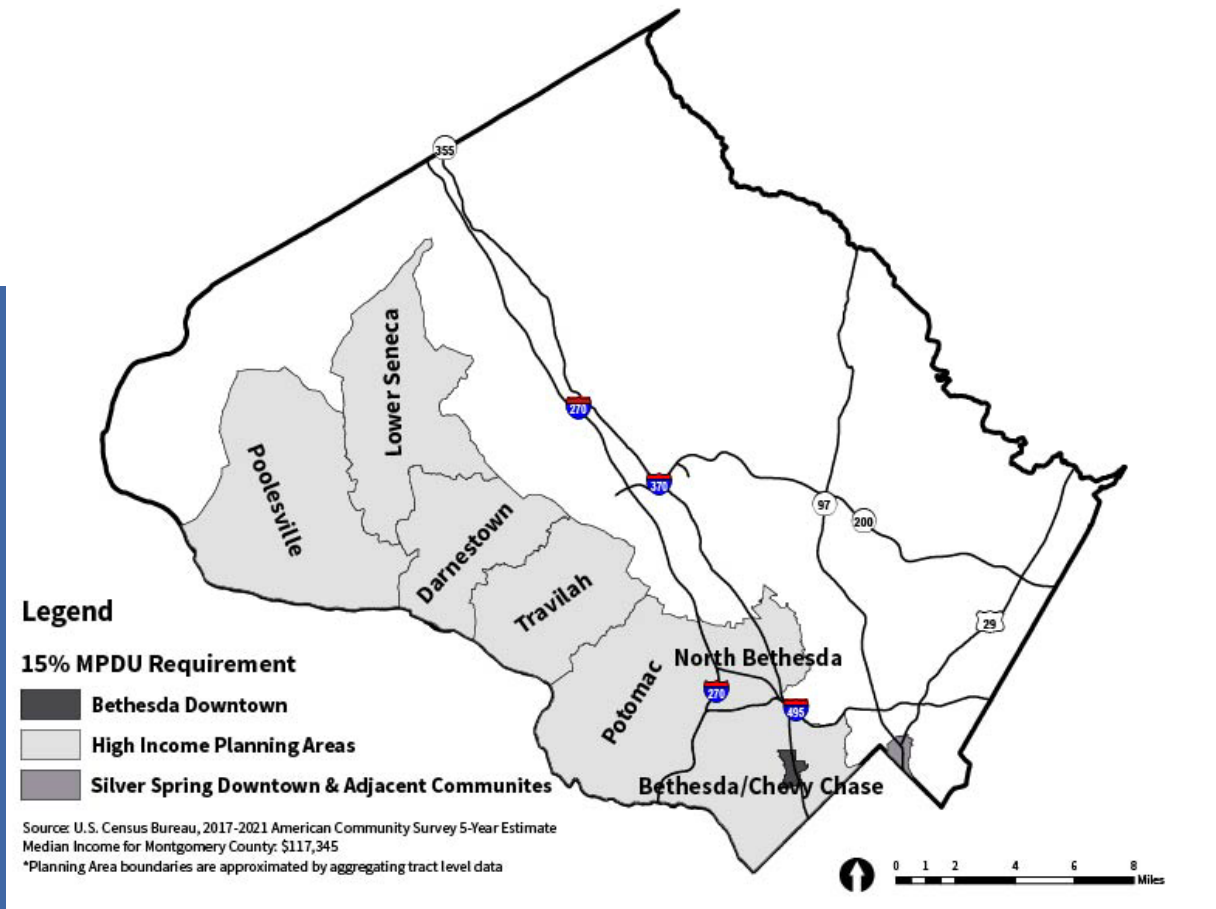


## OVERVIEW OF MODERATELY PRICED DWELLING UNIT (MPDU) PROGRAM AND DESIGNATION OF 15 PERCENT MPDU PLANNING AREAS



### Description

A 15 percent MPDUs is required for developments in a Planning Area designated by the Planning Board in which at least 45 percent of the United States Census Tracts have a median household income of at least 150 percent of the County-wide median household income.

Completed: 01-05-2023

MCPB  
Item No. 10  
01-12-2023

Montgomery County  
Planning Board  
2425 Reedie Drive, Floor 14  
Wheaton, MD 20902

## Planning Staff



Lisa Govoni, Housing Planner IV, Countywide Planning and Policy Division,  
[lisa.govoni@montgomeryplanning.org](mailto:lisa.govoni@montgomeryplanning.org), (301) 650-5624



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

### REVIEW BASIS

Chapter 25A

Chapter 59



### Summary:

- Montgomery County's Moderately Priced Dwelling Unit (MPDU) program is recognized as country's first mandatory, inclusionary zoning law. The program was enacted in 1974 with the aim of furthering the objective of providing a full range of housing choices for all incomes, ages, and households.
- In 2018, Bill 38-17 was passed by the Montgomery County Council and created a 15 percent MPDU requirement in Planning Areas designated by the Planning Board annually, in which 45 percent of the census tracts have a median household income of at least 150 percent of the county-wide median household income.
- The Planning Areas with a 15 percent MPDU requirement in 2023 include Poolesville, Lower Seneca, Darnestown, Travilah, Potomac, North Bethesda and Bethesda/Chevy Chase. The areas that encompass the Bethesda Downtown Plan and the Silver Spring Downtown and Adjacent Communities Plan also have a 15 percent MPDU requirement.

TABLE OF CONTENTS

SECTION 1: OVERVIEW..... 3

    MODERATELY PRICED DWELLING UNIT ORDINANCE OVERVIEW..... 3

    15 PERCENT MPDU REQUIREMENT ..... 8

    BENEFITS OF PROVIDING A HIGHER PERCENTAGE OF MPDUs ..... 9

    BETHESDA OVERLAY ZONE ..... 11

SECTION 2: PLANNING AREAS WITH A 15 PERCENT MPDU REQUIREMENT DESIGNATION..... 12

    15 PERCENT PLANNING AREA DESIGNATION OVERVIEW ..... 12

## SECTION 1: OVERVIEW

During the Planning Board briefing, Planning staff will present an overview of the various affordable housing programs that operate in Montgomery County today, with an emphasis on the inclusionary zoning Moderately Priced Dwelling Unit (MPDU) program. While there are many other important programs, policies, and funding sources focused on affordable housing, such as the Housing Choice Voucher program and the Housing Initiative Fund, this staff report contains only an overview of the history and implementation of the county's MPDU program as county code requires the Planning Board to annually designate areas of the county with a 15 percent minimum MPDU requirement.

### MODERATELY PRICED DWELLING UNIT ORDINANCE OVERVIEW

Montgomery County's Moderately Priced Dwelling Unit (MPDU) program is believed to be the country's first mandatory, inclusionary zoning law. The program was enacted in 1974 with the aim of furthering the objective of providing a full range of housing choices for all incomes, ages, and households. The program is widely recognized as the preeminent inclusionary zoning program in the country due to its success in both program longevity and production of units.

Montgomery County's Department of Housing and Community Affairs largely deals with the implementation and operation of the MPDU program, but the Planning Department and Planning Board have an important role to play in the program through the land use and zoning approvals of new construction development, in the preliminary plan and/or site plan process, and through master plan recommendations.

As will be discussed below, the MPDU rental and sales programs are run completely differently. Rental rates are set based on income level, administered by the leasing offices, and require annual recertification by tenants for the life of their tenancy. Sales prices are based on construction costs, and so maintain a deeper affordability (down to 50 percent AMI for some units), administered by the MPDU office, and once purchased do not require any future income level certification.

#### Eligible Household Size and Maximum Income for MPDUs

Currently, the program serves households earning up to 65 percent (garden style multifamily rental) or up to 70 percent (for-sale and high-rise multifamily rental) of Area Median Income. Per the U.S. Department of Housing and Urban Development, the Area Median Income (AMI) for a family of four was \$142,300 in FY 2022.

A household must have a minimum income of \$40,000, qualify for a mortgage loan of at least \$150,000 and have savings for a down payment and closing costs to purchase an MPDU.

The minimum income required to rent an MPDU varies from property to property.

Eligible Household Size and Maximum Income for MPDUs (Effective April 2022)		
Household Size	Garden Apartments	High-Rise Apartments/For-Sale
1	\$64,500	\$69,500
2	\$74,000	\$79,500
3	\$83,000	\$89,500
4	\$92,500	\$99,500
5	\$100,000	\$107,500

### MPDU Production and Control Periods

Since its inception in the early 1970s, the program [has produced more than 16,000 units](#), averaging around 300 units produced every year. The MPDU price control period requirements have changed over time but is currently 99 years for rental units and 30 years for for-sale units. At this time, over 8,300 units are under the control period (3,600 homeownership MPDUs, 3,100 rental MPDUs, and 1,600+ owned by the Housing Opportunities Commission and other non-profits).

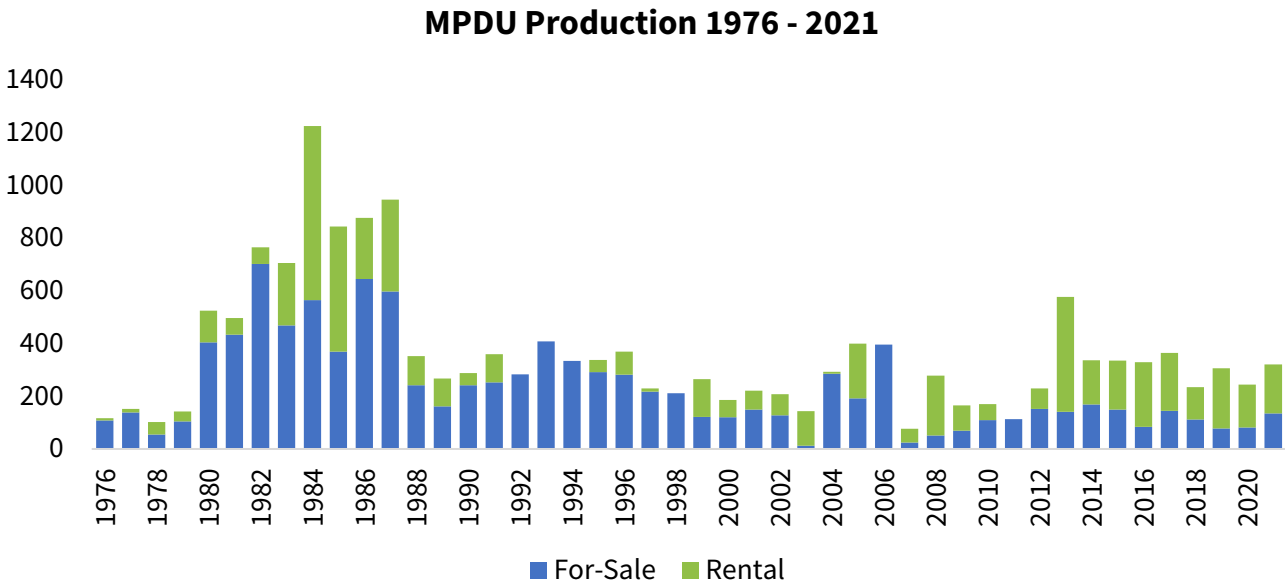


Figure 1 MPDU Production 1976 - 2021

Source: Department of Housing and Community Affairs

### Minimum Threshold

The requirement to provide a certain percentage of MPDUs applies to any new development in Montgomery County with twenty or more units. **The minimum percentage of MPDUs required varies from 12.5 percent to 15 percent of the total number of units in the development**, depending on the location of the development within the county (this will be discussed later in the report). The actual percentage of MPDUs for any development is based upon the density bonus achieved, which can exceed the minimum required. The actual percentage and number of MPDUs

required is set by the Montgomery County Planning Board at the time it approves the preliminary plan and/or site plan for the development.

### Projects under Minimum Threshold

**For properties providing 11-19 units, MPDUs are not required on site, but a payment must be made to the county's housing trust fund**, the Housing Initiative Fund (HIF), per county code. Currently, the amount of payment required to the HIF is equal to one-half (0.5) percent of the purchase price of each dwelling unit. The amount must be collected at settlement of each unit and forwarded to the county within three business days of recordation of the deed.

### Required Agreements for MPDUs

Once the MPDU requirement has been set as part of the development review and approval process, the developer/builder must execute two agreements with the Department of Housing and Community Affairs (DHCA). The first is the **Agreement to Build Moderately Priced Dwelling Units**. This agreement must be executed before building permits will be issued by the Department of Permitting Services (DPS).

The second is an **Offering Agreement**, which is submitted to DHCA once the developer/builder is ready to make the MPDUs available for sale or rent to eligible MPDU certificate holders.

### Role of Housing Opportunities Commission (HOC) and other Non-Profits

Once DHCA has approved the Offering Agreement, DHCA staff notifies the Montgomery County Housing Opportunities Commission (the county's public housing authority), the county's Department of Health and Human Services (DHHS), and certain non-profit organizations of the offering by emailing the completed Offering Agreement and exhibits.

These agencies have 21 days from the date of the email to review the offering and make their selection of units, if any. **Under the MPDU law, HOC, DHHS, and the non-profits are eligible to reserve up to 40 percent of the MPDUs offered. HOC may choose up to 33 percent of the MPDUs for itself.** If any of these agencies chooses to reserve some of the MPDUs, that agency's staff will work directly with the developer/builder's sales agent.

### MPDU Random Selection Drawing for For-Sale Units

Once DHCA has approved the Offering Agreement, staff will work with the developer and hold a random selection drawing among qualified MPDU certificate holders who are eligible to purchase the MPDUs available in that development based on sales price, income, and the MPDU point system for qualified buyers.

## MPDU Homeownership Program

There are generally three steps a household or individual must complete to be able to purchase an MPDU home. These three steps are classes designed to answer all questions about the MPDU program, provide information about the MPDU purchase application and selection process, and provide information about homeownership responsibilities.

The three classes include:

- 1.) Attend an MPDU orientation Seminar where the individual or household will learn about the program benefits, application and selection processes, and program rules.
- 2.) Attend a first-time homebuyer class.
- 3.) Take an online self-administered MPDU application tutorial.

After completing these steps, you will become an MPDU certificate holder. When MPDUs are available for sale in a new development, or when resale MPDUs become available, the MPDU office holds a Random Selection Drawing to select certificate holders who will be provided the opportunity to purchase the MPDUs. You can check the MPDU website regularly to find out which MPDUs are available for sale and when drawings will be held. If you are interested in purchasing one of the MPDUs that are available in a new development, you must enter the online drawing for those MPDUs. You must provide your MPDU certificate number (the number on your MPDU certificate) in order to enter a drawing. If you are eligible to buy one of the MPDUs based on your income and household size, you will be entered in the drawing. If you are not eligible, your entry will be rejected when the drawing is held. The drawing will take place approximately two to three weeks after the information is posted on the MPDU website.

There are about 400 households on the MPDU waiting list who have been issued a certificate and need to win a Random Selection Drawing to purchase a unit.

## MPDU Rentals Program

Persons interested in the MPDU rental program must apply directly to the MPDU complex of their choice. The management companies at these complexes will provide an application, verify income and credit history, and assess eligibility to rent an MPDU apartment. Rental rates are set based on income level, administered by the leasing offices, and require annual recertification by tenants for the life of their tenancy.

## Alternative Agreements

**Every effort should be made to provide the required number of MPDUs on site.** If there are extraordinary circumstances where the development proposed cannot accommodate the required number of MPDUs in the same location, the developer may contact DHCA to propose an alternative payment or alternative location agreement. If an applicant wishes to pursue an alternative agreement, they must submit a written request to DHCA at least 90 days prior to the submission of a

building permit application, and before an Agreement to Build is executed. The alternative agreement may be in place of, or in coordination with, an Agreement to Build and subsequent Offering Agreement, as described below. **These agreements are authorized at the discretion of DHCA, which makes no guarantees that they will be approved.**

**Alternative Payment Agreements are only available to for-sale developments.** No alternative agreement may be entered into for a rental development. To pursue an alternative payment agreement, the developer must demonstrate that it is infeasible to provide MPDUs on site per the required findings of the county code. The alternative payment amount must comply with Section 25A of the code, which currently requires a payment equal to 3 percent of the sales price of each market rate unit in the development. The payment amount may be prorated based on the number of MPDUs provided on site.

**Alternative Location Agreements are only available for high rise buildings (5 stories and higher) but may be applied to either for-sale or rental developments.** Alternative location agreements must increase the amount of MPDUs provided or increase the number of bedrooms to be provided; and the MPDUs must be located in the same Planning Area as the original development, or a Planning Area designated by the Planning Board in which at least 45 percent of census tracts have a median household income of at least 150 percent countywide median household income. New construction is not always necessary for alternative location agreements. The developer may consider buying, encumbering, or otherwise rehabilitating existing market rate housing units or expiring existing MPDUs that meet current MPDU standards.



## Location of MPDUs in Montgomery County

Figure 2 provides a map from the Department of Housing and Community Affairs identifying the location of all units currently under the MPDU control period in the county.

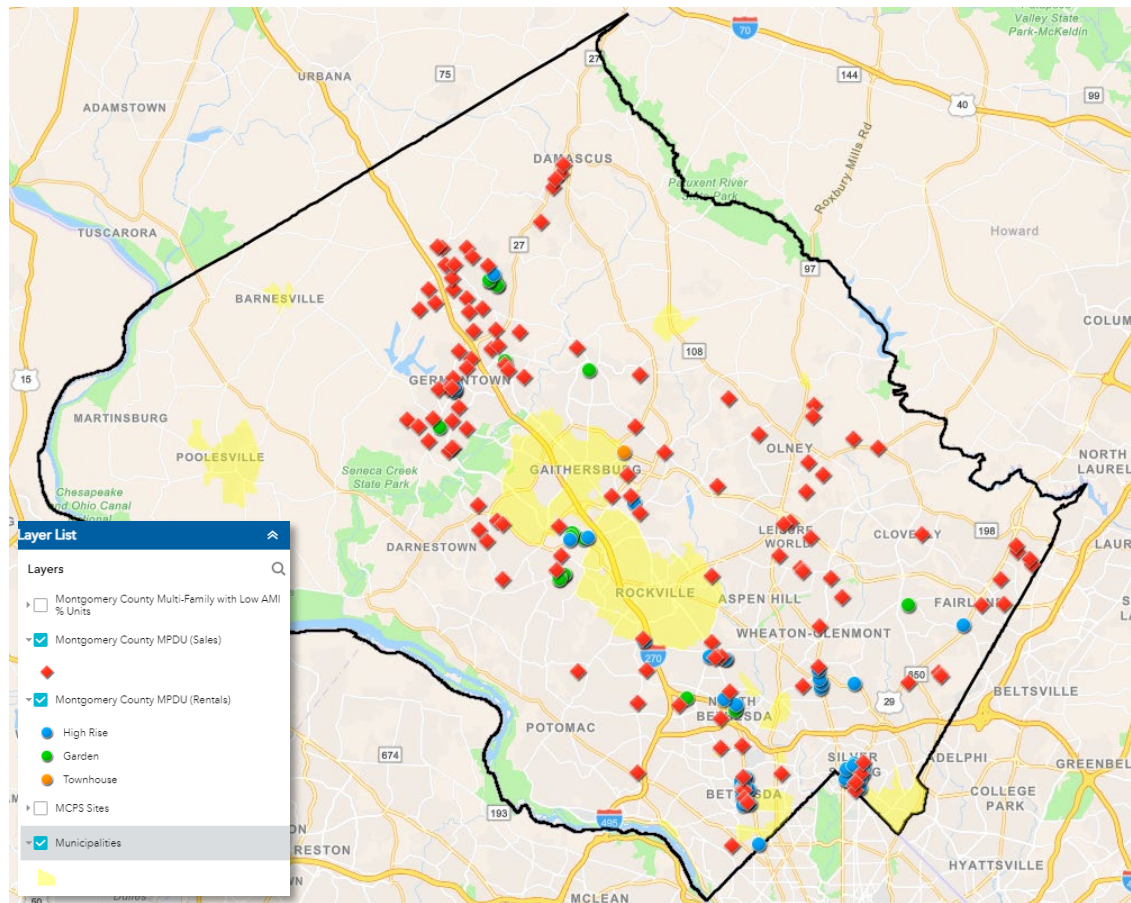


Figure 2 Map of Montgomery County MPDUs.

Source: Montgomery County Department of Housing and Community Affairs

## 15 PERCENT MPDU REQUIREMENT

While the county minimum requirement for MPDUs is 12.5 percent, there are several circumstances where 15 percent MPDUs may be required.

### 1. Master Plan requirement

- a. Plan wide requirement: Under Chapter 25A, the Council may establish a higher base requirement as part of a master plan approval.
  - i. An example of this would be the 2022 Silver Spring Downtown and Adjacent Communities Plan, which requires all optional method of development projects to provide a minimum of 15 percent MPDUs.

- b. Site-specific requirement: There may be instances where only certain sites may be designated as having a higher requirement through a Master Plan (instead of the entire plan area).
    - i. An example would be this would be the Forest Glen Metro Station Parking Lot and entrance parcel in the 2020 Forest Glen/Montgomery Hills Sector Plan, which requires any optional method project that includes residential dwelling units to provide a minimum of 15 percent MPDUs on that site.
  - c. Master Plan's priority public amenities: Before the county code (Chapter 25A) changed in 2018 to allow a Master Planned requirement of 15 percent, some sector and master plans would prioritize 15 percent MPDUs as the highest priority public amenity for residential development.
    - i. In the 2017 Rock Spring Sector Plan, providing 15 percent MPDUs is the highest priority public amenity for new residential development, unless the property is required to dedicate land for a school or athletic fields that can be used by MCPS and approximate the size of a local park.
- 2. **Overlay Zone**: An overlay zone is a zone mapped over the underlying base zone that modifies the requirements of the underlying zone. The intent of an overlay zone is to provide requirements and standards that are necessary to achieve the planning goals and objectives for development or redevelopment of an area.
  - a. In the Bethesda Overlay Zone, for any development application that includes 20 or more residential dwelling units, the Planning Board may only approve the application if the development provides at least 15 percent MPDUs under the provisions of Chapter 25A. The Bethesda Overlay Zone also modifies the MPDU incentives allowed for MPDUs (see Bethesda Overlay Section below).
- 3. **15 Percent Planning Area**: A minimum of 15 percent MPDUs is required for developments in a Planning Area designated by the Planning Board in which at least 45 percent of the United States Census Tracts have a median household income of at least 150 percent of the countywide median household income, at the time the Planning Board accepts an application as complete. This will be discussed in more detail later in the report.
- 4. **Optional**: While not a requirement, there are often times when a developer may elect to provide 15 percent or even a higher number of MPDUs to receive incentives. These incentives include bonus density, additional height, public benefit points, or impact tax waivers. Planning staff will discuss these benefits of providing a higher percentage of MPDUs in detail in the next section.

---

## BENEFITS OF PROVIDING A HIGHER PERCENTAGE OF MPDUS

The MPDU program provides optional incentives to offset the cost of providing additional MPDUs.

- 1. **Bonus Density**: The most commonly used incentive is bonus density. Chapter 59 (the Zoning Code) has a [three-tiered bonus density system](#):

- a. Except in the Bethesda Overlay Zone, residential density may be increased above the mapped residential floor area ratio (FAR) by:
    - i. 0.88 percent for each 0.1 percent increase in MPDUs above 12.5 percent, up to and including 15 percent;
    - ii. 22 percent plus 0.16 percent for each 0.1 percent increase in MPDUs above 15 percent, up to and including 20 percent; or
    - iii. 30 percent plus 0.1 percent for each 0.1 percent increase in MPDUs above 20 percent.
  - b. There is no cap on bonus density.
  - c. Here's an example from a real project in the North Bethesda area to illustrate how bonus density is calculated when providing 15 percent MPDUs:
    - i. Initial residential density equals 1,726,451 sf
    - ii. 15 percent MPDUs allows a 22 percent bonus density
    - iii. Bonus density = 384,219 sf (1,726,451 x 0.22)
    - iv. Total residential density (including bonus density) = 2,130,670 sf
- 2. Additional Height:** If a project exceeds 12.5 percent MPDUs, the height limit of the applicable zone and master plan does not apply to the extent required to provide the MPDUs.
- a. 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 increased height of 12 feet.
    - i. Here is an example from a project in the Chevy Chase Lake area that provided additional MPDUs to receive additional height.
      - 1. Average residential floor plate of the project is 20,000 sf
      - 2. 14,700 sf of gross floor area for additional MPDUs over 12.5 percent.
      - 3.  $14,700/20,000 = 0.735$
      - 4. Increase of 1 extra floor (12 feet)
- 3. Public Benefit Points:** Projects are permitted to earn 12 points for every 1 percent of MPDUs greater than 12.5 percent.
- a. If a project provides 20 percent MPDUs, the developer is not required to provide any other category of public benefit points for optional method projects in the C/R and employment zones.
  - b. For projects that have a requirement to provide 15 percent MPDUs, projects are still permitted to earn public benefit points for providing more than 12.5 percent, even though it is required. As Section 4.7.1.B states, “**Except for providing MPDUs exceeding 12.5 percent of a project’s dwelling units**, granting points as a public benefit for any amenity or project feature otherwise required by law is prohibited.”
- 4. Impact Tax Discount/Waiver (for more than 25 percent MPDUs)**
- a. If a project provides 25 percent MPDUs, the applicable school and transportation impact taxes are discounted by an amount equivalent to the lowest standard impact tax in the county for the [applicable dwelling type](#).

- i. As an example, impact taxes are generally the lowest in the infill impact areas (schools), and red policy areas (transportation). Projects with 25 percent MPDUs built in those areas will have all their impact taxes waived. Projects built in the turnover impact areas (schools) and orange, yellow, and green policy areas (transportation) would have school impact tax discounted by the amount of impact tax charged in infill impact areas and the transportation impact tax discounted by the amount of impact tax charged in red policy areas.
- b. Recent changes made through the 2020 update of the [Growth and Infrastructure Policy](#) ensured that any project seeking the impact tax waiver/discount would have to put their affordable units into the MPDU program to receive the waiver. The MPDU program generally has a longer a control period than many state and federal affordable programs, like the Low-Income Housing Tax Credit (LIHTC). Prior to this change, units could be included in those other affordable housing programs to achieve the 25 percent eligibility threshold.

---

## BETHESDA OVERLAY ZONE

The Bethesda Overlay Zone is the zone that implements many of the recommendations of the Bethesda Downtown Sector Plan. The Bethesda Overlay Zone has different rules and incentives for MPDUs in Downtown Bethesda as compared to the county.

- 1. Public Benefit Points:** The Planning Board may grant MPDU public benefit points for providing more than 15 percent MPDUs at the rate of 15 points for every 1 percent of the number of units in the project above 15 percent. Any fraction of 1 percent increase in MPDUs entitles the applicant to an equal fraction of 15 points. For points to be awarded, at least one more MPDU than would be required at 15 percent must be provided.
  - a. For a project providing at least 20 percent MPDUs, other public benefit point categories are not required except for 1) Exceptional Design and 2) Energy Conservation and Generation in the High-Performance Area.
- 2. Bonus Density:** In the Bethesda Overlay Zone, residential density may be increased above the mapped residential floor area ratio (FAR) by 17.5 percent plus 0.1 percent for each 0.1 percent increase in MPDUs above 17.5 percent.
- 3. Additional Height:** If a project exceeds 17.5 percent MPDUs and is located in the Height Incentive Area, the height limit of the applicable zone does not apply to the extent required to provide MPDUs. The additional height is calculated as the floor area provided for MPDUs above 15 percent divided by the average residential floor plate area, where each whole number and each remaining fraction allows a height increase of 12 feet.

## SECTION 2: PLANNING AREAS WITH A 15 PERCENT MPDU REQUIREMENT DESIGNATION

### 15 PERCENT PLANNING AREA DESIGNATION OVERVIEW

In 2018, [Bill 38-17](#) was passed by the Montgomery County Council. The bill went into effect in October 2018, and it created a 15 percent MPDU requirement in any Planning Area designated annually by the Planning Board, in which 45 percent of the census tracts have a median household income of at least 150 percent of the county-wide median household income.

Planning staff calculates this requirement using median income data (both at the county and census tract level) from the 5-year American Community Survey. Planning Area boundaries are aggregated by 2020 census tract boundaries, with each census tract in the county assigned a Planning Area if its centroid (i.e., the geometric center of the census tract) falls into that Planning Area (this is done through ArcGIS). While census data and the aggregated Planning Area/census tract data are used to calculate the 15 percent requirement, it is the actual boundary of the Planning Area that has the 15 percent requirement, not the aggregated census boundaries.

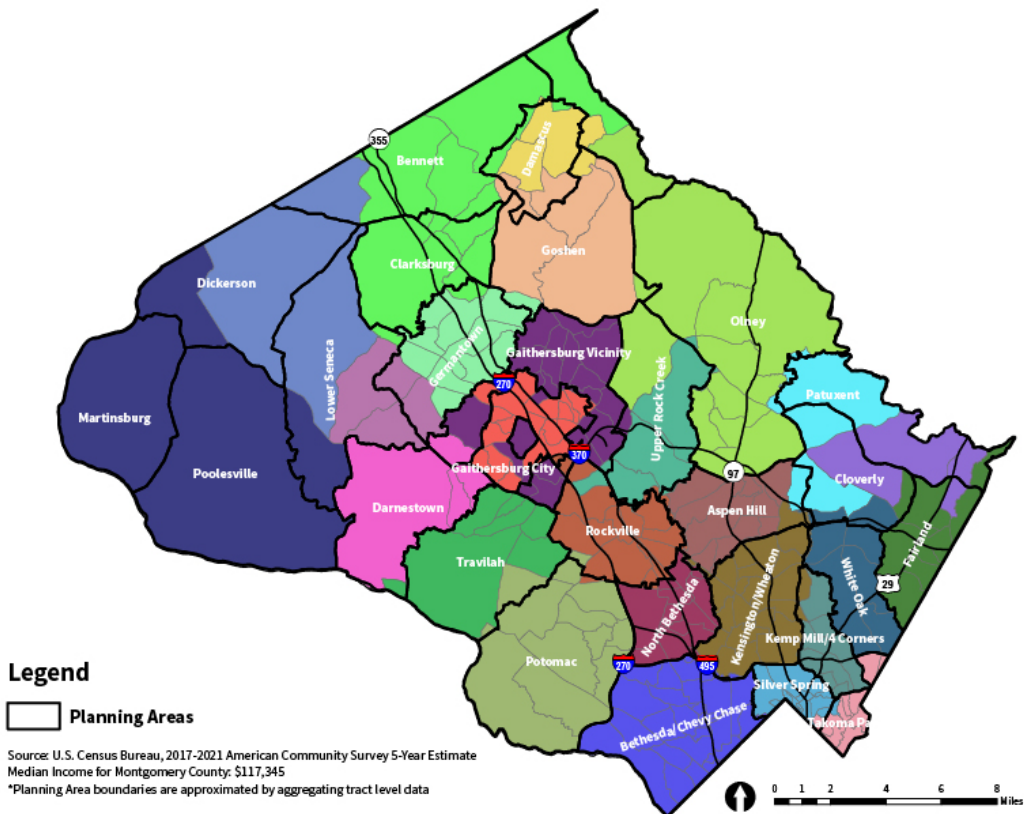


Figure 3 2020 Census Tracts and Planning Areas



In the 2017-2021 5-year ACS survey, Montgomery County had a median income of \$117,345. A 50 percent increase over the median is \$58,673, making \$176,018, 150 percent of median. The total area of all census tracts assigned to a Planning Area with a median income of over \$176,018 is divided by the total area of all census tracts assigned to that Planning Area. If 45 percent or more of the census tracts acreage assigned to that Planning Area has a median income higher than \$176,018, that Planning Area is designated with a 15 percent MPDU requirement. See below for an example where 55 percent of the census tracts assigned to the North Bethesda Planning Area have a median income greater than \$176,018.

<b>Median Income</b>	<b>Census Tract</b>	<b>Planning Area</b>	<b>Census Tract Acres</b>	<b>Acres &gt; 150% of Median</b>	<b>Percent of Acres &gt; 150% of Median</b>
<b>\$198,125</b>	24031701202	North Bethesda	442	442	7%
<b>\$224,395</b>	24031701205	North Bethesda	1,689	1,689	29%
<b>\$111,406</b>	24031701214	North Bethesda	311		
<b>\$100,481</b>	24031701215	North Bethesda	190		
<b>\$102,013</b>	24031701216	North Bethesda	336		
<b>\$86,023</b>	24031701218	North Bethesda	179		
<b>\$64,528</b>	24031701219	North Bethesda	557		
<b>\$152,572</b>	24031701222	North Bethesda	291		
<b>\$116,866</b>	24031701223	North Bethesda	180		
<b>\$218,636</b>	24031704401	North Bethesda	560	560	9%
<b>\$191,333</b>	24031704501	North Bethesda	548	548	9%
<b>TOTAL <sup>1</sup></b>			<b>5,913</b>	<b>3,238</b>	<b>55%</b>

In 2023, the Planning Areas with a 15 percent requirement include:

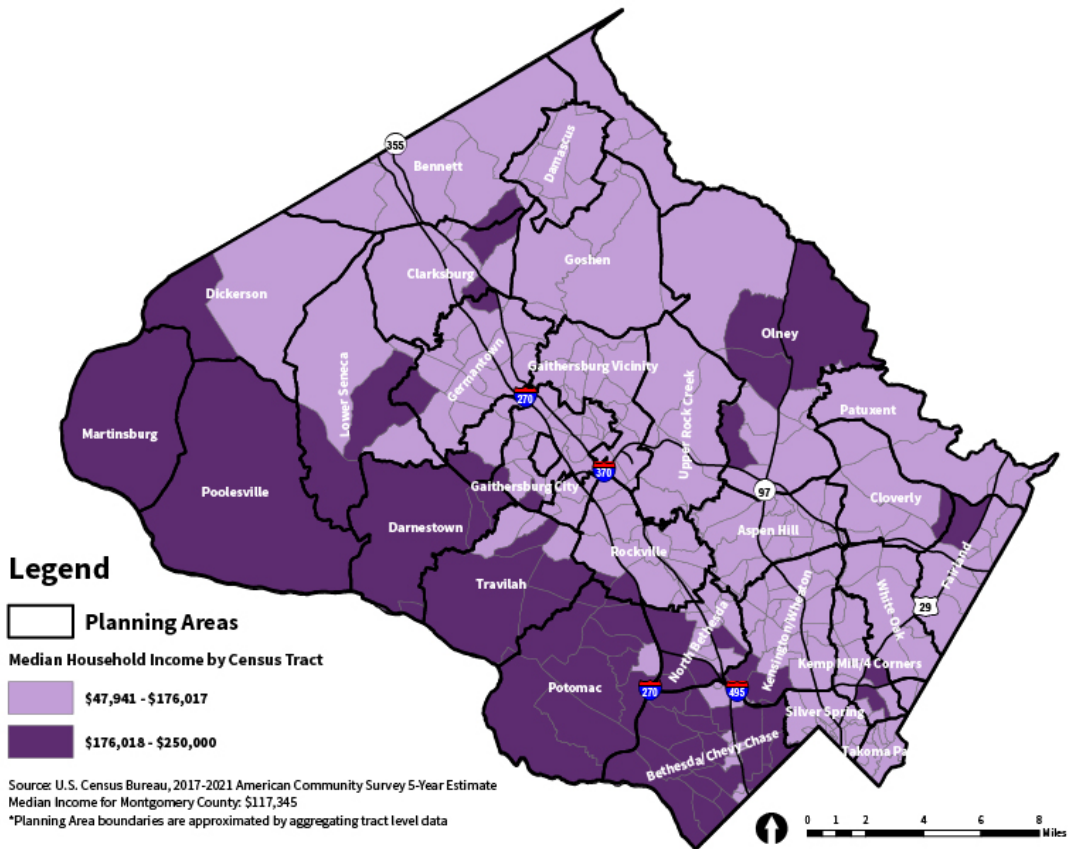
- Bethesda/Chevy Chase
- Darnestown
- Lower Seneca
- North Bethesda
- Poolesville
- Potomac
- Travilah

The Upper Rock Creek Planning Area, which had a 15 percent requirement in 2022, fell out of the requirement for 2023.

A corresponding webmap with associated 15 percent MPDU requirement information is available on both [mcatlas](#), and a [standalone ArcGIS webmap](#).

---

<sup>1</sup> The totals may not match the sum of the individual rows above due to rounding.



*Figure 4 Montgomery County Census Tracts with incomes below and above 150 percent of the median*

In addition, as discussed above, a 15 percent MPDU requirement exists for both the Bethesda Downtown Plan (through the Plan recommendations and the Bethesda Overlay Zone) and the Silver Spring Downtown and Adjacent Communities (SSDAC) Plan (through the Plan recommendations and the Downtown Silver Spring (DSS) Overlay Zone).

After staff calculates the 15 percent MPDU requirement, it is checked by division leadership, and then presented to the Board for acceptance. The results are then circulated to Council staff for dissemination among councilmembers.

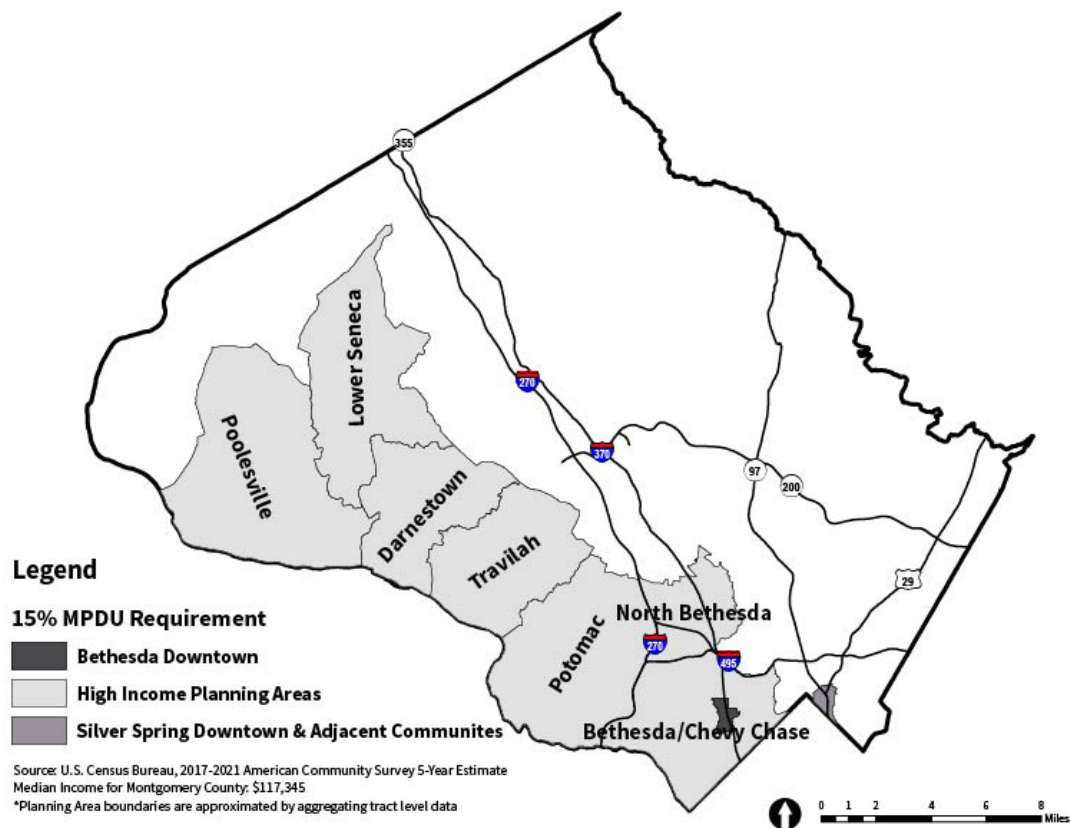


Figure 5 Map of the areas of Montgomery County with a 15 percent MPDU requirement in 2023