Ordinance No: 15-36
Zoning Text Amendment No: 04-13
Concerning: MPDUs-Sector Plan conformity requirement exceptions-CBD & RMX Optional Method of Development Projects
Draft No. & Date: 2 – 11/30/04
Introduced: July 20, 2004
Public Hearing: 9/23/04; 7:30 p.m.
Adopted: November 30, 2004
Effective: April 1, 2005

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

By: Councilmembers Floreen, Silverman, Subin, Knapp and Leventhal

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AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- allowing an exception to **[[**the**]]** master plan, sector plan, and urban renewal plan conformity requirements regarding residential density or building height for any project in a CBD, RMX, or Development Plan zone that includes MPDUs on-site.

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

DIVISION 59-D-1	"DEVELOPMENT PLAN"
Section 59-D-1.6	"Approval by district council"
DIVISION 59-D-2	"PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES AND RMX ZONES"
Section 59-D-2.4	"Action by planning board"
Section 59-D-2.42	"Findings required for approval."

EXPLANATION: ***Boldface*** *indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[*Single boldface brackets****]*** *indicate text that is deleted from existing law by the 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.*

OPINION

Zoning Text Amendment (ZTA) No. 04-13 was introduced on July 20, 2004, to allow an exception to the master plan, sector plan, and urban renewal plan conformity requirements regarding density and building height for any project plan for development in a CBD or RMX, or Development Plan zone that includes MPDUs on-site.

The Montgomery County Planning Board in its report to the Council recommended that the text amendment be approved with modifications.

The County Council held a public hearing on September 30, 2004, to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on October 20, November 15, and November 23 to review the amendment. ZTA 04-13 was considered by the Committee as a key component of the legislative initiatives directed toward increasing the supply of Moderately Priced dwelling units in the County. Under current zoning law, a development plan nor a project plan may be approved unless it is in substantial compliance with a master or sector plan recommendation. ZTA 04-13 as recommended by the Committee would clarify that a development plan or project plan may be approved to accommodate the construction of MPDUs, including any density bonus units, provided under Chapter 25A on-site. Under the Committee recommendation, any increase in residential density or building height above a master or sector plan limit must be in proportion to the MPDUs, including any density bonus units, provided on site. The Committee believes that a limited deviation from a master plan or sector plan guideline is a reasonable trade-off for the construction of MPDUs that might not otherwise be realized. In the opinion of the Committee, ZTA 04-13 as revised by the Committee does not violate master plan or sector principles or objectives.

The District Council reviewed Zoning Text Amendment No. 04-13 at a meeting held on November 30, 2004, and supported the recommendations of the Planning, Housing, and Economic Development Committee, with a revision to require an MPDU financial infeasibility finding before a development plan or project plan that exceeds any residential density or building height limit established in a master or sector plan may be approved. Under the financial infeasibility process, the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunity Commission, and the Chair of the Planning Board, <u>by majority vote</u>, must find that construction of all required MPDUs on site, including any bonus density units, would not be financially feasible. If a finding of MPDU financial infeasibility is made, the Planning Board would be authorized to allow a development plan or project plan to exceed any residential density or building height limit established in a master or sector plan to accomplish the construction of MPDUs, including any density bonus, provided on site. The CBD zone public use space requirement may be provided off-site, as authorized in Chapter 59, in combination with any deviation in a master plan guideline to accommodate the construction of MPDUs, including any density bonus units, on site. A finding of financial infeasibility is not a requirement for the optional method public use space requirement to be provided off-site to accomplish MPDUs, including any density bonus units, on-site. The Council expects the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunity Commission, and the Chair of the Planning Board, jointly, to establish procedures and standards for a finding of financial infeasibility.

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 04-13 will be approved as revised.

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-D-2 is amended as follows:

DIVISION 59-D-1. DEVELOPMENT PLAN.

* * *

59-D-1.6. Approval by District Council.

59-D-1.61. Findings.

Before approving an application for classification in any of these zones, the District Council must consider whether the application, including the development plan, fulfills the purposes and requirements set forth in Article 59-C for the zone. In so doing, the District Council must make the following specific findings, in addition to any other findings which may be necessary and appropriate to the evaluation of the proposed reclassification:

(a) That the zone applied for is in substantial compliance with the use and density indicated by the master plan or sector plan, and that it does not conflict with the general plan, the county capital improvements program or other applicable county plans and policies. **[[**However, any development plan containing MPDUs under Chapter 25A may exceed up to the maximum of the zone any density or building height limit in a master plan or sector plan to the extent necessary to achieve MPDUs on-site.**]]** However, to accommodate the construction of MPDUs, including any bonus density units, on-site, a development plan may exceed, in proportion to the MPDUs, provided under Chapter 25A, including any bonus density units, any residential density or building height limit established in a master plan or sector plan if a majority of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunity Commission, and the Chair of the Planning Board, find that construction of all required MPDUs on site, including any bonus density units, would not be financially feasible. If a finding of financial infeasibility is made, the Planning Board must determine which if any of the following measures authorized under Chapter 59 or Chapter 50 should be approved to accomplish the construction of the required MPDUs on site: (1) exceeding a master plan or sector plan height limit, (2) exceeding a master plan or sector plan residential density limit, or (3) locating any required public use space off-site.

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Sec. 2. Division 59-D-2 is amended as follows:

DIVISION 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES AND RMX ZONES.

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59-D-2.4. Action by Planning Board.

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59-D-2.42. Findings required for approval.

The fact that an application complies with all of the specific requirements and intent of the applicable zone does not create a presumption that the application must be approved. The Planning Board can approve, or approve subject to modifications, an application only if it finds that the proposed development meets all of the following requirements:

* * *

(b) It would conform to the [approved and adopted] applicable sector plan or [an] urban renewal plan [approved under Chapter 56]. **[[**However, any development containing MPDUs under Chapter 25A may exceed, up to the maximum of the zone any density or building height limit in a master plan or sector plan to the extent necessary to achieve MPDUs on-site.]] However, to accommodate the construction of MPDUs, including any bonus density units, on-site, a project plan may exceed, in proportion to the MPDUs provided under Chapter 25A, including any bonus density units, any residential density or building height limit established in a master plan or sector plan if a majority of the Director of the Department of Housing and Community Affairs, the Executive Director of the Housing Opportunity Commission, and the Chair of the Planning Board, find that construction of all required MPDUs on site, including any bonus density units, would not be financially feasible. If a finding of financial infeasibility is made, the Planning Board must determine which if any of the following measures authorized under Chapter 59 or Chapter 50 should be approved to accomplish the construction of the required MPDUs on site: (1) exceeding a master plan or sector plan height limit, (2) exceeding a master plan or sector plan residential density limit, or (3) locating any required public use space off-site.

Sec. 2. Effective date. This ordinance becomes effective April 1, 2005.

This is a correct copy of Council action.

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Mary A. Edgar, CMC
Clerk of the Council