites throughout the County simply can't accommodate the additional FAR. Townhomes are typically 3 or 4 stories by the nature of their design as walk up single family homes. For most EYA projects, the additional density would require that the project type itself change form townhomes to multi-family in order to take advantage of the additional FAR that would result from a 5 story building. This issue argues for some alternative solution for sites where townhomes are appropriate and desired but would preclude the developer from taking advantage of the bonus density.

EYA RECOMMEDS THE FOLLOWING:

RECOMMENDATION 1: All townhome and condominium for sale projects should be required to provide 15% affordable housing units. In return for the 15% affordable housing units, the projects should be allowed to increase BOTH height and density by 22% to accommodate the additional housing. The ultimate language in the bill needs to be explicit so that the developer feels confident that they will prevail at the Planning Board if they propose a project with the increased height and density allowed by law. It is also important that we, as a community, recognize that a one size fits all approach is not going to work for every single site or project in the County. Therefore, we support an optional payment in lieu of 3% of the gross sales price of the project to be paid to the County upon settlement of each unit. This will provide the necessary flexibility to the developer for sites where the additional FAR would either force the project into an alternative construction type, be unacceptable to the immediate surrounding community or the planning board due to site conditions, or in the case of townhomes – not be feasibly incorporated into the project. This provision would also enable the County to have a mechanism by which to avoid MPDU units in high-rise condominium buildings which have steep condo fees. The money collected by the County can be leveraged with bond financing to provide many more affordable housing units throughout the County. In cases where the developer can provide a portion of the affordable housing density on site, the developer should be allowed to pay a portion of the fee and provide a portion of the units on site. For example, a developer could provide 15% on site, 0% on site and a 3% fee, or 7.5% of the units on site and a 1.5% fee.

In addition, there are other means by which to make the provision of affordable housing units more economic. The following are some best practices from other jurisdictions which should be studied during PHED committee and incorporated to the extent possible.

- **RECOMMENDATION 2:** As an alternative to the 22% density bonus, the developer could provide a portion of the affordable units at 80% AMI and a portion at 60% AMI. This would increase the sales price of a 3 bedroom townhome from $208,000 to approximately $331,000. This would be more economically feasible to provide and fill a need in the County for housing at the low end of the workforce scale. DC just recently amended their legislation to allow all single family and townhome for sale units in the City to be sold at 80% AMI.
- **RECOMMENDATION 3:** For multi-family rental apartment projects, where the County does not want to encourage payments in lieu, the County with MNCPPC approval, could allow developers who are unable to take advantage of the 22% height and FAR bonus on site to take advantage of a 50% reduction in school and transportation impact taxes. This would provide a negotiating tool for the developer and MNCPPC with the community. When due to site conditions it would be inappropriate or cost prohibitive to increase the height or size of the building there would be a release valve that still results in 15% MPDU's on site while lessening the economic burden on the developer.
- **RECOMMENDATION 4:** Unit sizes: DCHA already allows for decreased unit sizes on average for affordable units. This is helpful and should be extended to include studios, and 1BR-dens as these unit types are becoming more popular as market rate affordable options and should be allowed for MPDU's as well.
- **RECOMMENDATION 5:** Reduced parking: In some metro locations, especially where public garages or street parking exists, providing no parking for affordable units might be appropriate. Structured parking below grade or in the podium of a multi-family building costs approximately $35,000 to $45,000 per space. Any reduction in parking would help to defray the added costs of providing 15% MPDU's.
- **RECOMMENDATION 6:** Alternative unit types: Some of EYA's most successful mixed income projects were built in partnership with the housing authorities from DC and Alexandria. In both cases, EYA seamlessly mixed affordable three bedroom flats into a market rate townhome community. The multi-family affordable buildings were almost identical to the townhomes and the average person can't tell the difference between the affordable and market rate units. The benefit was that EYA was able to provide three and in some cases four affordable units in the footprint of what would have been two market rate homes, thus dramatically increasing the total amount of affordable housing that could be provided on site.
- **RECOMMENDATION 7:** If a goal is to provide more 3 bedroom rental affordable units, an incentive needs to be provided to make the choice by the developer revenue neutral at a minimum when compared to the current requirements. For the example described in Exhibit 1 below, a reduction in square footage of affordable units from 8400 NSF to 7000 NSF (essentially changing the two 1 bedroom affordable units to market rate units) would make this option revenue neutral to the developer. This would result in a project that would be 93 total units

including 7 three bedroom affordable units. The affordable units would constitute 7.5% (reduced from 12.5%) of the building unit count and 9.6% (reduced from 11.3%) of the building net square footage. An alternative idea would be to provide an incentive which reduces impact taxes or fees for projects that provide the desired larger affordable units.

While we hope the ideas outlined above contribute to the upcoming discussion in PHED, we recognize that there are many other great ideas out there which we have not considered. We are happy to be a resource to the Council as this legislation is deliberated and can test various ideas on real life projects that are under construction in the County. The more the re-write is based upon reality, the more likely it is that the County will see the desired results. EYA appreciates the opportunity to be part of the discussion and we look forward to working with the PHED and full Council in the coming months.

Best regards,

Evan Goldman, Vice President of Development, EYA

EXHIBIT 1

SCENARIO 1: Per Current MPDU Regulations - Affordable Unit Mix Approximates Market Rate Mix:								
		NSF	# of Units	Total NSF	% of Units	Rent PSF	Rent/Month	Total Rent/Yr
TOTAL UNITS								
1 Bedroom		700	64	44000	66.7%	$2.60	$1,818.38	$1,396,512
2 Bedroom		900	32	28600	33.3%	$2.36	$2,127.13	$816,816
3 Bedroom		0	0	0	0.0%	$0.00	$0.00	$0
TOTAL SF		**756**	**96**	**72600**	**100%**	**$2.54**	**$1,921.29**	**$2,213,328**
MARKET UNITS:								
1 Bedroom		700	56	39200	66.7%	$2.75	$1,925.00	$1,293,600
2 Bedroom		900	28	25200	33.3%	$2.50	$2,250.00	$756,000
3 Bedroom		0	0	0	0.0%	$0.00	$0.00	$0
TOTAL SF		**767**	**84**	**64400**	**87.5%**	**$2.65**	**$2,033.33**	**$2,049,600**
AFFORDABLE UNITS:								
1 Bedroom		600	8	4800	66.7%	$1.79	$1,072.00	$102,912
2 Bedroom		850	4	3400	33.3%	$1.49	$1,267.00	$60,816
3 Bedroom		0	0	0	0.0%	$0.00	$1,444.00	$0
TOTAL SF		**683**	**12**	**8200**	**12.5%**	**$1.66**	**$1,137.00**	**$163,728**

SCENARIO 2: Maximize 3BR Affordable Units and Reduce Unit Count								
		NSF	# of Units	Total NSF	% of Units	Rent PSF	Rent/Month	Total Rent/Yr
AFFORDABLE UNITS:								
1 Bedroom		600	2	1200	22.2%	$1.79	$1,072.00	$25,728
2 Bedroom		850	0	0	0.0%	$1.49	$1,267.00	$0
3 Bedroom		1000	7	7000	77.8%	$1.44	$1,444.00	$121,296
TOTAL SF		**911**	**9**	**8200**	**10.7%**	**$1.49**	**$1,361.33**	**$147,024**
Reduction in Annual Cash Flow:								**($16,704)**
Cap Rate								**5.5%**
Reduction in Building Value:								**$ 303,709**

THE GREATER BETHESDA
CHAMBER of COMMERCE
Smart Business, Bright Future

7910 Woodmont Avenue, Suite 1204
Bethesda, MD 20814
T (301) 652-4900 F (301) 657-1973
staff@bccchamber.org
www.bccchamber.org

MPDU Testimony
Montgomery County Council
December 5, 2017

Good evening. I am Jennifer Russel speaking on behalf of The Greater Bethesda Chamber of Commerce.

We welcome Councilmember Floreen's effort to update Chapter 25A, given the age of the original ordinance and the changes that have transpired since 1973, when as a young and growing County we sought to encourage developers to build affordable housing under the guise of a density bonus. That density incentive disappeared in 1998 and must be reinstated so that builders can actually afford to effectively participate in the program. The Chamber, along with like-minded organizations, has begun detailed conversations with various stakeholders in an effort to update Chapter 25A so that it becomes a genuine tool to assist in solving the affordable housing shortage in the County. While we are not yet at the point to bring in specific language (which we are working on), we are hoping to make some of the following suggestions to be included in a revised bill:

REINSTATE CORE PRINCIPLES

- Reinstate references to the ability of builders to make a reasonable profit with this program. For years the industry has been struggling with ways to offset the increasing cost of both MPDUs and the other layers of the development parfait. Since residential builders are the ones being asked to provide this public benefit, and may be the best suited in some circumstances to do so, they must not be unfairly burdened.
- Reinstate language that offers flexibility for a developer to comply with the law by contributing to the Housing Initiative Fund. Flexibility is fundamental to the ever-changing market.

WHERE TO USE MPDUs

- Remove the suggested language stating that master plans are the vehicle to be used to pick and choose the percentage of required MPDUs. This is far too unpredictable.
- While the idea of a consistent rate of MPDUs strewn uniformly throughout the county, with a resultant bonus density and height incentives to make it work, is (theoretically) preferred over the master plan tool, our initial examination of this approach indicates that in almost all cases, there is no ability to actually use, and therefore benefit from, this tool.
- Oft times the additional density, or even permitted density, especially in the case of townhouses or single family units, will not fit on the site and, as we are well aware, the community process to achieve extra height and density is certain to be a target in some communities, despite the altruistic goal of achieving more affordable housing.
- Instead, it might be more fruitful to introduce impact tax waivers in certain circumstances, with a special look at the orange and yellow policy areas, recently earmarked for higher impact taxes, in the SSP adopted in November 2016. I have always thought that including these areas in higher impact tax categories ran counter to the County's policy of encouraging market-rate housing that is affordable to the next level of new homeowners, despite lack of proximity to transit. Please remember that not everyone can afford to live proximate to Metro.

- We believe that in some high-rise rental projects, and likely in the CR zone, with sufficient density and height bonuses, it may be possible to achieve a 15% MPDU rate. The bonus would be "by-right" and would have to be accommodated as part of the regulatory process. It may be that the CR zone could be modified to indicate that MPDUs are the highest priority public benefit for new residential development, such as language adopted today for the Grosvenor-Strathmore minor master plan. This will "neaten" the process, so to speak, by extracting THs and single-family units from a bonus density situation that doesn't work on the ground.

RENTAL VS FOR SALE

- The existing program is plagued by the applicability of regulations across the board to rental vs sales units, as well as variations as to costs for single family and multi-family units, plus wide variability in land costs based upon location. Revisions in this bill must recognize the challenges that accrue to different product types, and offer remedies thereto.
- Consider different MPDU programs/regulations for rental vs. sale units. In that regard, automatic (rather than discretionary) alternative payments for single-family units should be strongly considered, because a greater density bonus would not be feasible for most single-family projects constrained by other limitations on development.
- Introduce automatic (not discretionary) alternative payments for sale condos (including high-rise); if the cost of monthly expenses are projected to exceed a certain percentage of income or a fixed amount, an alternative payment is permitted and/or encouraged; redirect and incentivize focus of the program to rental units, where it is more effective, as is seen by the zero vacancy rate in rental MPDUs.

HOUSING INITIATIVE FUND

- Small builders, who are in truth small businesses, must remain free of the MPDU requirement as is currently the case. Addition of a payment into the Housing Initiative Fund for projects under 20 dwelling units has the impact of a tax on small builders, particularly if the proposed payment amount is left to a future undetermined regulation.

WHAT PROBLEM ARE WE SOLVING?

- With respect to Bill 38-17, which requires 15% MPDUs in any development in a cluster which has 15% or less FARMS, we would submit that such a measure will prove difficult to use on an annual basis, since it is subject to change quickly, and development projects actually occur over a long-term period reliant on the market. It could also bring the school choice issue into the fold and, from my point of view, is more appropriately considered under the next evaluation of the SSP in 2020, given its suggested consideration at the time an applicant submits a preliminary plan of subdivision.
- If you want MPDUs in wealthier communities in the county, be brave and simply require it. Don't continue to support inequity in the quality of education.

We look forward to changes in the MPDU law and hope you will earnestly consider the specific language changes we will submit prior to PHED.

Coalition for Smarter Growth
DC • MD • VA

December 4, 2017
President Roger Berliner
100 Maryland Ave
Rockville MD, 20850

Re: Bill 34-17, Moderately Priced Dwelling Units (MPDU's) and Bill 38-17 Requirement to Build

Council President Berliner and the Montgomery County Council:

Thank you for your continued support of expanding both affordable and inclusive housing throughout Montgomery County. Recent master plans have placed an importance on increasing MPDU production in high cost neighborhoods, Bill 34-17 presents an opportunity to engage in a thorough discussion about the future of the MPDU program. Firstly, we believe Bill 34-17 does several things to update and improve the MPDU program but are concerned that as written, the bill prioritizes too much offsite development of affordable units. Specifically, we feel that bill 34-17 inadvertently hurts the goal of spreading economic diversity throughout the county and shifts the focus away from onsite housing production to generating a revenue stream for the Housing Initiative Fund (HIF). Despite these shortcomings, we believe Bill 34-17 has merit and offer suggestions to strengthen the bill.

Bill 38-17 seeks to require 15% MPDU production in communities whose high school clusters FARMS rates are 15% or less. We see this bill as squarely fitting in with the goals of promoting economic diversity throughout all of Montgomery County.

We also ask the council work concurrently on a zoning ordinance that incorporates the land-use recommendations found in the rental housing study.

1. Bill 34-17

Bill 34-17 seeks to update and reform several aspects of the MPDU program. We strongly agree with recommendations to establish the payment to the HIF for projects with under 20 units, tie eligibility standards to Montgomery's median income, clarify eligibility standards for age-restricted units and allow flexibility in floor area ratio to provide larger unit types. These are common sense proposals that will enhance the MPDU program and make it more effective.

However, we have grave concerns about loosening restrictions on offsite MPDU housing production. Many of the 2004 reforms to the MPDU law originated over this exact issue. In fact, from 2002-2005 12 offsite payments were allowed, totaling 313 MPDU's or roughly 20% of total MPDU's built during that time period. A core function of the MPDU law is to ensure economic diversity throughout the county, not just increase total amount of MPDU's. A 2010 study tracked the education performance of MCPS schoolchildren living in affordable housing and found those students in the higher income neighborhoods performed much better academically.

We must ensure that alternative location agreements or alternative payment agreements foster production of affordable homes in our highly desirable neighborhoods. Removing the requirement that

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alternative payments be used to create housing in the same policy area in which the payment was collected, opens the door to clustering of affordable housing in certain pockets of the county.

Fees in certain circumstances can be an efficient way to support affordable housing but the county must develop strict guidelines to ensure that offsite properties are located in appropriate neighborhoods, built to a high standard of quality, and well maintained over the long term. In Seattle, between 2002 and 2013, where developers had the choice between an in-lieu payment and onsite housing, they chose the fee every single time. Additionally, it took city agencies several years to spend the fees, delaying delivery of needed housing. Incentivizing a fee-based system may shift the MPDU program away from production of onsite housing to a revenue generator for county housing programs.

We ask the council amend the bill in the following way:

1. Require that offsite payments be used to build housing in the same policy area where the fees are collected
2. The council set a standard formula for how alternative payments are calculated
3. Require that alternative payments must be used to produce more MPDU's that would otherwise would have been provided onsite
4. Retain the ban on bonus densities for offsite development
5. Draft regulations to efficiently allocate and spend collected payments.

2. Bill 38-17

Bill 38-17 furthers county goals of expanding affordable housing to all parts of Montgomery. The recently released rental housing study illustrated the deep need for increasing housing units off all types, especially in our high cost areas. Bill 38-17 would mandate MPDUs where we need them most—exclusive and high opportunity neighborhoods. Additionally, it would lessen the increasing economic east-west divide in Montgomery.

Data in the rental housing study showcases this increasing East-West divide. The Friendship Heights/Bethesda/White Flint subarea is 68% white, with a median income of $130,000 compared to the Rt. 29 Corridor East subarea which is 24% white with a median income of $80,000. This pattern holds when comparing the Silver Spring/Glenmont subarea 39% white with a median income of $85,000 to Westbard which is 78% white with a median income of $175,000.

In particular, this bill would have a significant impact for low-income children. A 2010 study by the Century Foundation evaluated the impact of the MPDU program on school performance for low-income children. During the course of elementary school, students living in affordable housing who went to low-poverty schools cut their initial achievement gap in half. The study noted, "Within education research, these are large effects since relatively few educational reforms demonstrate positive effects of this magnitude." These findings validate the intent of the MPDU program and the need for moving to 15% MPDUs in low-poverty school clusters.

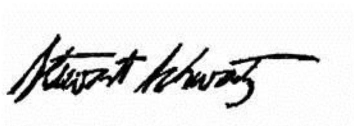
A 2015 study from Harvard University found that neighborhoods have significant impacts on socio-economic outcomes. For every year a young child spent in a low-poverty neighborhood there were increases in future earnings. A young child moving from a high to low poverty neighborhood at age 8 will increase their lifetime earnings by about $300,000. Fostering mixed-income neighborhoods is key to erasing generational poverty and this bill can help do just that.

In Conclusion

According to analysis at George Mason University, Montgomery will need to produce roughly 6,200 housing units every year to meet demand through 2040 and regionally 127,000 apartment units are needed to meet demand over the next 13 years. Solving our housing crisis will include both preserving and expanding housing options in the county. We urge the council to implement the land-use recommendations in the rental housing study concurrently with these MPDU bills. The recommendations include reducing parking minimums in exchange for more affordable units, expanding the use of publicly owned land to subsidize development of apartments for low-income residents and reviewing our bonus density program. Several options for financing more affordable housing production are also provided in the rental housing study.

Pairing reforms in the MPDU law with reforms in our zoning regulations will boost housing production and ensure that inclusionary units are dispersed evenly throughout the county. Taking a comprehensive approach to the housing crisis is the only way to solve it. We hope that the council can enhance the MPDU program and reform zoning practices to boost housing production in the county.

Sincerely,



Stewart Schwartz
Executive Director
Coalition for Smarter Growth

MARYLAND BUILDING INDUSTRY ASSOCIATION 11825 West Market Place | Fulton, MD 20759 | 301-776-6242 | marylandbuilders.org

Custom Builders of Montgomery County Testimony in OPPOSITION to Bill 34-17 Housing—Moderately Priced Dwelling Units (MPDUs)
December 5, 2017

Thank you for the opportunity to express our concern over the way Bill 34-17 will impact our business and other small volume builders. We understand, and agree with, the bill's laudable intent to increase low and moderate income residents' access to quality affordable housing. However, the MPDU law was never intended for projects under 20 houses-- as proposed in this bill-- nor should it be. As small businesses building small projects, we have no ability to provide MPDUs or the funds to support them.

Our small, local business builds only three or four houses a year throughout the County. Even as a small business, we are responsible for employing hundreds of local craftsman and subcontractors each year. These working men and women are reliant on small businesses like ours, to provide well-paying jobs and consistent work. We simply cannot afford any more fees, especially to provide for affordable housing via payment into a fund for which our support was not originally intended. We do not take anything away from the stock of truly affordable housing when we take a risk on an expensive, close-in Bethesda infill property, nor do we have any ability to add to it.

This is an additional fee of an unknown amount, and could have a disastrous impact on the jobs we provide and on our ability to operate and remain a viable business. It is often believed that builders like us have tremendous revenues that can continuously be applied to new taxes and fees. That is simply not the case. Custom and infill builders in the County typically build large expensive homes, however, we are just small businesses, taking risks and trying to make a living as <u>builders</u> for those buyers who want to move into a new, well located home. We do not have endless resources, but are subject to the ever increasing cost of doing business in the County. I humbly ask that the Council take into account the dramatic impact this could have on an already high-risk industry and strike the provision which requires developments of fewer than 20 houses to pay into the Housing Initiative Fund.

Laurence M. Cafritz
Chair, Custom Builders of Montgomery County
Maryland Building Industry Association

MARYLAND BUILDING INDUSTRY ASSOCIATION 11825 West Market Place | Fulton, MD 20759 | 301-776-6242 | marylandbuilders.org

Montgomery County Chapter of MBIA Comments on Bill 34-17, Housing—Moderately Priced Dwelling Units—Amendments

On behalf of the Montgomery County Chapter of the Maryland Building Industry Association I would first and foremost like to commend the County Council, specifically Councilmember Floreen for tackling such a critical, county wide priority. We agree that this public policy needs improvement to ensure the County achieves its goal of providing more affordable housing; particularly housing that meets the needs of the community. We agree there is a VERY real need in Montgomery for more affordable housing. To us, the pivotal challenge is the most efficient mechanisms to achieve this goal and maximizing all the tools in the Department of Housing and Community Affairs (DHCA)'s toolbox, while keeping Montgomery County economically competitive in the region. Moderately Priced Dwelling units are just one program among many that DHCA is utilizing to meet affordable housing needs.

Since its inception in 1976, the MPDU program has successfully produced 10,000 homeownership MPDU's and 5200 rental MPDUs. We all want to see more affordable units produced. However, parts of the program need to be revisited to better meet the needs of a changing county. According to the recent Rental Housing Study, 50 percent of all renter households in Montgomery County are cost-burdened. Also, there is a great demand for affordable family-sized units. The study shows us that we need quality affordable housing and flexibility is key in meeting residents' demands

In ways, this bill increases flexibility that would help developers build larger MPDU units to meet a real need in the County. Using floor area to calculate the MPDU requirement, is a creative way for builders to meet their obligations and that benefits the County. Further, we support the option of alternative payments in lieu of locating MPDU's in each subdivision. Ultimately, these funds will bolster the broader range of DHCA's tools that provide housing opportunities throughout the County.

The County's MPDU program and amendments to the program are an extremely complicated subject. It must be acknowledged that the MPDU requirements have different impacts based on product type--rental versus for sale product and multifamily versus single family. Therefore they need different solutions. There is not one-solution that equitably works for all. This is especially true for single family projects where even permitted density is often unachievable due to other site constraints. We realize this has not been the understanding in the past. Previously it may have been possible that single-family projects, through the use of smaller lots and townhouses, could recoup their density and costs. Not so in today's regulatory world. With more environmental, stormwater and design considerations, compounded with the reduced size of land available for single-family or townhouse development, a project cannot be redesigned to absorb the costs of MPDUs. Builders are very often building MPDU's at a significant financial loss.

While we support the bill's intent, there are several aspects that concern us.

1) Chief among these concerns is the fact that this bill abandons the original intent of this law, which was to provide an incentive to builders of new homes and communities to build

affordable housing, not to suffer a loss or put them at a market disadvantage. To help make the bill more business friendly, we request that the bill reinsert this important public policy which asserts that builders and developers are to incur no loss or penalty and should have a reasonable prospect of realizing a profit on the MPDU's. From the outset of the MPDU law, there were incentives for builders that built affordable housing. It is imperative that there be appropriate offsets for the additional costs incurred.

2) Second, since the origin of the MPDU law, it was deemed inappropriate for developers building less than 20 units to provide for MPDUs. This bill does not require small volume builders to create MPDUs, but they are required to provide for MPDUs via payment to the HIF. When it comes to a policy for the whole, a small disparate population cannot be expected to bear the responsibility for the whole of a County that includes over 1 million residents. This would be a burdensome tax, placed on a small group and is neither fair nor reasonable.

3) Also, it is important that the Council set a policy that is simple and streamlined with a consistent, application. The concept of setting the base MPDU requirement during master plan approval can lead to unintended market advantage for one project versus another.

The building industry looks forward to working with Council and Staff to find solutions to these concerns.

Thank you for your consideration. If you have any questions please feel free to contact Erin Bradley, Vice President of Government Affairs at ebradley@marylandbuilders.org or (301) 776-6207.

Sylke Knuppel
Chair, Montgomery County Chapter
Maryland Builders Industry Association

MARYLAND BUILDING INDUSTRY ASSOCIATION 11825 West Market Place | Fulton, MD 20759 | 301-776-6242 | marylandbuilders.org

MBIA's Montgomery County Chapter Comments on Bill 38-17 Housing-Moderately Priced Dwelling Units—Requirement to Build

Thank you for taking the time to consider MBIA's comments on Bill 38-17 which increases the minimum MPDU requirement to 15 percent based on the free and reduced meal eligibility rate in a given MCPS High School Service Area. Developers and builders across Montgomery County understand that it falls to us and the community at large to provide affordable housing in an inclusive and responsive way. That said, while we appreciate the intent of Bill 38-17—to increase socio-economic integration in Montgomery County—MBIA members have some concerns with the bill as drafted.

While we support the bill's intent, there are several aspects that concern us.

1) Chief among these concerns is the fact that this bill does not provide an incentive to builders of new homes and communities to build the additional affordable housing. Builders and developers are to incur no loss or penalty and should have a reasonable prospect of realizing a profit on the MPDU's. From the outset of the MPDU law, there were incentives for builders that built affordable housing. It is imperative that there be appropriate offsets for the additional costs incurred.

2) Second, in its current form, this bill does not provide certainty, predictability or consistency. Because the legislation frames the requirement in terms of the High School Service Area's eligibility rate for free or reduced meals, there is too much variability. As the eligibility rate changes yearly, it is foreseeable that a developer may purchase a piece of land and only be subject to a 12.5 percent requirement; however by the time they are ready to submit the preliminary plan the requirement is 15 percent.

While the development community understands its obligation, and does not wish to abdicate that responsibility, it is important that the industry be aware and able to account for everything that will impact a proposed project. One way to increase certainty in this bill would be to name the High School Service Areas this bill will affect or tie the requirement to something more concrete. However, as written, there are too many variables that could ultimately cost thousands of dollars or render a new development infeasible.

Thank you for your consideration.

Sylke Knuppel
Chair, Montgomery County Chapter
Maryland Builders Industry Association

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Dusty Rood, Chair
Leslie Ford-Weber, Chair-Elect
Jim Young, Immediate Past Chair
Georgette "Gigi" Godwin, President & CEO

Bill 34-17: Housing- Moderately Priced Dwelling Units (MPDUs) – Amendments
December 5, 2017

Montgomery County is competing with locations around the world for the next generation of talent and the organizations that employ them. Transportation and housing options are taken into consideration as someone contemplates where to live. Housing that is attainable is a key component to quality of life. It is also an important factor in attracting and retaining the next generation of talent to live and work in Montgomery County. The local Moderately Priced Dwelling Unit (MPDU) law is a leader in the country in inclusionary zoning. It has been an important part of delivering to the market housing units that are accessible for a portion of our community.

The MPDU program is one of the many ways that Montgomery County Government addresses housing affordability throughout the county. At the same time, there are many 'asks' and requirements put on developers and builders to operate and deliver product in Montgomery County. The goals of the MPDU program will only be achieved if and when the developer and/or builder is able to make the project viable – that is, profitable.

As you consider the various revisions to the existing law, please keep in mind the need for flexibility. The sites and the product types as well as how different areas of the county are treated in the 2016 Sub Division Staging Policy, especially vis a vis impact taxes, will impact each project differently. Therefore, it is beneficial to all parties to have some flexibility in order to incentivize the type of outcomes that are beneficial to the overall community.

As mentioned, there are already a number of tools being deployed to support attainable housing at all points on the spectrum. Overburdening the MPDU program with unrealistic and unattainable goals will not help to achieve the ultimate goal of generating much needed supply. It is clear that the MPDU program needs to be updated to reflect the current economy. MCCC stands ready to support revisions that will make the program successful.