

ZTA 22-08 – COMMERCIAL/RESIDENTIAL ZONES - MPDU

Description

ZTA 22-08 clarifies the intent that the MPDU and other income-restricted housing density bonus provisions apply to the CRN Zone.

ZTA 22-06

COMPLETED: 9-1-2022

MCPB

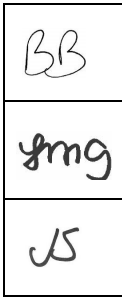
Item No. 10

9-8-2022

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Summary

- This ZTA clarifies that developments in the CRN Zone providing more than the required minimum of MPDUs qualify for the density bonus provisions of Section 4.5.2.C.
- MPDU density bonus in the CRN zone would require a site plan.
- A Council Public Hearing is scheduled for September 13, 2022.
- Planning staff supports the ZTA with minor amendments.

LEAD SPONSORS

Councilmember Friedson

INTRODUCTION DATE:

July 26, 2022

REVIEW BASIS:

Chapter 59

SECTION ONE

BACKGROUND

Rationale for ZTA 22-08

ZTA 22-08 was introduced on July 26, 2022 by Councilmember Friedson and is scheduled for a Council Public Hearing on Tuesday, September 13, 2022. This ZTA was introduced to clarify the intent of the Commercial/Residential group of zones, specifically that standard method development projects are also eligible for density and height bonuses allowed in the code. The ZTA also is intended to ensure any application utilizing the additional density and height allowed by code for Moderately Priced Dwelling Unit (MPDU) development is reviewed and approved by a site plan.

Section 4.5.2.C, Development With Moderately Priced Dwelling Units and Other Income-Restricted Housing, details how to calculate height and density incentives for providing more than the code required number of MPDUs. What is different in the Commercial/Residential Zones compared to other zone groups is there is no corresponding MPDU optional method of development that coincides with this section, nor is it explicit which zones may use the section or how the review should be performed. This ZTA is intended to add that clarity under the Standard Method Development section that height and density may be modified under Section 4.5.2.C for eligible properties, and that a site plan is the review process for such applications.

SECTION TWO

ANALYSIS

ZTA 22-08 as introduced

ZTA 22-08 modifies two subsections within Section 4.5.3, Standard Method Development. Under Subsection A, In General, the code currently states that height and density is set by the zoning map. This ZTA amends the subsection to add unless additional height and density is permitted under Section 4.5.2.C. This referenced section contains the qualifications and formulas for determining what height and density incentives are available for projects providing more than the minimum required MPDUs.

Subsection B, Procedures for Approval, outlines the circumstances under which a site plan is required for standard method review. The ZTA adds to this that In the CRN zone, site plan approval is required for applications that develop under Section 4.5.2.C. This new language only applies to the CRN zone because currently there is no optional method development procedures for the CRN zone, which automatically require site plan. For any application to receive additional density under Section 4.5.2.C, it must already be building at the maximum mapped FAR for that specific site. The CRT and CR zones have optional method development provisions, and in most instances utilization of the MPDU

density and height would fall under these optional method provisions because the total density would exceed standard method limits. Optional method projects are always reviewed through a site plan.

A Racial Equity and Social Justice (RESJ) statement was issued for ZTA 22-08 (Attachment C). The analysis expects little to no impact on RESJ within the County as it's mostly about clarifying policies rather than modifying them.

Analysis of ZTA 22-08

The new text proposed for Section 4.5.3.A. should provide some further clarity that additional height and density is available for developments with additional MDPU's. Staff does understand the concern that a development in a zone with a low mapped FAR could apply for the additional density and height allowed by Section 4.5.2.C without triggering the need for a site plan. For this reason, Planning staff is supportive of this ZTA providing clarifying language that standard method development projects that otherwise meet the criteria of Section 4.5.2.C. can utilize the additional height and FAR provisions included with site plan approval. Staff does recommend minor modifications to Section 4.5.3.B, as follows:

A. In General

1. In [[the CRN zone]] any of the Commercial/Residential zones, the maximum total, nonresidential, and residential [FARs]FAR and maximum height for any property [is]are set by the zone shown on the zoning map, unless additional height and density is permitted under Section 4.5.2.C.

B. Procedure for Approval

* * *

3. [[In the CRN zone site]] Site plan approval is required for applications that develop under Section 4.5.2.C.

* * *

Planning staff recommends changing the applicability statements in both In General, and Procedure for Approval from being specific to the CRN zone to being applicable to all Commercial/Residential Zones. In all instances, a CR zoned project would be an optional method project before Section 4.5.2.C. kicks in because all CR zones are mapped at or above the allowed maximum FAR for standard method development. There are, however, many CRT zoned properties with FARs between 0.25 and 0.75 which is less than the 1.0 standard method maximum in the CRT zone. These properties are in the same situation as all CRN zoned properties today, where there is no optional method to automatically require site plan review. These CRT zoned properties should be handled the same way as the CRN zoned properties that the introduced ZTA would accomplish. In addition, the way the text was written only mentioning the CRN zone could be interpreted that only the CRN zone may utilize section 4.5.2.C, making the code even less clear than it is today.

Planning staff recommends another minor change to add a new Specification for Density under the Standard Method Development Standards table 4.5.3.C. The modified section of table would appear as shown below:

1. Site	Detached House	Duplex - Side	Duplex - Over	Townhouse	Apartment	Multi Use	General
* * *							
Lot (min)							
Lot area	1,000 SF	500 SF	1,000 SF	800 SF	n/a	n/a	n/a
Lot width at front building line	25'	12.5'	25'	12'	n/a	n/a	n/a
Lot width at front lot line	10'	10'	10'	n/a	n/a	n/a	n/a
Density (max)							
CRN Density, FAR	mapped						
CRT Density, FAR	The lesser of: mapped FAR or the greater of 10,000 SF or 1.0 FAR						
CR Density, FAR	The lesser of: mapped FAR or the greater of 10,000 SF or 0.5 FAR						
Specification for Density							
a. In the CR zone, a designated historic resource that does not occupy more than 10% of the gross floor area is excluded from the FAR calculation.							
b. Density may be increased above the limits set forth above with MPDU and other Income-Restricted Housing per Section 4.5.3.C.							
* * *							

This new specification makes it clear that density under the standard method of development may be increased based on the provisions of Section 4.5.3.C. This change would ensure no matter which section of code is read, the intent of allowing any standard method Commercial/Residential zoned property to utilize additional density for additional MPDUs is clear.

SECTION THREE

CONCLUSION

Planning staff supports the concept for ZTA 22-08 with the minor amendments clarifying that all standard method development projects reviewed under Section 4.5.2.C. have a site plan review and recommends the Planning Board transmit these comments to the District Council. This ZTA provides clarity and a process for reviewing standard method development projects in the Commercial/Residential group of zones that voluntarily provide more than the minimum required MPDUs.

- Attachment A – ZTA 22-08 introduction packet
- Attachment B – ZTA 22-08 with suggested modifications
- Attachment C – RESJ Statement for ZTA 22-08



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

AGENDA ITEM #7B
July 26, 2022
Introduction

SUBJECT

Zoning Text Amendment (ZTA) 22-08, Commercial/Residential Zones – MPDU

Lead Sponsor: Councilmember Friedson

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

DESCRIPTION/ISSUE

ZTA 22-08 will apply Section 4.5.2.C., Development with Moderately Priced Dwelling Units and Other Income-Restricted Housing, to the CRN zone.

SUMMARY OF KEY DISCUSSION POINTS

- ZTA 22-08 will clarify the Council's intent that the MPDU provisions apply in the CRN zone.
- ZTA 22-08 will require site plan approval for projects that develop under Section 4.5.2.C. in the CRN zone.
- A public hearing is tentatively scheduled for September 20, 2022.

This report contains:

ZTA 22-08

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Zoning Text Amendment No.: 22-08
Concerning: Commercial/Residential
Zones – MPDU
Draft No. & Date: 1 – 5/31/2022
Introduced: July 26, 2022
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**

Lead Sponsor: Councilmember Friedson

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- clarify the applicability of the moderately-priced dwelling unit provisions to the CRN zone; and
- generally amend the provisions for Commercial/Residential development.

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 4.5.3. “Standard Method Development”

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:

1 **Sec. 1. DIVISION 59-4.5 is amended as follows:**

2 **Division 4.5. Commercial/Residential Zones**

3 * * *

4 **Section 4.5.3. Standard Method Development**

5 The CRN, CRT, and CR [zone]zones allow standard method development under
6 the following limitations and requirements.

7 **A. In General**

- 8 1. In the CRN zone, the maximum total, nonresidential, and residential
9 [FARs]FAR and maximum height for any property [is]are set by the
10 zone shown on the zoning map, unless additional height and density is
11 permitted under Section 4.5.2.C.

12 * * *

13 **B. Procedure for Approval**

- 14 1. Site plan approval may be required under Section 7.3.4.A.8.
15 2. An applicant may file a site plan application to modify the Build-to
16 Area, Building Orientation, and Transparency requirements under
17 Section 4.5.3.C.3.
18 3. In the CRN zone, site plan approval is required for applications that
19 develop under Section 4.5.2.C.

20 * * *

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

23

Attachment B

Zoning Text Amendment No.: 22-08
Concerning: Commercial/Residential
Zones – MPDU
Draft No. & Date: 1 – 5/31/2022
Introduced: July 26, 2022
Public Hearing:
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
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ORDINANCE

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Sec. 1. DIVISION 59-4.5 is amended as follows:

Division 4.5. Commercial/Residential Zones

* * *

Section 4.5.3. Standard Method Development

The CRN, CRT, and CR [zone]zones allow standard method development under the following limitations and requirements.

A. In General

1. In ~~[[the CRN zone]]~~ any of the Commercial/Residential zones, the maximum total, nonresidential, and residential [FARs]FAR and maximum height for any property [is]are set by the zone shown on the zoning map, unless additional height and density is permitted under Section 4.5.2.C.

* * *

B. Procedure for Approval

1. Site plan approval may be required under Section 7.3.4.A.8.
2. An applicant may file a site plan application to modify the Build-to Area, Building Orientation, and Transparency requirements under Section 4.5.3.C.3.
3. [[In the CRN zone, site]] Site plan approval is required for applications that develop under Section 4.5.2.C.

C. CRN, CRT, and CR Zones, Standard Method Development Standards

1. Site	Detached House	Duplex - Side	Duplex - Over	Townhouse	Apartment	Multi Use	General
* * *							
Lot (min)							
Lot area	1,000 SF	500 SF	1,000 SF	800 SF	n/a	n/a	n/a
Lot width at front	25'	12.5'	25'	12'	n/a	n/a	n/a

building line							
Lot width at front lot line	10'	10'	10'	n/a	n/a	n/a	n/a
Density (max)							
CRN Density, FAR	mapped						
CRT Density, FAR	The lesser of: mapped FAR or the greater of 10,000 SF or 1.0 FAR						
CR Density, FAR	The lesser of: mapped FAR or the greater of 10,000 SF or 0.5 FAR						
Specification for Density							
a. In the CR zone, a designated historic resource that does not occupy more than 10% of the gross floor area is excluded from the FAR calculation.							
b. <u>Density may be increased above the limits set forth above with MPDU and other Income-Restricted Housing per Section 4.5.3.C.</u>							
* * *							

24

25 * * *

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

28

This is a correct copy of Council action.

Judy Rupp
Clerk of the Council

Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

ZTA 22-08: COMMERCIAL/RESIDENTIAL ZONES – MPDU

SUMMARY

The Office of Legislative Oversight anticipates that Zoning Text Amendment 22-08 would have little or no impact on racial equity and social justice (RESJ) in the County as it clarifies provisions implicitly included in the Zoning Ordinance rather than changes land use policies or practices that could impact RESJ.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a process that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a goal of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF ZTA 22-08

Zoning Text Amendments typically modify the Zoning Ordinance to change definitions of terms, modify development standards, create new zones, or to adjust allowable uses among other uses. Such changes in the Zoning Ordinance can impact current racial and social inequities in land use. Some ZTAs, however, do not change, modify, or create new standards or adjustable land uses, but instead clarify existing land uses. ZTA 22-08, Commercial/Residential Zones – MPDU, exemplifies this later approach of a ZTA clarifying existing land use policy and practice rather than changing it.

The purpose of ZTA 22-08 is to explicitly allow Moderately Priced Dwelling Units (MPDUs) in Commercial Residential Neighborhood (CRN) zones.³ MPDUs are dwelling units offered for sale or rent to eligible low or moderate-income households earning up to 65 or 70 percent of the area median income through the Department of Housing and Community Affairs.⁴ The MPDU Program requires that 12.5 to 15.0 percent of new housing units in projects with 20 or more units to be affordable to such households.⁵

Of note, Division 59.4.5 of the Zoning Ordinance explicitly describes the applicability of MPDUs for Commercial Residential Town (CRT) and Commercial Residential (CR) zones. This section of the Zoning Ordinance, however, does not describe the applicability of MPDUs in CRN zones. Yet, because the Zoning Ordinance does not explicitly prohibit MPDUs in the CRN zone, they are implicitly allowed in such zones. To make the allowance of MPDUs in CRN zones as explicit as their allowance in CRT and CR zones, ZTA 22-08 modifies applicable sections and subsections of the Zoning Ordinance toward this end. ZTA 22-08 also articulates a regulatory review process with the Planning Board for MPDUs in the CRN zone, under the Standard Method Development.

ZTA 22-08 was introduced on July 26, 2022.

RESJ Impact Statement

Zoning Text Amendment 22-08

ANTICIPATED RESJ IMPACTS

OLO finds that ZTA 22-08 does not establish new policies or land use practices. Instead, ZTA 22-08 clarifies that MPDUs are allowed in Commercial Residential Neighborhoods by inserting language in the Zoning Ordinance that is analogous to the allowance for MPDUs in Commercial Residential and Commercial Residential Town zones. Since ZTA 22-08 does not change the County's land use policies or practices, but instead makes explicit an implicit allowance for MPDUs in CRN zones, OLO anticipates that ZTA 22-08 will have little to no impact on RESJ in the County.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

CONTRIBUTIONS

OLO staffers Elsabett Tesfaye, Performance Management and Data Analyst drafted this RESJ impact statement.

¹ Definition of racial equity and social justice adopted from "Applying a Racial Equity Lens into Federal Nutrition Programs" by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools.

<https://www.racialequitytools.org/glossary>

² Ibid.

³ The Commercial Residential Neighborhood zone (CRN) is one of the three family of zones under Division 59.4.5: Commercial/Residential Zones that also include Commercial Residential Town (CRT) and Commercial Residential (CR).

⁴ COMCORE Chapter 25A-Housing: Moderately Priced-Regulations.

https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_comcor/0-0-0-13342

⁵ Aseem Nigam, Annual Report on MPDU's Covering Calendar Year 2020, Department of Housing and Community Affairs

https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/affordable/publications/mpdu/annual_report_mpdu-2020.pdf