



MCPB

Item No. 11

Date: 11/04/2021

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**Zoning Text Amendment 21-07, Density and Height Allocation – Development with Moderately Priced Dwelling Units**

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Lisa Govoni, Planner Coordinator, Countywide Planning & Policy, [Lisa.Govoni@montgomeryplanning.org](mailto:Lisa.Govoni@montgomeryplanning.org), 301-650-5624



Jason Sartori, Chief, Countywide Planning & Policy, [Jason.Sartori@montgomeryplanning.org](mailto:Jason.Sartori@montgomeryplanning.org), 301-495-2172

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**Completed: 10/28/2021**

**Description**

ZTA 21-07 would exempt applications with 100 percent MPDU projects from mapped FAR limits if the maximum density does not exceed 2.5 FAR and if the underlying zone is CR or CRT.

**Summary**

Staff recommends the Board transmit comments in support of ZTA 21-07 with amendments to the District Council. The Zoning Text Amendment (ZTA) was introduced on October 5, 2021 by Council President Hucker and Councilmember Riemer, with Councilmember Rice signing on as a co-sponsor. The public hearing is scheduled to be held on November 9, 2021.

**Background**

Developments with 100 percent MPDUs, built under a government regulation or binding agreement, would be exempt from FAR limits if the maximum residential density does not exceed 2.5 FAR. The exemption would only apply to properties with an underlying zone of CR or CRT. The government regulation or binding agreement must limit the price or rent charged for each unit for at least 30 years. The average cost of all units must be affordable to households earning 60 percent or less of the area median income (AMI) to qualify for this exemption.

**Rationale for ZTA Introduction**

In 2018, [ZTA 18-06](#) was introduced to amend the provisions for bonus density for Moderately Priced Dwelling Units (MPDUs). The Zoning Text Amendment was the result of more than a year of work to generally amend provisions concerning the MPDU program. The ZTA revised or established bonus density standards for certain Residential, Commercial/Residential, Employment and Overlay Zones. It established a three tiered bonus density system where the density allowed for any application that includes more than 12.5 percent MPDUs, qualified under [Chapter 25A](#) and rounded up to the nearest whole number of units, equals the density allowed under Sec. [4.4.8.B.1](#) plus an increased density of:

- a. 0.88 percent for each 0.1 percent increase in MPDUs above 12.5 percent, up to and including 15 percent;
- b. 22 percent plus 0.16 percent for each 0.1 percent increase in MPDUs above 15 percent, up to and including 20 percent; or

- c. 30 percent plus 0.1 percent for each 0.1 percent increase in MPDUs above 20 percent.

Previously, MPDU bonus density provisions were found in both Chapter 25A and Chapter 59. In Chapter 25A, there was a bonus density chart that dictated bonus density for “T” zone properties. “T” zones are zones translated from certain zoning existing before October 30, 2014. These zones were capped at a 22 percent bonus density for providing 15 percent MPDUs.

The Zoning Code rewrite put into effect another bonus density for properties without a “T” designation. For providing 15 percent or more MPDUs, the gross floor area of all MPDUs was exempt from the calculation of FAR. This bonus density system was uncapped and as a result, projects without a “T” zone that were 100 percent MPDUs projects would not have any of their residential FAR counted toward the calculation of FAR.

ZTA 18-06 sought to combine both bonus density systems into a three tiered system where projects providing 15 percent MPDUs got a 22 percent bonus, but bonus density was not limited to 22 percent. Projects that provided 100 percent MPDUs could achieve a 110 percent bonus density. As a consequence of this change, the ability of 100 percent MPDU projects to have uncapped/unlimited bonus density was removed. The bonus density chart in Chapter 25A was removed, and all bonus density provisions were placed in Chapter 59 with the same bonus system applying to projects with and without a “T” designation.

#### ZTA 21-07 as introduced

ZTA 21-07 as introduced amends one section of the Zoning Ordinance, under Section 4.5.2 Density and Height Allocation. The amendment is as follows:

#### **Sec. 1. DIVISION 59-4 is amended as follows:**

\* \* \*

#### **Section 4.5.2. Density and Height Allocation**

\* \* \*

#### **C. Development with Moderately Priced Dwelling Units**

8. In the CR or CRT zones, an application with 100 percent of the units under a government regulation or binding agreement that limits for at least 30 years the price or rent charged for each unit such that the average cost of all units is affordable to households earning less than 60 percent of the area median income (AMI), adjusted for family size, is exempt from the FAR limits of the underlying zone provided the maximum density does not exceed 2.5 FAR.

This amendment allows projects with an underlying zone of CR or CRT to have their FAR exempt (as long as it does not exceed 2.5 FAR) if they provide 100 percent of their units as MPDUs under a government regulation or binding agreement that limits rent or price charged for each unit for 30 years.

#### **Analysis**

Staff analyzed the numbers of zoning blocks with an underlying zone of CR or CRT 2.25 or less. Staff found 558 zoning blocks with an underlying zone of CR or CRT 2.25 or less. Of course, many of the properties within those zoning blocks are already developed or will be developed as something other than 100 percent MPDU projects. The prospect of building a 100 percent MPDU building in high cost areas like

Montgomery County is expensive and time consuming. There are very few projects in Montgomery County that will be able to achieve this level of affordability, given the deep subsidies and multiple funding sources required to make an affordable project of that magnitude feasible. Because of these reasons, staff expects very few projects to take advantage of the proposed amendment, but believes that the few projects that will, will positively benefit Montgomery County given the significant number of income-restricted units they will bring.

#### Affordable Housing vs. Moderately Priced Dwelling Units

Staff believes the current proposed language is intended to align the amendment with Low-Income Housing Tax Credit eligibility. However, the introduction language for the amendment introduced the amendment as a 100 percent MPDU ZTA. As proposed below in the applicability section, staff will recommend that eligibility be broadened to apply to 100 percent MPDU projects or 100 percent affordable projects that are awarded 9 percent Low-Income Housing Tax Credits (LIHTC).

As background, the LIHTC program is one of the two programs (the other being the MPDU program) that produce most of the affordable housing in Montgomery County. LIHTC is the largest source of federal support for the creation and preservation of dedicated affordable housing and is administered by state and local housing finance agencies based on regulations issued by the U.S. Treasury Department. These programs vary in how they are administered, the household income levels served (as a percentage of AMI), and control period.

<b>Affordable Housing Program</b>	<b>How It Works</b>	<b>Area Median Income (AMI) Served</b>	<b>Control Period</b>
Moderately Priced Dwelling Unit (MPDU)	Montgomery County specific policy; Mandatory set aside of 12.5 -15 percent of units in new developments greater than 20 units; rental or for-sale units	65 percent-70 percent AMI, dependent on construction type	30 years for-sale, 99 years for rental
Low-Income Housing Tax Credit (LIHTC)	Administered by state housing finance agencies; provides funding for the development costs of low-income housing; rental units only  There are two types of LIHTC tax credits, 9 percent credits and 4 percent credits, both of	20 percent of the units to households with incomes of 50 percent or less of the AMI or 40 percent of the units to households with incomes of 60 percent or less of the AMI, or tiered income limits serving an average of 60 percent AMI.	In Maryland, the building must remain in compliance and is subject to a covenant to enforce compliance for a minimum of 40 years (15- year compliance period and a 25-year extended use period). <sup>1</sup>

<sup>1</sup> <https://dhcd.maryland.gov/HousingDevelopment/Pages/lihtc/default.aspx>

	which are allocated by state and local housing finance agencies. The 9 percent LIHTC is awarded on a competitive basis in accordance with preferences and priorities laid out in the housing finance agency's Qualified Allocation Plan.		
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## Recommended Modifications

### Applicability

Staff believes the project that was the impetus behind this proposed amendment is actually a 100 percent affordable project that was awarded a 9 percent tax credit and not a 100 percent MPDU project. The differences between the two are highlighted above in the Affordable Housing vs. MPDU section, but generally the MPDU program and the LIHTC program vary in how they are administered, incomes served, and control period.

Staff wants to ensure that a project that intends to take advantage of the amendment is eligible to do so. Staff recommends broadening the applicability of the amendment to apply to eligible 100 percent MPDU projects or a 100 percent affordable project that was awarded a 9 percent Low-Income Housing Tax Credits. Staff received guidance from Council staff on how to broaden the applicability, as suggested below.

### **Sec. 1. DIVISION 59-4 is amended as follows:**

\* \* \*

### **Section 4.5.2. Density and Height Allocation**

\* \* \*

### **C. Development with Moderately Priced Dwelling Units and Other Income-Restricted Housing**

8. In the CR or CRT zones, an application is exempt from the total FAR limits of the underlying zone, provided the maximum residential density does not exceed 2.5 FAR, [[with]]if 100% of the units are income-restricted for at least 30 years under[[ a government regulation or binding agreement that limits for at least 30 years the price or rent charged for each unit such that the average cost of all units is affordable to households earning less than 60% of the area median income (AMI), adjusted for family size.]]:

a. the MPDU requirements of Chapter 25A; or

b. an award of 9% Low-Income Housing Tax Credits (LIHTC).

Staff supports these modifications as recommended. These modifications modify the section header and the text of the amendment to broaden the applicability to both 100 percent MPDU projects, as defined by Chapter 25A, or 100 percent affordable projects that are awarded a 9 percent Low-Income Housing Tax Credit.

## Other Considerations

### Height

**Additional height is allowed for additional MPDUs above 12.5 percent.** Section 4.5.2.C Developments with Moderately Priced Dwelling Units, lays out the conditions for additional heights for MPDUs:

**Sec. 1. DIVISION 59-4 is amended as follows:**

\* \* \*

**Section 4.5.2. Density and Height Allocation**

\* \* \*

### **C. Development with Moderately Priced Dwelling Units**

7. The height limit of the applicable zone and master plan does not apply to the extent required to provide the MPDUs. The additional height is calculated as the floor area provided for MPDUs above 12.5 percent divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet.

As such, the mapped height would be allowed to be increased for projects with additional MPDUs over 12.5 percent but tax credit units would have to put their units in the MPDU program (with the longer control period) to be eligible to take advantage of additional height provision.

### Impact Tax Waivers

Staff also wants to note that another affordable housing incentive – **the impact tax discount/waiver for projects that build 25 percent MPDUs – also requires the units be put in the MPDU program to be eligible for the incentive.** Recent changes to the incentive through the Growth and Infrastructure Policy ensures that the affordable units have to be placed in the MPDU program to receive the incentive. The incentive was also changed from allowing all impact taxes waived to be limited to the lowest standard impact in the county for the applicable dwelling type.

### Bethesda Overlay Zone

Staff also wants to highlight the implications for the Bethesda Overlay Zone (BOZ). Given that the amendment is silent on the applicability in the BOZ, staff believes the proposed amendment would be available to properties within the BOZ who wish to build 100 percent affordable housing. **Staff supports the amendment's applicability to properties within the BOZ, given the area's access to amenities and opportunities that would benefit the residents of affordable housing.** There are 68 zoning blocks within the BOZ with an underlying zone less than CR or CRT 2.5.

**Conclusion**

Staff supports the change proposed in ZTA 21-07 with recommended modifications. The proposed amendment fits in with county policy to incentivize the production of MPDUs and other affordable housing and proposes an appropriate benefit for projects providing 100 percent MPDUs or LIHTC units, which is consistent with the benefit provided prior to adoption of ZTA 18-06.

**Attachments**

1. ZTA No. 21-07 – introduction packet



**Committee:** PHED  
**Committee Review:** At a future date  
**Staff:** Livhu Ndou, Legislative Attorney  
**Purpose:** To introduce agenda item – no vote expected  
**Keywords:** #Density, #MPDU

AGENDA ITEM #5.5A  
October 5, 2021  
**Introduction**

## SUBJECT

Zoning Text Amendment (ZTA) 21-07, Density and Height Allocation – Development with Moderately Priced Dwelling Units

## EXPECTED ATTENDEES

None

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

## DESCRIPTION/ISSUE

Zoning Text Amendment (ZTA) 21-07 would exempt applications with 100% moderately-priced dwelling units (MPDUs) from mapped FAR limits.

## SUMMARY OF KEY DISCUSSION POINTS

- Developments with 100% MPDUs, under a government regulation or binding agreement, would be exempt from the FAR limits if maximum density does not exceed 2.5 FAR.
- This exemption would only apply if the underlying zone is CR or CRT.
- The government regulation or binding agreement must limit the price or rent charged for each unit for at least 30 years.
- The average area median income (AMI) of all households must be 60% or less to qualify for this exemption.

### **This report contains:**

ZTA 21-07

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Zoning Text Amendment No.: 21-07

Concerning: Density and Height  
Allocation –  
Development with  
Moderately Priced  
Dwelling Units

Draft No. & Date: 1 – 9/2/2021

Introduced:

Public Hearing:

Adopted:

Effective:

Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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Lead Sponsors: Council President Hucker and Councilmember Riemer

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- exempt applications with 100% moderately-priced dwelling units (MPDUs) from mapped FAR limits; and
- generally amend the density provisions for MPDUs

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Division 4.5	“Commercial/Residential Zones”
Section 4.5.2.	“Density and Height Allocation”

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*

*Underlining indicates text that is added to existing law by the original text amendment.*

*[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.*

*Double underlining indicates text that is added to the text amendment by amendment.*

*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*

*\* \* \* indicates existing law unaffected by the text amendment.*



*ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

**Sec. 1. DIVISION 59-4 is amended as follows:**

**\* \* \***

**Section 4.5.2. Density and Height Allocation**

**\* \* \***

**C. Development with Moderately Priced Dwelling Units**

For any application that includes more than 12.5% of the gross residential floor area as Moderately Priced Dwelling Units (MPDUs), qualified under Chapter 25A, the following provisions apply:

1. Except in the Bethesda Overlay zone, residential density may be increased above the mapped residential FAR by:
  - a. 0.88% for each 0.1% increase in MPDUs above 12.5%, up to and including 15%;
  - b. 22% plus 0.16% for each 0.1% increase in MPDUs above 15%, up to and including 20%; or
  - c. 30% plus 0.1% for each 0.1% increase in MPDUs above 20%.
2. In the Bethesda Overlay zone, residential density may be increased above the mapped residential FAR by 17.5% plus 0.1% for each 0.1% increase in MPDUs above 17.5%.
3. Total density may be increased above the number following the zoning classification on the zoning map by an amount equal to the residential density achieved under Sec.4.5.2.C.1.
4. Any increase in density allowed under this section must be calculated after the base density of the property has been increased under Sec.4.5.2.B for development using FAR averaging.
5. To achieve an increase in density under Section 4.5.2.C, at least one more MPDU than would be required at 12.5% must be provided.

- 27           6.     The floor area counted as MPDU floor area includes a proportional  
28                 share of the gross floor area not devoted to residential units.
- 29           7.     The height limit of the applicable zone and master plan does not apply  
30                 to the extent required to provide the MPDUs. The additional height is  
31                 calculated as the floor area provided for MPDUs above 12.5% divided  
32                 by the average residential floor plate area, where each whole number  
33                 and each remaining fraction allows an increase of 12 feet.
- 34           8.     In the CR or CRT zones, an application with 100% of the units under  
35                 a government regulation or binding agreement that limits for at least  
36                 30 years the price or rent charged for each unit such that the average  
37                 cost of all units is affordable to households earning less than 60% of  
38                 the area median income (AMI), adjusted for family size, is exempt  
39                 from the FAR limits of the underlying zone provided the maximum  
40                 density does not exceed 2.5 FAR.

41     \*     \*     \*

42           **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
43     date of Council adoption.

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45     This is a correct copy of Council action.

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48     Selena M. Singleton, Esq.  
49     Clerk of the Council