


MEMORANDUM

September 18, 2018

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz,  Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 18-06, MPDU- Bonus Density

PURPOSE: Develop recommendations for the Council concerning  
ZTA 18-06, MPDU- Bonus Density

Expected Participants:

Gwen Wright  
Pam Dunn  
Greg Russ  
Clarence Snuggs  
Stephanie Killian

The Planning, Housing, and Economic Development (PHED) Committee discussed the possibility of deleting the inappropriately-placed bonus density table in Chapter 25A and placing all bonus density provisions in the zoning code. A ZTA is necessary to conform the Zoning Ordinance to the Chapter 25A revisions that the Council approved. If the Council does not approve ZTA 18-06 in some form, bonus densities for Moderately Priced Dwelling Unit (MPDUs) will not be in the County code.

ZTA 18-06 would establish MPDU bonus density standards for certain Residential, Commercial/Residential, Employment, and Overlay zones and would generally amend provisions concerning MPDUs.

Increased bonus densities are recommended by Councilmember Floreen. Councilmember Floreen also recommends allowing bonus density for more than 12.5% off-site MPDUs or alternative payments. Additionally, she would allow public benefit points for all projects with more than 12.5% MPDUs.

On September 11, the Council conducted a public hearing. All speakers supported Councilmember Floreen's proposed amendments to the draft as introduced. There was a recommendation to allow the MPDU standards and procedures to apply to housing for seniors. The Citizens Coordinating Committee on Friendship Heights, in submitted testimony, recommended: 1) allowing bonus density only for optional method projects that provide amenities; 2) prohibiting bonus density for the MPDUs required

by law; 3) prohibiting additional height that impacts residential (single-family) neighborhoods; 4) addressing recreational needs and amenities; and 5) reviewing Chapter 25A and Chapter 59 to make sure that nothing drops out.

## Issues

### *1. Which zones should be allowed MPDU bonus density?*

ZTA 18-06 would also expand the zones in which bonus density was allowed (development in R-200, R-90, R-60, R-40, and TLD zones are not currently allowed MPDU bonus density). The current Chapter 25A bonus density table indicates the potential for a maximum MPDU bonus density of 22% for a development with 15% MPDUs; however, the zoning code has the last word on where and when MPDU bonus densities are allowed. The fact that low-density residential zones did not allow for MPDU bonus density was raised in Planning Board worksessions on the 2014 Zoning Ordinance Rewrite. It was decided, both at the Planning Board and at the Council, that single-unit residential zones should not be significantly changed by the 2014 Zoning Ordinance Rewrite.

Low-density zones with MPDUs are allowed relief from development standards other than density. In particular, minimum lot sizes are reduced and more unit types (townhouses) are allowed for development with MPDUs.

Currently, most CR, LSC, and EOF zoned properties are not eligible for bonus density for providing more than 12.5% MPDUs. Zones without a "T" may exceed the designated gross floor area for providing more than 12.5% MPDUs. Projects with 15% MPDUs or less may deduct all FAR used for the MPDUs from their density. Projects with more than 15% MPDUs may exempt all the floor area used for MPDUs from the designated FAR limit. ZTA 18-06 would allow all CR zoned property a bonus as allowed for residential zones; the bonus would only be available for up to 15% MPDUs. The bonus density would not be one-to-one; it would be a bonus of 22% of density for the 2.5% increment above 12.5%.

### *2. Should the maximum allowed bonus density be increased to the maximum bonus currently allowed by Chapter 25A (22%)?*

Currently, bonus density is available for projects with up to 15% MPDUs. Under Chapter 25A, a project with 15% MPDUs is allowed bonus density of 22%.<sup>1</sup> Projects with more than 15% MPDUs are not allowed any additional bonus density beyond 22%. ZTA 18-06 would allow a maximum bonus density for projects with up to 20% MPDUs at the same bonus rate currently allowed by Chapter 25A (a 2.5% increase in MPDUs above the required 12.5% allows a 22% bonus density, which equals a 0.1% bonus density for every 0.88% increase in MPDUs).

For the Residential zones, the following table indicates the standard method maximum density, the current MPDU maximum density, the percent of current MPDU density compared to the standard

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<sup>1</sup> Enacted Bill 34-17 deleted in its entirety the provision (Sec. 25A-5A(d)) that prohibited a subdivision making an alternative payment from getting any bonus density. (See lines 724-726 of the enacted Bill.) With this provision deleted, there is nothing in the law preventing such developments from getting the bonus density. This point/intent was discussed during the consideration of the Bill and is reflected in the packets. There was no corresponding provision regarding alternative locations; a project that provided more than 12.5% MPDUs at an alternative location would also be eligible for the bonus density.

method maximum density, the proposed MPDU maximum density in ZTA 18-06, and the percentage change between the current MPDU maximum density and the proposed MPDU maximum density.

|       | Standard Density per Acre | Current MPDU Density per Usable Area | Current % MPDU Density from Standard | Proposed MPDU Density per Acre | Proposed % MPDU Density Increase from Current MPDU Density |
|-------|---------------------------|--------------------------------------|--------------------------------------|--------------------------------|--|
| R-200 | 2.18                      | 2.44                                 | 12%                                  | 3.61                           | 48%  |
| R-90  | 4.84                      | 4.39                                 | -9%                                  | 8.03                           | 83%  |
| R-60  | 7.26                      | 6.1                                  | -16%                                 | 12.05                          | 98%  |
| R-40  | 10.89                     | 10.12                                | -7%                                  | 18.07                          | 79%  |
| TLD   | 9.07                      | 9.76                                 | 8%                                   | 15.05                          | 54%  |
| TMD   | 12.1                      | 15.25                                | 26%                                  | 20.08                          | 32%  |
| THD   | 15.02                     | 18.3                                 | 22%                                  | 24.93                          | 36%  |
| R-30  | 14.5                      | 17.69                                | 22%                                  | 24.07                          | 36%  |
| R-20  | 21.7                      | 26.47                                | 22%                                  | 36.02                          | 36%  |
| R-10  | 43.5                      | 53.07                                | 22%                                  | 72.21                          | 36%  |

Councilmember Floreen would not have a maximum bonus density. She recommends amending ZTA 18-06 to allow bonus density above 22%. Currently, Chapter 25A gives bonus density for up to 15% MPDUs. She would recommend extending bonus density for projects that provide more than 15% MPDUs. Under her proposal, developments that provide 20% MPDUs would be allowed 30% bonus density. Above 20% MPDUs, the bonus would be allowed on a one-to-one basis with no maximums. (A 100% MPDU project would be allowed a 110% bonus.) In CR zones currently, when more than 15% MPDUs are provided, the floor area of all MPDUs is not counted as adding FAR. That translates to the possibility of 100% bonus density in a 100% MPDU project.

It is possible to compare the standards of the County’s MPDU program to other similar programs in the region and the nation.<sup>2</sup> As a percentage bonus increase, no other local jurisdiction has a higher bonus density. There are higher bonus densities in California (San Diego 50%, San Clemente and Huntington Beach 35%), but there is no jurisdiction in the country that has an unlimited bonus density.

<sup>2</sup> Jane Lyons, Memorandum on Bonus Densities (attached), in its regional comparison:

*There is variation between bonus density regulations in the Washington region. Montgomery County's regulations for bonus densities in exchange for Moderately Priced Dwelling Units (MPDUs) tends to be equal to the average of comparable jurisdictions. The following are notable differences that the county has with jurisdictions in Maryland and the Washington, D.C. metropolitan area with comparable requirements: Lower than average number of units that trigger affordable housing requirements (20 compared to 33.6); higher than average maximum percentage of affordable units possible to receive a bonus density (15 compared to 12.4); higher than average maximum possible bonus density (22 compared to 18.94); and lower than average minimum possible bonus (1 compared to 6.33).*

3. *If the maximum density is increased, should there be special consideration for the building height abutting single-family residential areas?*

This issue was raised by the Citizens Coordinating Committee on Friendship Heights. The ZTA as introduced and as recommended by Councilmember Floreen included the provision to increase building heights to accommodate MPDUs<sup>3</sup>:

*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% divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet.*

The increased density proposed by Councilmember Floreen's amendment may result in increased height because of the increase in bonus density. This height would still be reviewed for compatibility in the site plan process. The neighborhood protection provisions of Section 59.4.1.8.B would still apply.

4. *Should the prohibition on public benefit points for attributes required by law apply to MPDUs above 12.5%?*

The current code on public benefit points in the CR zones reads as follows:

*Granting points as a public benefit for any amenity or project feature otherwise required by law is prohibited.*<sup>4</sup>

Councilmember Floreen recommends revising the provision so that it would read as follows:

*Except for providing MPDUs exceeding 12.5% of a project's dwelling units, granting points as a public benefit for any amenity or project feature otherwise required by law is prohibited.*  
[Emphases added.]

All areas of the County are required to have a minimum 12.5% MPDUs. Some areas of the County will be required to provide a minimum 15% MPDUs. The Citizen Coordinating Committee on Friendship Heights does NOT recommend allowing public benefit points for MPDUs required by law. In their view, points should be awarded for attributes that exceed minimum requirements and special attention should be paid to recreational needs.

Currently, the MPDUs that are **not** required by law can receive a significant number of public benefit points:

*There is no limitation on the number of points for providing more than 12.5% of the residential units as MPDUs as required under Chapter 25A.*

a. *Points are calculated as follows:*

i. *12 points are granted for every 1% of MPDUs greater than 12.5%. Any fraction of 1% increase in MPDUs entitles the applicant to an equal fraction of 12 points.*

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<sup>3</sup> Section 59.4.7.3.D.6.c.i.

<sup>4</sup> Chapter 59, Section 4.7.1.B.

- ii. *An additional 2 points are granted for every 1% of 2 bedroom MPDUs not otherwise required.*
- iii. *An additional 5 points are granted for every 1% of 3 bedroom MPDUs.*
- iv. *In any case, for density and points to be awarded, at least one more MPDU than would be required at 12.5% must be provided to take advantage of the MPDU public benefit points in any zone.*
- v. *For a project providing a minimum of 15% MPDUs, one less benefit category than is required under Section 4.5.4.A.2 and Section 4.6.4.A.2 must be satisfied. A project that provides a minimum of 20% MPDUs does not have to satisfy any other benefit category under Section 4.5.4.A.2 and Section 4.6.4.A.2.<sup>5</sup>*

**5. *Should the bonus density be based on the “usable area”?***

Density is generally based on gross acreage of a site. In the low-density residential zones, density for MPDUs is currently based on the “usable area” of the site. The difference between usable area and gross area of a site is the exclusion of some environmental buffer area. “If more than 50% of the tract is within environmental buffers, usable area is calculated by deducting from the tract the incremental area of the environmental buffer that exceeds 50%.”<sup>6</sup>

The effect of excluding some area is to reduce the maximum total number of units allowed on the site. The lower density recognizes the difficulties/impossibilities of achieving all bonus densities when there are significant environmental concerns on the site.

ZTA 18-06 would base bonus density on units per acre of the entire site.

**6. *Under ZTA 18-06, does the Council want to allow increased bonus density for MPDUs and public benefit points for all MPDUs above 12.5% in the Bethesda Overlay zone?***

The zone underlying the Bethesda Overlay zone is CR. Under ZTA 18-06, those CR zones would be allowed increased density. An argument can be made that the Bethesda Overlay zone does not address density limits for MPDUs.

It does say:

*In the CR or CRT zone, a development may exceed the mapped FAR on a site if the Planning Board approves a sketch or site plan under Section 7.3.3 or Section 7.3.4 that includes the allocation of gross floor area from Bethesda Overlay Zone (BOZ) Density, or FAR Averaging under Section 4.9.2.C.5.<sup>7</sup>*

The provision does not state that BOZ density and FAR averaging are the only ways to achieve density above the mapped density. The MPDU provisions in the Bethesda Overlay zone include building height, park impact payments, and public benefit points, **but not density**.

<sup>5</sup> Chapter 59, Section 4.7.3.D.6.

<sup>6</sup> Chapter 59, Section 1.4.2, Definitions.

<sup>7</sup> Section 4.9.2.C.

Councilmember Floreen intends that ZTA 18-06 allow for bonus density for the provision of more than 12.5% MPDUs throughout all CR-zoned areas, including the area covered by the Bethesda Overlay zone.

Staff recommends more clearly stating the Council’s intent, whatever that intent may be.

**7. *What is the Council’s intent when the phrase “more than 12.5% MPDUs, qualified under Chapter 25A” is used?***

There are three ways to satisfy MPDU requirements under Chapter 25A. Units may be provided on site. The developer, with the agreement of DHCA, may provide an alternative site off-site. The developer, again with the approval of DHCA and under particular circumstances, may allow a payment to the housing initiative fund. To the extent that any of these methods result in more than 12.5% MPDUs or their equivalent, bonus density is permitted.

**8. *Should the Living Facility for Seniors or Persons with Disabilities be required to comply with Chapter 25A and be allowed to provide MPDUs off-site or by an alternative payment?***

The current zoning code is being interpreted in a manner that does not allow Living Facility for Seniors or Persons with Disabilities to accommodate their MPDU-like requirements off-site or provide a payment in lieu. Residential Care facilities are specifically subject to Chapter 25A standards; these facilities may use off-site MPDUs or the payment-in-lieu options of Chapter 25A. Testimony recommended the same treatment between the 2 uses.<sup>8</sup>

Unlike most housing, Living Facilities for Seniors includes a significant amount of medical and food services. The cost of housing alone is low compared to these packaged services. Staff recommends including the proposed provision.

| <u>This Packet Contains</u>                            | <u>© number</u> |
|--|-----------------|
| ZTA 18-06 as introduced                                | 1 – 19          |
| Planning Board August 1 recommendation                 | 20 – 21         |
| Planning Staff report                                  | 22 – 24         |
| Councilmember Floreen recommendation and density chart | 25 – 28         |
| ZTA 18-06 as recommended by Councilmember Floreen      | 29 – 49         |
| Planning Board September 10 recommendation             | 50 – 51         |
| Planning Staff report                                  | 52 – 53         |
| MPDU research from Summer Fellow Jane Lyons            | 54 – 71         |

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<sup>8</sup>Section 59.3.3.2.C.2.c.iii is recommended to be modified as follows:

Use Standards

- c. Where an independent Living Facility for Seniors or Persons with Disabilities is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards, Section 7.3.1 Conditional Use and the following standards:  
\* \* \*

- iii. A minimum of 15% of the dwelling units is permanently reserved for households of very low income, or 20% for households of low income, or 30% for households of MPDU income, and otherwise satisfies Chapter 25A. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs under Executive regulations. Income levels are defined in Section 1.4.2, Defined Terms.

Zoning Text Amendment No.: 18-06  
Concerning: MPDU - Bonus Density  
Draft No. & Date: 2 - 6/13/18  
Introduced: June 19, 2018  
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 Sponsor: Councilmember Floreen

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

- revise or establish Moderately-Priced Dwelling Unit (MPDU) density bonus standards for certain Residential, Commercial/Residential, Employment, and Overlay zones; and
- generally amend provisions concerning MPDUs

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

|                 |  |
|-----------------|--|
| DIVISION 4.4.   | “Residential Zones”                                      |
| Section 4.4.7.  | “Residential - 200 Zone (R-200)”                         |
| Section 4.4.8.  | “Residential - 90 Zone (R-90)”                           |
| Section 4.4.9.  | “Residential - 60 Zone (R-60)”                           |
| Section 4.4.10. | “Residential - 40 Zone (R-40)”                           |
| Section 4.4.11. | “Townhouse Low Density Zone (TLD)”                       |
| Section 4.4.12. | “Townhouse Medium Density Zone (TMD)”                    |
| Section 4.4.13. | “Townhouse High Density Zone (THD)”                      |
| Section 4.4.14. | “Residential Multi-Unit Low Density - 30 Zone (R-30)”    |
| Section 4.4.15. | “Residential Multi-Unit Medium Density - 20 Zone (R-20)” |
| Section 4.4.16. | “Residential Multi-Unit High Density - 10 Zone (R-10)”   |
| DIVISION 4.5.   | “Commercial/Residential Zones”                           |
| Section 4.5.2.  | “Density and Height Allocation”                          |
| Section 4.5.4.  | “Optional Method Development”                            |
| DIVISION 4.6.   | “Employment Zones”                                       |
| Section 4.6.2.  | “Density and Height Allocation”                          |
| Section 4.6.4.  | “Optional Method Development”                            |
| DIVISION 4.7.   | “Optional Method Public Benefits”                        |
| Section 4.7.3.  | “Public Benefit Descriptions and Criteria”               |
| DIVISION 4.9.   | “Overlay Zones”  |
| Section 4.9.17. | “Transferable Development Rights (TDR) Overlay Zone”     |

**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 59-4.4 is amended as follows:**

2   **Division 4.4. Residential Zones**

3   \*   \*   \*

4   **Section 4.4.7. Residential - 200 Zone (R-200)**

5   \*   \*   \*

6   **C.   R-200 Zone, Optional Method Development Standards**

| 1. Site   | MPDU Development |        |           | Cluster Development |
|---|------------------|--------|-----------|---------------------|
|   | Detached House   | Duplex | Townhouse | Detached House      |
| <b>Dimensions (min)</b>   |                  |        |           |                     |
| Usable area   | 9 acres          |        |           | 5 acres             |
| <b>Specification for Site under MPDU Development</b>  |                  |        |           |                     |
| a. In an optional method MPDU Development, the maximum percentage of duplex or townhouse building types allowed is 40%. The Planning Board may allow up to 100% duplex or townhouse units if it finds that the proposed development is more desirable from an environmental perspective or that, because of site constraints, the proposed number of MPDUs could not be achieved under the development requirements in Division 4.4 for the required number of detached house dwelling units. |                  |        |           |                     |
| <b>Specification for Site under Cluster Development</b>   |                  |        |           |                     |
| * * *   |                  |        |           |                     |
| <b>Density (max)</b>  |                  |        |           |                     |
| Density (units/acre [of usable area])   | [2.44]2.66       |        |           | 2                   |
| <b>Specification for Density</b>  |                  |        |           |                     |
| <u>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.7.B.2 plus an increase of .88% for each .1% increase in MPDUs above 12.5%. The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.7.C.1.</u>   |                  |        |           |                     |

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8   **Section 4.4.8. Residential - 90 Zone (R-90)**

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10   **C.   R-90 Zone, Optional Method Development Standards**

| 1. Site   | MPDU Development |        |           | Cluster Development |        |           |
|---|------------------|--------|-----------|---------------------|--------|-----------|
|   | Detached House   | Duplex | Townhouse | Detached House      | Duplex | Townhouse |
| Dimensions (min)  |                  |        |           |                     |        |           |
| Usable area   | 5 acres          |        |           | 5 acres             |        |           |
| <b>Specification for Site under MPDU Development</b>  |                  |        |           |                     |        |           |
| a. In an optional method MPDU Development, the maximum percentage of duplex or townhouse building types allowed is 50%. The Planning Board may allow up to 100% duplex or townhouse units if it finds that the proposed development is more desirable from an environmental perspective or that, because of site constraints, the proposed number of MPDUs could not be achieved under the development requirements in Division 4.4 for the required number of detached house dwelling units. |                  |        |           |                     |        |           |
| <b>Specification for Site under Cluster Development</b>   |                  |        |           |                     |        |           |
| * * *   |                  |        |           |                     |        |           |
| Density (max)   |                  |        |           |                     |        |           |
| Density (units/acre [of usable area])   | [4.39]5.90       |        |           | 3.6                 |        |           |
| <b>Specification for Density</b>  |                  |        |           |                     |        |           |
| <u>The density allowed for any application that includes more than 12.5% 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.2 plus an increase of .88% for each .1% increase in MPDUs above 12.5%. The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.8.C.1.</u>   |                  |        |           |                     |        |           |

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12 **Section 4.4.9. Residential - 60 Zone (R-60)**

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14 **C. R-60 Zone, Optional Method Development Standards**

| 1. Site   | MPDU Development |        |           | Cluster Development |        |           |
|---|------------------|--------|-----------|---------------------|--------|-----------|
|   | Detached House   | Duplex | Townhouse | Detached House      | Duplex | Townhouse |
| Dimensions (min)  |                  |        |           |                     |        |           |
| Usable area   | 3 acres          |        |           | 5 acres             |        |           |
| <b>Specification for Site under MPDU Development</b>  |                  |        |           |                     |        |           |
| a. In an optional method MPDU Development, the maximum percentage of duplex or townhouse building types allowed is 60%. The Planning Board may allow up to 100% duplex or townhouse units if it finds that the proposed development is more desirable from an environmental perspective or that, because of site constraints, the proposed number of MPDUs could not be achieved under the development requirements in Division 4.4 for the required number of detached house dwelling units. |                  |        |           |                     |        |           |
| <b>Specification for Site under Cluster Development</b>   |                  |        |           |                     |        |           |
| * * *   |                  |        |           |                     |        |           |
| Density (max)   |                  |        |           |                     |        |           |
| Density (units/acre [of usable area])   | [6.1]8.86        |        |           | 5                   |        |           |
| <b>Specification for Density</b>  |                  |        |           |                     |        |           |
| The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.9.B.2 plus an increase of .88% for each .1% increase in MPDUs above 12.5%. The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.9.C.1.  |                  |        |           |                     |        |           |

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**Section 4.4.10. Residential - 40 Zone (R-40)**

\* \* \*

**C. R-40 Zone, Optional Method Development Standards**

| 1. Site   | MPDU Development |        |           |
|---|------------------|--------|-----------|
|   | Detached House   | Duplex | Townhouse |
| Dimensions (min)  |                  |        |           |
| Usable area   | 3 acres          |        |           |
| Density (max)   |                  |        |           |
| Density (units/acre [of usable area])   | [10.12]13.29     |        |           |
| <b><u>Specification for Density</u></b>   |                  |        |           |
| <p>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.10.B.2 plus an increase of .88% for each .1% increase in MPDUs above 12.5%. The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.10.C.1.</p> |                  |        |           |

19 \* \* \*

20 **Section 4.4.11. Townhouse Low Density Zone (TLD)**

21 \* \* \*

22 **C. TLD Zone, Optional Method Development Standards**

| 1. Site   | MPDU Development |        |           |
|---|------------------|--------|-----------|
|   | Detached House   | Duplex | Townhouse |
| Dimensions (min)  |                  |        |           |
| Usable area   | 20,000 SF        |        |           |
| Density (max)   |                  |        |           |
| Density (units/acre [of usable area])   | [9.76]11.07      |        |           |
| <b><u>Specification for Density</u></b>   |                  |        |           |
| <p>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.11.B.2 plus an increase of .88% for each .1% increase in MPDUs above 12.5%. The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.11.C.1.</p> |                  |        |           |

23 \* \* \*

24 **Section 4.4.12. Townhouse Medium Density Zone (TMD)**

25 \* \* \*

26 **C. TMD Zone, Optional Method Development Standards**

| 1. Site   | MPDU Development |        |           |
|---|------------------|--------|-----------|
|   | Detached House   | Duplex | Townhouse |
| Dimensions (min)  |                  |        |           |
| Usable area   | 20,000 SF        |        |           |
| Density (max)   |                  |        |           |
| Density (units/acre [of usable area])   | [15.25]14.76     |        |           |
| <b><u>Specification for Density</u></b>   |                  |        |           |
| <p>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.12.B.2 plus an increase of .88% for each .1% increase in MPDUs above 12.5%. The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.12.C.1.</p> |                  |        |           |

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28 **Section 4.4.13. Townhouse High Density Zone (THD)**

29 \* \* \*

30 **C. THD Zone, Optional Method Development Standards**

| 1. Site   | MPDU Development |        |           |
|---|------------------|--------|-----------|
|   | Detached House   | Duplex | Townhouse |
| Dimensions (min)  |                  |        |           |
| Usable area   | 39,200 SF        |        |           |
| Density (max)   |                  |        |           |
| Density (units/acre [of usable area])   | [18.30]18.32     |        |           |
| <b><u>Specification for Density</u></b>   |                  |        |           |
| <p>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.13.B.2 plus an increase of .88% for each .1% increase in MPDUs above 12.5%. The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.13.C.1.</p> |                  |        |           |

31 \* \* \*

32 **Section 4.4.14. Residential Multi-Unit Low Density - 30 Zone (R-30)**

33 \* \* \*

34 **C. R-30 Zone, Optional Method Development Standards**

| 1. Site  | MPDU Development |        |           |           |
|--|------------------|--------|-----------|-----------|
|  | Detached House   | Duplex | Townhouse | Apartment |
| <b>Dimensions (min)</b>  |                  |        |           |           |
| Usable area  | 11,700 SF        |        |           |           |
| <b>Density (max)</b>   |                  |        |           |           |
| Density (units/acre [of usable area])  | 17.69            |        |           |           |
| <b><u>Specification for Density</u></b>  |                  |        |           |           |
| <p><u>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.14.B.2 plus an increase of .88% for each .1% increase in MPDUs above 12.5%. The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.14.C.1.</u></p> |                  |        |           |           |

35 \* \* \*

36 **Section 4.4.15. Residential Multi-Unit Medium Density - 20 Zone (R-20)**

37 \* \* \*

38 **C. R-20 Zone, Optional Method Development Standards**

| 1. Site  | MPDU Development |        |           |           |
|--|------------------|--------|-----------|-----------|
|  | Detached House   | Duplex | Townhouse | Apartment |
| <b>Dimensions (min)</b>  |                  |        |           |           |
| Usable area  | 15,600 SF        |        |           |           |
| <b>Density (max)</b>   |                  |        |           |           |
| Density (units/acre [of usable area])  | 26.47            |        |           |           |
| <b><u>Specification for Density</u></b>  |                  |        |           |           |
| <p><u>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.15.B.2 plus an increase of .88% for each .1% increase in MPDUs above 12.5%. The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.15.C.1.</u></p> |                  |        |           |           |

39 \* \* \*

40 **Section 4.4.16. Residential Multi-Unit High Density - 10 Zone (R-10)**

41 \* \* \*

42 **C. R-10 Zone, Optional Method Development Standards**

| 1. Site  | MPDU Development |        |           |           |
|--|------------------|--------|-----------|-----------|
|  | Detached House   | Duplex | Townhouse | Apartment |
| <b>Dimensions (min)</b>  |                  |        |           |           |
| Usable area  | 20,000 SF        |        |           |           |
| <b>Density (max)</b>   |                  |        |           |           |
| Density (units/acre [of usable area])  | 53.07            |        |           |           |
| <b><u>Specification for Density</u></b>  |                  |        |           |           |
| <p><u>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.16.B.2 plus an increase of .88% for each .1% increase in MPDUs above 12.5%. The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.16.C.1.</u></p> |                  |        |           |           |

43 \* \* \*

44 **Sec. 2. DIVISION 59-4.5 is amended as follows:**

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

46 \* \* \*

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

48 **A. Density and Height Limits**

- 49 1. Density is calculated as an allowed floor area ratio (FAR).
- 50 2. Each CRN, CRT, and CR zone classification is followed by a number and a sequence of 3 additional symbols: C, R, and H, each followed by another number where:
  - 53 a. The number following the classification is the maximum total FAR allowed unless additional FAR is allowed under Section 4.5.2.C or Section [4.7.3.D.6.c]4.5.2.D;
  - 56 b. The number following the C is the maximum nonresidential

- 57 FAR allowed;
- 58 c. The number following the R is the maximum residential FAR
- 59 allowed unless additional residential FAR is allowed under
- 60 Section 4.5.2.C or Section [4.7.3.D.6.c]4.5.2.D; and
- 61 d. The number following the H is the maximum building height in
- 62 feet allowed unless additional height is allowed under Section
- 63 4.5.2.C, Section [4.7.3.D.6.c]4.5.2.D, or Section 4.5.2.A.2.e.
- 64 e. With Planning Board approval, any Optional Method project in
- 65 a CR zone that includes the provision of a major public facility
- 66 under Section 4.7.3.A may add the height of any floor mostly
- 67 used for above grade parking to the maximum height otherwise
- 68 allowed, when the major public facility diminishes the ability of
- 69 the applicant to provide parking at or below grade.
- 70 3. The following limits apply unless additional total FAR, residential
- 71 FAR, or height is allowed under Section 4.5.2.C, Section
- 72 [4.7.3.D.6.c]4.5.2.D, or Section 4.5.2.A.2.e:

73 \* \* \*

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

75 For any application that includes more than 12.5% of the gross residential

76 floor area as Moderately Priced Dwelling Units (MPDUs), qualified under

77 Chapter 25A, the following provisions apply:

- 78 1. Residential density equals the mapped residential FAR plus an
- 79 increase of .88% for each .1% increase in MPDUs above 12.5%.
- 80 2. The increased residential density under this provision is limited to the
- 81 first 15% of MPDUs in the project.
- 82 3. To achieve an increase in density under Section 4.5.2.C, at least one
- 83 more MPDU than would be required at 12.5% must be provided.



- 84           4.     The floor area counted as MPDU floor area includes a proportional  
85                     share of the gross floor area not devoted to residential units.
- 86           5.     The height limit of the applicable zone and master plan does not apply  
87                     to the extent required to provide the MPDUs. The additional height is  
88                     calculated as the floor area provided for MPDUs above 12.5% divided  
89                     by the average residential floor plate area, where each whole number  
90                     and each remaining fraction allows an increase of 12 feet.

91     **[C]D. Special Provisions for "T" Zones Translated from Certain Zones**  
92             **Existing Before October 30, 2014**

- 93           1.     These special provisions apply to certain properties rezoned by  
94                     District Map Amendment to implement this Chapter and are indicated  
95                     on the zoning map as the zoning classification followed by a T, such  
96                     as "CR2.0 C1.5 R1.5 H75 T".
- 97           2.     For Commercial/Residential-zoned properties designated with a T, the  
98                     following provisions apply:
- 99                     a.     Residential density may be increased above the number  
100                         following the R on the zoning map in proportion to:
- 101                         i.     any MPDU density bonus achieved under Section 4.5.2.C  
102                                 [Chapter 25A for providing more than 12.5% of the  
103                                 residential units as Moderately Priced Dwelling Units  
104                                 (MPDUs), qualified under Chapter 25A]; or
- 105                         ii.    any workforce housing floor area that satisfies Chapter  
106                                 25B; however, the increased residential density under  
107                                 this provision is limited to 10% of the floor area  
108                                 indicated on the zoning map.

- 109 [b. Total density may be increased above the number following the  
110 zoning classification on the zoning map by an amount equal to  
111 the residential floor area allowed under Sec 4.5.2.D.2.a.
- 112 c. In any case, to achieve a density bonus under Section 4.5.2.C.2,  
113 at least one more MPDU than would be required at 12.5% must  
114 be provided.]
- 115 [d]b. On a property within a designated central business district  
116 mapped at a height up to 145 feet, height may be increased  
117 above the number following the H on the zoning map by up to  
118 1.5 times if:
- 119 i. the height is the minimum necessary for both:
- 120 (A) the floor area devoted to a publicly owned or  
121 operated facility; plus
- 122 (B) the floor area provided for workforce housing  
123 units, divided by the average residential floor plate  
124 area, where each whole number and each  
125 remaining fraction allows an increase of 12 feet; or
- 126 ii. additional height is specifically recommended for the  
127 provision of MPDUs above 12.5% in an applicable  
128 master plan.
- 129 [e]c. Property within a designated central business district and not  
130 located in a designated density transfer area[,] is exempt from  
131 Section 4.5.2.B.2.d.
- 132 [f]d. Height on a portion of a building may be increased above the  
133 number following the H on the zoning map so long as the  
134 average height of the building is no greater than the maximum  
135 height allowed by the mapped zone. Average building height is

136 calculated as the sum of the area of each section of the roof  
137 having a different height multiplied by that height, divided by  
138 the total roof area. Height is measured at the midpoint of each  
139 roof section along each frontage.

140 [g]e. Any density or height increases under Section 4.5.2.C or  
141 4.5.2.D requires site plan approval under Section 7.3.4.

142 \* \* \*

143 **Section 4.5.4. Optional Method Development**

144 The CRT and CR zone allow development under the optional method.

145 \* \* \*

146 **B. Development Standards**

147 \* \* \*

148 2. Lot, Density, and Height

149 a. Lot standards for detached house, duplex, and townhouse  
150 building types are determined by the site plan approval process  
151 under Section 7.3.4.

152 b. The maximum total, nonresidential, and residential FARs and  
153 the maximum height are established by the mapped zone unless  
154 increased under Section 4.5.2.C and Section  
155 [4.7.3.D.6.c]4.5.2.D.

156 c. In the CR zone, a designated historic resource that does not  
157 occupy more than 10% of the gross floor area is excluded from  
158 the FAR calculation.

159 \* \* \*

160 **Sec. 3. DIVISION 59-4.6 is amended as follows:**

161 **Division 4.6. Employment Zones**

162 \* \* \*

163 **Section 4.6.2. Density and Height Allocation**

164 **A. Density and Height Limits**

- 165 1. Density is calculated as an allowed floor area ratio (FAR).  
166 2. Each GR, NR, LSC, and EOF zone classification is followed by a  
167 number and symbol: H, which is followed by another number where:  
168 a. The number following the classification is the maximum total  
169 FAR allowed unless additional FAR is allowed under Section  
170 4.6.2.C or Section [4.7.3.D.6.c]4.6.2.D; and  
171 b. The number following the H is the maximum building height in  
172 feet allowed unless additional height is allowed under Section  
173 [4.7.3.D.6.c]4.6.2.C.  
174 3. The following limits apply unless additional total FAR, residential  
175 FAR, or height is allowed under Section 4.6.2.C and Section  
176 [4.7.3.D.6.c]4.6.2.D.

177 \* \* \*

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

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

- 182 1. Residential density equals the maximum residential density allowed in  
183 the zone plus an increase of .88% for each .1% increase in MPDUs  
184 above 12.5%.  
185 2. The increased residential density under this provision is limited to the  
186 first 15% of MPDUs in a project.  
187 3. To achieve an increase in density under Section 4.6.2.C, at least one  
188 more MPDU than would be required at 12.5% must be provided.

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- 4. The floor area counted as MPDU floor area includes a proportional share of the gross floor area not devoted to residential units.
- 5. 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% divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet.

\* \* \*

**[C]D. Special Provisions for "T" Zones Translated from Certain Zones Existing Before October 30, 2014**

- 1. These special provisions apply to certain properties rezoned by District Map Amendment to implement this Chapter and are indicated on the zoning map as the zoning classification followed by a T, such as "EOF2.0 H60 T".
- 2. For Employment-zoned properties designated with a T, the following provisions apply:
  - a. [Residential density may be increased above the maximum allowed in the zone in proportion to any MPDU density bonus achieved under Chapter 25A for providing more than 12.5% of the residential units as Moderately Priced Dwelling Units (MPDUs).
  - b.] In the LSC zone, to allow construction of all workforce housing units on-site, residential density may be increased by a maximum of 5% and building height may be increased up to a maximum building height of 200 feet. Density and building height may only be increased to the extent required for the number of workforce housing units that are constructed.

216 [c. In any case, to achieve a density bonus under Section 4.6.2.C.2,  
217 at least one more MPDU than would be required at 12.5% must  
218 be provided.

219 d)b. Any density increase under Section 4.6.2.C requires site plan  
220 approval under Section 7.3.4.

221 \* \* \*

222 **Section 4.6.4. Optional Method Development**

223 The LSC and EOF zone allow development under the optional method.

224 \* \* \*

225 **B. Development Standards**

226 \* \* \*

227 **2. Lot, Density, and Height**

228 a. Lot standards for detached house, duplex, and townhouse  
229 building types are established by the site plan approval process.

230 b. The maximum total FAR and the maximum height are  
231 established by the mapped zone unless increased under Section  
232 [4.7.3.D.6.c]4.6.2.C or Section 4.6.2.D.

233 c. In the GR, NR, and EOF zones, gross floor area of all  
234 Household Living uses is limited to 30% of the gross floor area  
235 on the subject site.

236 \* \* \*

237 **Sec. 4. DIVISION 59-4.7 is amended as follows:**

238 **Division 4.7. Optional Method Public Benefits**

239 \* \* \*

240 **Section 4.7.3. Public Benefit Descriptions and Criteria**

241 \* \* \*

242 **D. Diversity of Uses and Activities**

243 \* \* \*

244 **6. Moderately Priced Dwelling Units:** There is no limitation on the  
245 number of points for providing more than 12.5% of the residential  
246 units as MPDUs as required under Chapter 25A.

247 [a.] Points are calculated as follows:

248 [i]a. 12 points are granted for every 1% of MPDUs greater than  
249 12.5%. Any fraction of 1% increase in MPDUs entitles the  
250 applicant to an equal fraction of 12 points.

251 [ii]b. An additional 2 points are granted for every 1% of 2-bedroom  
252 MPDUs not otherwise required.

253 [iii]c. An additional 5 points are granted for every 1% of 3-bedroom  
254 MPDUs.

255 [iv]d. In any case, for [density and] points to be awarded, at least one  
256 more MPDU than would be required at 12.5% must be provided  
257 to take advantage of the MPDU public benefit points in any  
258 zone.

259 [v]e. For a project providing a minimum of 15% MPDUs, one less  
260 benefit category than is required under Section 4.5.4.A.2 and  
261 Section 4.6.4.A.2 must be satisfied. A project that provides a  
262 minimum of 20% MPDUs does not have to satisfy any other  
263 benefit category under Section 4.5.4.A.2 and Section 4.6.4.A.2.

264 [b. In a zone with a "T" designation, if a project exceeds 12.5%  
265 MPDUs, residential density may be increased under  
266 Section 4.5.2.C in the Commercial/Residential zones or under  
267 Section 4.6.2.C in the Employment zones.

268 c. In a zone without a "T" designation:

269 i. If a project exceeds 12.5% MPDUs, the height limit of

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

276 ii. For a project providing less than 15% MPDUs, the gross  
277 floor area of any MPDUs provided above 12.5% is  
278 exempt from the calculation of FAR.

279 iii. For a project providing a minimum of 15% MPDUs, the  
280 gross floor area of all MPDUs provided is exempt from  
281 the calculation of FAR.]

282 \* \* \*

283 **Sec. 5. DIVISION 59-4.9 is amended as follows:**

284 **Division 4.9. Overlay Zones**

285 \* \* \*

286 **Section 4.9.17. Transferable Development Rights (TDR) Overlay Zone**

287 \* \* \*

288 **B. Optional Method**

289 **1. In General**

290 The TDR Overlay optional method of development permits an  
291 increase in the maximum residential density, if the development  
292 satisfies the requirements for optional method development using  
293 Transferable Development Rights under Section 4.9.17.B.

294 \* \* \*

295 **d. Development with Moderately Priced Dwelling Units**

296 i. A property developed under Section 4.9.17.B must



- 297 satisfy Chapter 25A.
- 298 ii. [A density bonus allowed under Chapter 25A] Any
- 299 increase in density allowed under the optional method of
- 300 development for the provision of MPDUs is calculated
- 301 after the base density of the property has been increased
- 302 under Section 4.9.17.B through TDRs.
- 303 iii. In a Rural Residential or Residential zone with a TDR
- 304 density designation of less than three units per acre,
- 305 development using TDRs and providing MPDUs above
- 306 12.5% must follow the requirements under optional
- 307 method MPDU Development. Any other optional method
- 308 development in a Rural Residential or Residential zone
- 309 must satisfy the requirements of Section 4.9.16.B.

310 \* \* \*

311 **Sec. 6. Effective date.** This ordinance becomes effective 20 days after the

312 date of Council adoption.

313

314 This is a correct copy of Council action.

315

316

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317 Megan Davey Limarzi, Esq.  
318 Clerk of the Council



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

August 1, 2018

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 18-06

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 18-06 at its regular meeting on July 19, 2018. By a vote of 4:0 (Vice Chair Dreyfus absent), the Planning Board recommends approval, with minor editorial changes, to revise or establish Moderately-Priced Dwelling Unit (MPDU) density bonus standards for certain Residential, Commercial/Residential, Employment, and Overlay zones. The modifications reflect corrections to Section numbers (“Specification for Density” sections in the Optional Method of Development Standards-tables on lines 6, 10 and 14) and clarifying language intent (on lines 80-81 and 185-186). In addition, one speaker requested clarification (confirmation) that the affordable housing units required in connection with an independent living project (Section 59.3.3.2.C.2.c.iii) are considered MPDUs under the parameters of Chapter 25A. The Board has no objection to this request but suggests that language addressing the clarification be vetted through the Department of Housing and Community Affairs (DHCA).

ZTA 18-06 would revise or establish MPDU bonus density standards for certain Residential, Commercial/Residential, Employment, and Overlay zones and would generally amend provisions concerning MPDUs in the Zoning Ordinance. ZTA 18-06 uses the bonus density table in Chapter 25A as guidance for creating an equation for calculating the bonus density and amends the Zoning Ordinance by allowing a project that includes 15% of the residential units as MPDUs to have a maximum bonus density of 22% (a 2.5% increase in MPDUs above the required 12.5% allows a 22% bonus density, which equals an .88% bonus density for every .1% increase in MPDUs). ZTA 18-06 would also apply a bonus density provision to optional method development in the R-200, R-90, R-60, R-40, and TLD zones (where currently there is not), consistent with the policy goal of increasing the potential for establishing additional MPDUs in the lower density residential zones consistent with the provisions of Chapter 25A. In addition, bonus density would be calculated as units per acre versus units per acre of "usable area" of the site.

The Board believes that the proposed ZTA language reflects the Planning, Housing and Economic Development (PHED) Committee recommendations to place all bonus density provisions in the Zoning Ordinance (thereby deleting the MPDU bonus density table from Chapter 25A). The Board further believes that the proposal to establish MPDU density bonus provisions for the low density

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The Honorable Hans Riemer  
August 2, 2018  
Page 2

the County. Any concerns regarding increased density or compatibility of uses are addressed during site plan review of an optional method of development project.

**CERTIFICATION**

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, July 19, 2018.



Casey Anderson  
Chair

CA:GR



Zoning Text Amendment (ZTA) No. 18-06, MPDU- Bonus Density

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Gregory Russ, Planner Coordinator, FP&P, [gregory.russ@montgomeryplanning.org](mailto:gregory.russ@montgomeryplanning.org), 301-495-2174



Pam Dunn, Chief, FP&P, [pamela.dunn@montgomeryplanning.org](mailto:pamela.dunn@montgomeryplanning.org), 301-650-5649

Completed: 07/12/18

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Description

ZTA No. 18-06 amends the Montgomery County Zoning Ordinance to revise or establish Moderately-Priced Dwelling Unit (MPDU) density bonus standards for certain Residential, Commercial/Residential, Employment, and Overlay zones.

Summary

Staff recommends approval, with modifications, of ZTA No. 18-06 to revise or establish Moderately-Priced Dwelling Unit (MPDU) density bonus standards for certain Residential, Commercial/Residential, Employment, and Overlay zones. The modifications reflect minor editorial changes (correcting Section numbers and clarifying language intent).

Background/Analysis

When the Planning, Housing, and Economic Development (PHED) Committee considered Bill 34-17 (Housing- Moderately-Priced Dwelling Units (MPDUs) - Amendments) on June 11, the Committee recommended deleting the inappropriately-placed bonus density table in Chapter 25A. The Committee recommended placing all bonus density provisions in the zoning code. ZTA 18-06 was introduced to implement the Committee-recommended revisions to Chapter 25A pertaining to the density bonus provisions. ZTA 18-06 would revise or establish Moderately Priced Dwelling Unit (MPDU) bonus density standards for certain Residential, Commercial/Residential, Employment, and Overlay zones and would generally amend provisions concerning MPDUs in the Zoning Ordinance. ZTA 18-06 uses the bonus density table in Chapter 25A as guidance for creating an equation for calculating the bonus density and amends the Zoning Ordinance by allowing a project that includes 15% of the residential units as MPDUs to have a maximum bonus density of 22%. ZTA 18-06 would also apply a bonus density provision to optional method development in the R-200, R-90, R-60, R-40, and TLD zones (where currently there is not). In addition, bonus density would be calculated as units per acre versus units per acre of "usable area" of the site.

As proposed, ZTA 18-06 adds to or modifies the MPDU bonus density provisions as discussed below:

- Removal of the MPDU Density Bonus table from Chapter 25A and including bonus density parameters in the Zoning Code consistent with Chapter 25A -ZTA 18-06 establishes maximum density bonus provisions for projects with up to 15% MPDUs at the same bonus rate currently allowed by Chapter 25A (a 2.5% increase in MPDUs above the required 12.5% allows a 22% bonus density, which equals a .88% bonus density for every .1% increase in MPDUs). Under these circumstances, this equals a 22% bonus density above the standard method density allowed by the zone. Projects with more than 15% MPDUs are not allowed any additional density bonus beyond 22%.
- ZTA 18-06 would also expand the zones in which a density bonus is allowed (development in R-200, R-90, R-60, R-40 and TLD zones are not currently allowed MPDU bonus density consistent with the limits as established in Chapter 25A). Although the current Chapter 25A bonus density table indicates the potential for a maximum MPDU density bonus of 22% for a development with 15% MPDUs, the Zoning Code did not allow for MPDU bonus density in low density residential zones. (This issue was raised in Planning Board worksessions on the 2014 Zoning Ordinance Re-write and was decided both at the Planning Board and at the Council that single-unit residential zones should not be significantly changed by the 2014 Zoning Ordinance Rewrite.) It should be noted, however, that currently low density residential zones under MPDU development are allowed relief from development standards other than density (minimum lot sizes are reduced and additional unit types (duplexes and townhouses) are allowed for development with MPDUs). Staff believes that the language, as introduced, is consistent with the policy goal of increasing the potential for establishing additional MPDUs in the lower density residential zones consistent with the provisions of Chapter 25A.

For the Residential zones, the following table indicates the standard method maximum density, the current MPDU maximum density, the percent of current MPDU density compared to the standard method maximum density, the proposed MPDU maximum density in ZTA 18-06, and the percentage change between the current MPDU maximum density and the proposed MPDU maximum density. It should be noted that the current MPDU density is calculated on usable area while the proposed MPDU density is based on gross acreage.

|       | Standard Density per Acre | Current MPDU Density per Usable Area | Current % MPDU Density from Standard | Proposed MPDU Density per Acre | Proposed % MPDU Density Increase or decrease from Current MPDU Density |
|-------|---------------------------|--------------------------------------|--------------------------------------|--------------------------------|--|
| R-200 | 2.18                      | 2.44                                 | 12%                                  | 2.66                           | 9%   |
| R-90  | 4.84                      | 4.39                                 | -9%                                  | 5.90                           | 34%  |
| R-60  | 7.26                      | 6.1                                  | -16%                                 | 8.86                           | 45%  |
| R-40  | 10.89                     | 10.12                                | -7%                                  | 13.29                          | 31%  |
| TLD   | 9.07                      | 9.76                                 | 8%                                   | 11.07                          | 13%  |
| TMD   | 12.1                      | 15.25                                | 26%                                  | 14.76                          | -3%  |
| THD   | 15.02                     | 18.3                                 | 22%                                  | 18.32                          | 0%   |

- Bonus density proposed to be calculated as units per acre instead of units per acre of "usable area" of the site. Density is generally based on gross acreage of a site. In the low density residential zones, density for MPDUs is currently based on the "usable area" of the site. The difference between usable area and gross area of a site is the exclusion of some environmental buffer area. "If more than 50% of the tract is within environmental buffers, usable area is calculated by deducting from the tract the incremental area of the environmental buffer that exceeds 50%."

The effect of excluding some area is to reduce the maximum total number of units allowed on the site. The lower density recognizes the difficulties of achieving all bonus densities when there are significant environmental concerns on the site. Staff has no objection to using gross acreage of a site for calculating potential MPDU density, recognizing that in some instances the theoretical yield would not be possible. However, in those cases where the maximum density could be reached, additional MPDUs could be provided in a project.

- Under the Commercial/Residential and Employment Zones, MPDU provisions are located under their own new headings (Section 4.5.2.C and Section 4.6.2.C, respectively- "Development with Moderately Priced Dwelling Units") for an easier read and for consistency. The Section includes:

- Residential density calculations consistent with the language proposed in the Residential Zones (as stated above and translated from the MPDU density bonus table being removed from Chapter 25A- a .1% residential bonus density for every .88% increase in MPDUs above 12.5%)
- All other applicable MPDU density bonus provisions relocated from the sections on Special Provisions for "T" zones Translated from Certain Zones Existing Before October 30, 2014
- In addition, it should be noted that under Section 4.7.3., Public Benefit Descriptions and Criteria, Subsection D.6. Moderately Priced Dwelling Units, all "T" designation references to MPDU density provisions are being removed and addressed in Sections 4.5.2.C and 4.6.2.C.

### Conclusion

Staff recommends approval, with minor modifications, of ZTA 18-06 to revise or establish Moderately-Priced Dwelling Unit (MPDU) density bonus standards for certain Residential, Commercial/Residential, Employment, and Overlay zones. Staff-recommended modifications reflect minor editorial changes (correcting Section numbers and clarifying language). The proposed ZTA language reflects the Planning, Housing and Economic Development (PHED) Committee recommendations to place all bonus density provisions in the Zoning Ordinance (thereby deleting the MPDU bonus density table from Chapter 25A). Staff further believes that the proposal to establish MPDU density bonus provisions for the low density residential zones is consistent with the intent of Chapter 25A to provide more MPDUs throughout the County. Any concerns regarding increased density or compatibility of uses are addressed during site plan review of an optional method of development project.


MONTGOMERY COUNTY COUNCIL  
ROCKVILLE, MARYLAND

NANCY FLOREEN  
COUNCILMEMBER AT-LARGE

MEMORANDUM

August 24, 2018

TO: Councilmembers

FROM: Councilmember  y Floreen

SUBJECT: Amendments to ZTA 18-06

I am introducing some amendments to ZTA 18-06 - Bonus Density, and I wanted you and the public to be aware of them in time for the public hearing on September 11. This way, we will have an opportunity to hear what community members think of the amendments as well as of the ZTA as introduced.

My goal is to try to shape the ZTA so that we maximize the number of MPDUs that our developments provide. Giving developers extra density in exchange for giving us more MPDUs has been a successful approach in the past. At the same time, we now have a mixture of systems for calculating how much bonus density developments earn depending on the zone and the number of MPDUs.

The amendments I'm proposing bring order to that system by building on what we do now and incorporating it into a chart that will be an easy reference for the community, the homebuilding industry, and the staff. That chart is attached.

Embedded in the chart are three different approaches:

1. For developments providing 12.6-15% MPDUs, use the same ratio of MPDUs to bonus market rate units we use now, a factor of .88% bonus density for every .1 increase in the percentage of MPDUs provided above 12.5%. For example, a development providing 12.6% MPDUs would earn a bonus density of .88% market units.

2. For developments providing 15.1-20% MPDUs, the density bonus allows for a bonus of .16% for every .1% increase in MPDUs provided above 15%. Thus, for developments providing 15.1-20% MPDUs, density may increase by 22% (the bonus for 15% MPDUs) plus .16% for each .1% increase in MPDUs over 15% up to 20%. Collaboration among Planning Staff, my staff and the industry resulted in a consensus

around the new factor, .16%, which results in a 30% bonus density for projects providing 20% MPDUs.

100 MARYLAND AVENUE, 6TH FLOOR • ROCKVILLE, MARYLAND 20850  
240/777-7959 FAX 240/777-7989 COUNCILMEMBER.FLOREEN@MONTGOMERYCOUNTYMD.GOV

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3. For developments providing more than 20% MPDUs, I propose using a system built on what we use today in the C/R zones. In the C/R zones, for each additional square foot of MPDUs provided beyond 12.5%, a development receives an equivalent increase in density to use for market rate units. In this ZTA, that one-for-one ratio becomes the basis for the amount of additional density allowed for developments that provide more than MPDUs.

My amendments will also include removing the cap on bonus density where it exists today. Current law puts no cap on bonus density for providing MPDUs in the C/R zones. We want to increase the number of MPDUs, so I believe that there should be no cap in any zone. In non-multi-family zones, the physical constraints on the property will form an effective limit on density, even without a cap.

One more change would permit developments in the C/R zones to earn public benefit points for providing more than 12.5% MPDUs, even in areas in which they are required to provide 15% MPDUs, except for the Bethesda Overlay Zone. My reasoning for this change is that we want to make it feasible for developments to provide as many MPDUs as possible. We are requiring 15% MPDUs in those areas where we have the biggest need for affordable housing. I want us also to encourage developments that are required to provide the higher percentage of MPDUs by enabling them to obtain the needed public benefit points.

I look forward to our continuing discussions on this important ZTA and welcome your input. I also hope that I can count on your support for continuing to provide incentives that give us the affordable housing our residents need.

cc: Clarence Snuggs, Director, DHCA  
Stephanie Killian, Manager, DHCA  
Lisa Schwartz, Sr. Planning Specialist, DHCA  
Marlene Michaelson, Executive Director, County Council  
Jeff Zyontz, County Council  
Linda McMillan, County Council  
Josh Hamlin, County Council

26



| % MPDUs | % Bonus Density   |
|---------|---|
|         | .88%, 22% + .16%, and 30% + .1% for every .1% increase in MPDUs |
| 12.5    | 0.00  |
| 12.6    | 0.88  |
| 12.7    | 1.76  |
| 12.8    | 2.64  |
| 12.9    | 3.52  |
| 13.0    | 4.40  |
| 13.1    | 5.28  |
| 13.2    | 6.16  |
| 13.3    | 7.04  |
| 13.4    | 7.92  |
| 13.5    | 8.80  |
| 13.6    | 9.68  |
| 13.7    | 10.56   |
| 13.8    | 11.44   |
| 13.9    | 12.32   |
| 14.0    | 13.20   |
| 14.1    | 14.08   |
| 14.2    | 14.96   |
| 14.3    | 15.84   |
| 14.4    | 16.72   |
| 14.5    | 17.60   |
| 14.6    | 18.48   |
| 14.7    | 19.36   |
| 14.8    | 20.24   |
| 14.9    | 21.12   |
| 15.0    | 22.00   |
| 15.1    | 22.16   |
| 15.2    | 22.32   |
| 15.3    | 22.48   |
| 15.4    | 22.64   |
| 15.5    | 22.80   |
| 15.6    | 22.96   |
| 15.7    | 23.12   |
| 15.8    | 23.28   |
| 15.9    | 23.44   |
| 16.0    | 23.60   |
| 16.1    | 23.76   |
| 16.2    | 23.92   |
| 16.3    | 24.08   |
| 16.4    | 24.24   |
| 16.5    | 24.40   |
| 16.6    | 24.56   |
| 16.7    | 24.72   |
| 16.8    | 24.88   |

|           |  |
|-----------|--|
| 16.9      | 25.04                                      |
| 17.0      | 25.20                                      |
| 18.0      | 26.80                                      |
| 19.0      | 28.40                                      |
| 20.0      | 30.00                                      |
| Over 20.0 | 30.00 plus 1% for every 1% mpdus above 20% |

Zoning Text Amendment No.: 18-06  
Concerning: MPDU- Bonus Density  
Draft No. & Date: 2 - 8/21/18  
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 Sponsor: Councilmember Floreen

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

- revise or establish Moderately-Priced Dwelling Unit (MPDU) density bonus standards for certain Residential, Commercial/Residential, Employment, and Overlay zones; and
- generally amend provisions concerning MPDUs

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

|                      |  |
|----------------------|--|
| DIVISION 4.4.        | “Residential Zones”                                      |
| Section 4.4.7.       | “Residential - 200 Zone (R-200)”                         |
| Section 4.4.8.       | “Residential - 90 Zone (R-90)”                           |
| Section 4.4.9.       | “Residential - 60 Zone (R-60)”                           |
| Section 4.4.10.      | “Residential - 40 Zone (R-40)”                           |
| Section 4.4.11.      | “Townhouse Low Density Zone (TLD)”                       |
| Section 4.4.12.      | “Townhouse Medium Density Zone (TMD)”                    |
| Section 4.4.13.      | “Townhouse High Density Zone (THD)”                      |
| Section 4.4.14.      | “Residential Multi-Unit Low Density - 30 Zone (R-30)”    |
| Section 4.4.15.      | “Residential Multi-Unit Medium Density - 20 Zone (R-20)” |
| Section 4.4.16.      | “Residential Multi-Unit High Density - 10 Zone (R-10)”   |
| DIVISION 4.5.        | “Commercial/Residential Zones”                           |
| Section 4.5.2.       | “Density and Height Allocation”                          |
| Section 4.5.4.       | “Optional Method Development”                            |
| DIVISION 4.6.        | “Employment Zones”                                       |
| Section 4.6.2.       | “Density and Height Allocation”                          |
| Section 4.6.4.       | “Optional Method Development”                            |
| DIVISION 4.7.        | “Optional Method Public Benefits”                        |
| <u>Section 4.7.1</u> | <u>“General Provisions”</u>                              |
| Section 4.7.3.       | “Public Benefit Descriptions and Criteria”               |
| DIVISION 4.9.        | “Overlay Zones”  |
| Section 4.9.17.      | “Transferable Development Rights (TDR) Overlay Zone”     |

**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 59-4.4 is amended as follows:**

**Division 4.4. Residential Zones**

**Section 4.4.7. Residential - 200 Zone (R-200)**

**C. R-200 Zone, Optional Method Development Standards**

| 1. Site   | MPDU Development                                    |        |           | Cluster Development |
|---|---|--------|-----------|---------------------|
|   | Detached House                                      | Duplex | Townhouse | Detached House      |
| <b>Dimensions (min)</b>   |   |        |           |                     |
| Usable area   | 9 acres   |        |           | 5 acres             |
| <b>Specification for Site under MPDU Development</b>  |   |        |           |                     |
| a. In an optional method MPDU Development, the maximum percentage of duplex or townhouse building types allowed is 40%. The Planning Board may allow up to 100% duplex or townhouse units if it finds that the proposed development is more desirable from an environmental perspective or that, because of site constraints, the proposed number of MPDUs could not be achieved under the development requirements in Division 4.4 for the required number of detached house dwelling units. |   |        |           |                     |
| <b>Specification for Site under Cluster Development</b>   |   |        |           |                     |
| * * *   |   |        |           |                     |
| <b>Density (max)</b>  |   |        |           |                     |
| Density (units/acre [of usable area])   | [2.44][[2.66]] <u>See Specification for Density</u> |        |           | 2                   |
| <b>Specification for Density</b>  |   |        |           |                     |
| <u>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.7.B. [[2]]1 plus an increase of:</u>   |   |        |           |                     |
| <ul style="list-style-type: none"> <li>a. <u>.88% for each .1% increase in MPDUs above 12.5% up to and including 15%,</u></li> <li>b. <u>22% plus .16% for each .1% increase in MPDUs above 15% up to and including 20%, or</u></li> <li>c. <u>30% plus .1% for each .1% increase in MPDUs above 20%.</u></li> </ul>  |   |        |           |                     |
| <u>[[The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.7.C.1.]]</u>  |   |        |           |                     |

**Section 4.4.8. Residential - 90 Zone (R-90)**

10 **C. R-90 Zone, Optional Method Development Standards**

| 1. Site   | MPDU Development                                    |        |           | Cluster Development |        |           |
|---|---|--------|-----------|---------------------|--------|-----------|
|   | Detached House                                      | Duplex | Townhouse | Detached House      | Duplex | Townhouse |
| Dimensions (min)  |   |        |           |                     |        |           |
| Usable area   | 5 acres   |        |           | 5 acres             |        |           |
| <b>Specification for Site under MPDU Development</b>  |   |        |           |                     |        |           |
| a. In an optional method MPDU Development, the maximum percentage of duplex or townhouse building types allowed is 50%. The Planning Board may allow up to 100% duplex or townhouse units if it finds that the proposed development is more desirable from an environmental perspective or that, because of site constraints, the proposed number of MPDUs could not be achieved under the development requirements in Division 4.4 for the required number of detached house dwelling units. |   |        |           |                     |        |           |
| <b>Specification for Site under Cluster Development</b>   |   |        |           |                     |        |           |
| * * *   |   |        |           |                     |        |           |
| Density (max)   |   |        |           |                     |        |           |
| Density (units/acre [of usable area])   | [4.39][[5.90]] <u>See Specification for Density</u> |        |           | 3.6                 |        |           |
| <b>Specification for Density</b>  |   |        |           |                     |        |           |
| The density allowed for any application that includes more than 12.5% 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. [[2]] <u>1</u> plus an increase of:  |   |        |           |                     |        |           |
| <ul style="list-style-type: none"> <li>a. <u>.88% for each .1% increase in MPDUs above 12.5% up to and including 15%,</u></li> <li>b. <u>22% plus .16% for each .1% increase in MPDUs above 15% up to and including 20%, or</u></li> <li>c. <u>30% plus .1% for each .1% increase in MPDUs above 20%.</u></li> </ul>  |   |        |           |                     |        |           |
| [[The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.8.C.1.]]   |   |        |           |                     |        |           |

11 \* \* \*

12 **Section 4.4.9. Residential - 60 Zone (R-60)**

13 \* \* \*

14 **C. R-60 Zone, Optional Method Development Standards**

| 1. Site  | MPDU Development                                   |        |           | Cluster Development |        |           |
|--|--|--------|-----------|---------------------|--------|-----------|
|  | Detached House                                     | Duplex | Townhouse | Detached House      | Duplex | Townhouse |
| Dimensions (min)   |  |        |           |                     |        |           |
| Usable area  | 3 acres  |        |           | 5 acres             |        |           |
| <b>Specification for Site under MPDU Development</b>   |  |        |           |                     |        |           |
| a. In an optional method MPDU Development, the maximum percentage of duplex or townhouse building types allowed is 60%. The Planning Board may allow up to 100% duplex or townhouse units if it finds that the proposed development is more desirable from an environmental perspective or that, because of site constraints, the proposed number of MPDUs could not be achieved under the development requirements in Division 4.4 for the required number of detached house dwelling units.  |  |        |           |                     |        |           |
| <b>Specification for Site under Cluster Development</b>  |  |        |           |                     |        |           |
| * * *  |  |        |           |                     |        |           |
| Density (max)  |  |        |           |                     |        |           |
| Density (units/acre [of usable area])  | [6.1][[8.86]] <u>See Specification for Density</u> |        |           | 5                   |        |           |
| <b>Specification for Density</b>   |  |        |           |                     |        |           |
| <p>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.9.B. <del>[[2]]</del> <u>1</u> plus an increase of:</p> <p>a. <u>.88% for each .1% increase in MPDUs above 12.5% up to and including 15%.</u></p> <p>b. <u>22% plus .16% for each .1% increase in MPDUs above 15% up to and including 20%, or</u></p> <p>c. <u>30% plus .1% for each .1% increase in MPDUs above 20%.</u></p> <p><del>[[The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.9.C.1.]]</del></p> |  |        |           |                     |        |           |

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18

\* \* \*  
Section 4.4.10. Residential - 40 Zone (R-40)  
\* \* \*

**C. R-40 Zone, Optional Method Development Standards**

| 1. Site  | MPDU Development                                      |        |           |
|--|---|--------|-----------|
|  | Detached House  | Duplex | Townhouse |
| Dimensions (min)   |   |        |           |
| Usable area  | 3 acres   |        |           |
| Density (max)  |   |        |           |
| Density (units/acre [of usable area])  | [10.12][[13.29]] <u>See Specification for Density</u> |        |           |
| <b><u>Specification for Density</u></b>  |   |        |           |
| <p>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.10.B.2 plus an increase of:</p> <ul style="list-style-type: none"> <li>a. .88% for each .1% increase in MPDUs above 12.5% up to and including 15%.</li> <li>b. 22% plus .16% for each .1% increase in MPDUs above 15% up to and including 20%, or</li> <li>c. 30% plus .1% for each .1% increase in MPDUs above 20%.</li> </ul> <p>[[The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.10.C.1.]]</p> |   |        |           |

19 \* \* \*

20 **Section 4.4.11. Townhouse Low Density Zone (TLD)**

21 \* \* \*

22 **C. TLD Zone, Optional Method Development Standards**

| 1. Site   | MPDU Development                                     |        |           |
|---|--|--------|-----------|
|   | Detached House                                       | Duplex | Townhouse |
| Dimensions (min)  |  |        |           |
| Usable area   | 20,000 SF  |        |           |
| Density (max)   |  |        |           |
| Density (units/acre [of usable area])   | [9.76][[11.07]] <u>See Specification for Density</u> |        |           |
| <b><u>Specification for Density</u></b>   |  |        |           |
| <p>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.11.B.2 plus an increase of:</p> <ul style="list-style-type: none"> <li>a. .88% for each .1% increase in MPDUs above 12.5% up to and including 15%.</li> <li>b. 22% plus .16% for each .1% increase in MPDUs above 15% up to and including 20%, or</li> <li>c. 30% plus .1% for each .1% increase in MPDUs above 20%.</li> </ul> <p>[[The maximum density allowed under this provision may not exceed the maximum density under</p> |  |        |           |



Sec. 4.4.11.C.1.]]

23 \* \* \*

24 **Section 4.4.12. Townhouse Medium Density Zone (TMD)**

25 \* \* \*

26 **C. TMD Zone, Optional Method Development Standards**

| 1. Site   | MPDU Development                                       |        |           |
|---|--|--------|-----------|
|   | Detached House   | Duplex | Townhouse |
| <b>Dimensions (min)</b>   |  |        |           |
| Usable area   | 20,000 SF  |        |           |
| <b>Density (max)</b>  |  |        |           |
| Density (units/acre [of usable area])   | [15.25] [[14.76]] <u>See Specification for Density</u> |        |           |
| <b><u>Specification for Density</u></b>   |  |        |           |
| <p>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.12.B.2 plus an increase of:</p> <ul style="list-style-type: none"> <li>a. <u>.88% for each .1% increase in MPDUs above 12.5% up to and including 15%.</u></li> <li>b. <u>22% plus .16% for each .1% increase in MPDUs above 15% up to and including 20%, or</u></li> <li>c. <u>30% plus .1% for each .1% increase in MPDUs above 20%.</u></li> </ul> <p>[[The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.12.C.1.]]</p> |  |        |           |

27 \* \* \*

28 **Section 4.4.13. Townhouse High Density Zone (THD)**

29 \* \* \*

30 **C. THD Zone, Optional Method Development Standards**

| 1. Site   | MPDU Development                                       |        |           |
|---|--|--------|-----------|
|   | Detached House   | Duplex | Townhouse |
| <b>Dimensions (min)</b>   |  |        |           |
| Usable area   | 39,200 SF  |        |           |
| <b>Density (max)</b>  |  |        |           |
| Density (units/acre [of usable area])   | [18.30] [[18.32]] <u>See Specification for Density</u> |        |           |
| <b><u>Specification for Density</u></b>   |  |        |           |
| <p>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed</p> |  |        |           |

under Sec. 4.4.13.B.2 plus an increase of:

- a. .88% for each .1% increase in MPDUs above 12.5% up to and including 15%.
- b. 22% plus .16% for each .1% increase in MPDUs above 15% up to and including 20%, or
- c. 30% plus .1% for each .1% increase in MPDUs above 20%.

[[The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.13.C.1.]]

31 \* \* \*

32 **Section 4.4.14. Residential Multi-Unit Low Density - 30 Zone (R-30)**

33 \* \* \*

34 **C. R-30 Zone, Optional Method Development Standards**

| 1. Site   | MPDU Development                     |        |           |           |
|---|--------------------------------------|--------|-----------|-----------|
|   | Detached House                       | Duplex | Townhouse | Apartment |
| Dimensions (min)  |                                      |        |           |           |
| Usable area   | 11,700 SF                            |        |           |           |
| Density (max)   |                                      |        |           |           |
| Density (units/acre [of usable area])   | [17.69]See Specification for Density |        |           |           |
| <b><u>Specification for Density</u></b>   |                                      |        |           |           |
| <p>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.14.B.2 plus an increase of:</p> <ul style="list-style-type: none"> <li>a. <u>.88% for each .1% increase in MPDUs above 12.5% up to and including 15%.</u></li> <li>b. <u>22% plus .16% for each .1% increase in MPDUs above 15% up to and including 20%, or</u></li> <li>c. <u>30% plus .1% for each .1% increase in MPDUs above 20%.</u></li> </ul> <p>[[The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.14.C.1.]]</p> |                                      |        |           |           |

35 \* \* \*

36 **Section 4.4.15. Residential Multi-Unit Medium Density - 20 Zone (R-20)**

37 \* \* \*

38 **C. R-20 Zone, Optional Method Development Standards**

| 1. Site          | MPDU Development |        |           |           |
|------------------|------------------|--------|-----------|-----------|
|                  | Detached House   | Duplex | Townhouse | Apartment |
| Dimensions (min) |                  |        |           |           |
| Usable area      | 15,600 SF        |        |           |           |

|  |                                      |
|--|--------------------------------------|
| <b>Density (max)</b>   |                                      |
| Density (units/acre [of usable area])  | [26.47]See Specification for Density |
| <b>Specification for Density</b>   |                                      |
| <p>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.15.B.2 plus an increase of:</p> <ul style="list-style-type: none"> <li>a. .88% for each .1% increase in MPDUs above 12.5% up to and including 15%.</li> <li>b. 22% plus .16% for each .1% increase in MPDUs above 15% up to and including 20%, or</li> <li>c. 30% plus .1% for each .1% increase in MPDUs above 20%.</li> </ul> <p>[[The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.15.C.1.]]</p> |                                      |

39 \* \* \*

40 **Section 4.4.16. Residential Multi-Unit High Density - 10 Zone (R-10)**

41 \* \* \*

42 **C. R-10 Zone, Optional Method Development Standards**

|  |                                      |               |                  |                  |
|--|--------------------------------------|---------------|------------------|------------------|
|  | <b>MPDU Development</b>              |               |                  |                  |
| <b>1. Site</b>   | <b>Detached House</b>                | <b>Duplex</b> | <b>Townhouse</b> | <b>Apartment</b> |
| <b>Dimensions (min)</b>  |                                      |               |                  |                  |
| Usable area  | 20,000 SF                            |               |                  |                  |
| <b>Density (max)</b>   |                                      |               |                  |                  |
| Density (units/acre [of usable area])  | [53.07]See Specification for Density |               |                  |                  |
| <b>Specification for Density</b>   |                                      |               |                  |                  |
| <p>The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.16.B.2 plus an increase of:</p> <ul style="list-style-type: none"> <li>a. .88% for each .1% increase in MPDUs above 12.5% up to and including 15%.</li> <li>b. 22% plus .16% for each .1% increase in MPDUs above 15% up to and including 20%, or</li> <li>c. 30% plus .1% for each .1% increase in MPDUs above 20%.</li> </ul> <p>[[The maximum density allowed under this provision may not exceed the maximum density under Sec. 4.4.16.C.1.]]</p> |                                      |               |                  |                  |

43 \* \* \*

44 **Sec. 2. DIVISION 59-4.5 is amended as follows:**

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

46 \* \* \*

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

48 **A. Density and Height Limits**

- 49 1. Density is calculated as an allowed floor area ratio (FAR).
- 50 2. Each CRN, CRT, and CR zone classification is followed by a number  
51 and a sequence of 3 additional symbols: C, R, and H, each followed  
52 by another number where:
- 53 a. The number following the classification is the maximum total  
54 FAR allowed unless additional FAR is allowed under Section  
55 4.5.2.C or Section [4.7.3.D.6.c]4.5.2.D;
- 56 b. The number following the C is the maximum nonresidential  
57 FAR allowed;
- 58 c. The number following the R is the maximum residential FAR  
59 allowed unless additional residential FAR is allowed under  
60 Section 4.5.2.C or Section [4.7.3.D.6.c]4.5.2.D; and
- 61 d. The number following the H is the maximum building height in  
62 feet allowed unless additional height is allowed under Section  
63 4.5.2.C, Section [4.7.3.D.6.c]4.5.2.D, or Section 4.5.2.A.2.e.
- 64 e. With Planning Board approval, any Optional Method project in  
65 a CR zone that includes the provision of a major public facility  
66 under Section 4.7.3.A may add the height of any floor mostly  
67 used for above grade parking to the maximum height otherwise  
68 allowed, when the major public facility diminishes the ability of  
69 the applicant to provide parking at or below grade.
- 70 3. The following limits apply unless additional total FAR, residential  
71 FAR, or height is allowed under Section 4.5.2.C, Section

[4.7.3.D.6.c]4.5.2.D, or Section 4.5.2.A.2.e:

\* \* \*

**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. Residential density [[equals]] may be increased above the mapped residential FAR by: [plus an increase of .88% for each .1% increase in MPDUs above 12.5%]
  - a. .88% for each .1% increase in MPDUs above 12.5% up to and including 15%,
  - b. 22% plus .16% for each .1% increase in MPDUs above 15% up to and including 20%, or
  - c. 30% plus .1% for each .1% increase in MPDUs above 20%.
2. [[The increased residential density under this provision is limited to the first 15% of MPDUs in the project.]] 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.
3. 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.
- [[3]]4. 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.
- [[4]]5. The floor area counted as MPDU floor area includes a proportional share of the gross floor area not devoted to residential units.



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- c. In any case, to achieve a density bonus under Section 4.5.2.C.2, at least one more MPDU than would be required at 12.5% must be provided.]
- [d]b. On a property within a designated central business district mapped at a height up to 145 feet, height may be increased above the number following the H on the zoning map by up to 1.5 times if:
  - i. the height is the minimum necessary for both:
    - (A) the floor area devoted to a publicly owned or operated facility; plus
    - (B) the floor area provided for workforce housing units, divided by the average residential floor plate area, where each whole number and each remaining fraction allows an increase of 12 feet; or
  - ii. additional height is specifically recommended for the provision of MPDUs above 12.5% in an applicable master plan.
- [e]c. Property within a designated central business district and not located in a designated density transfer area[,] is exempt from Section 4.5.2.B.2.d.
- [f]d. Height on a portion of a building may be increased above the number following the H on the zoning map so long as the average height of the building is no greater than the maximum height allowed by the mapped zone. Average building height is calculated as the sum of the area of each section of the roof having a different height multiplied by that height, divided by

150 the total roof area. Height is measured at the midpoint of each  
151 roof section along each frontage.

152 [g]e. Any density or height increases under Section 4.5.2.C or  
153 4.5.2.D requires site plan approval under Section 7.3.4.

154 \* \* \*

155 **Section 4.5.4. Optional Method Development**

156 The CRT and CR zone allow development under the optional method.

157 \* \* \*

158 **B. Development Standards**

159 \* \* \*

160 2. Lot, Density, and Height

161 a. Lot standards for detached house, duplex, and townhouse  
162 building types are determined by the site plan approval process  
163 under Section 7.3.4.

164 b. The maximum total, nonresidential, and residential FARs and  
165 the maximum height are established by the mapped zone unless  
166 increased under Section 4.5.2.C and Section  
167 [4.7.3.D.6.c]4.5.2.D.

168 c. In the CR zone, a designated historic resource that does not  
169 occupy more than 10% of the gross floor area is excluded from  
170 the FAR calculation.

171 \* \* \*

172 **Sec. 3. DIVISION 59-4.6 is amended as follows:**

173 **Division 4.6. Employment Zones**

174 \* \* \*

175 **Section 4.6.2. Density and Height Allocation**

176 **A. Density and Height Limits**



- 177 1. Density is calculated as an allowed floor area ratio (FAR).  
178 2. Each GR, NR, LSC, and EOF zone classification is followed by a  
179 number and symbol: H, which is followed by another number where:  
180 a. The number following the classification is the maximum total  
181 FAR allowed unless additional FAR is allowed under Section  
182 4.6.2.C or Section [4.7.3.D.6.c]4.6.2.D; and  
183 b. The number following the H is the maximum building height in  
184 feet allowed unless additional height is allowed under Section  
185 [4.7.3.D.6.c]4.6.2.C.  
186 3. The following limits apply unless additional total FAR, residential  
187 FAR, or height is allowed under Section 4.6.2.C and Section  
188 [4.7.3.D.6.c]4.6.2.D.

189 \* \* \*

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

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

- 194 1. Residential density [[equals]] may be increased above the mapped  
195 residential FAR by: [plus an increase of .88% for each .1% increase in  
196 MPDUs above 12.5%]  
197 a. .88% for each .1% increase in MPDUs above 12.5% up to and  
198 including 15%.  
199 b. 22% plus .16% for each .1% increase in MPDUs above 15% up to  
200 and including 20%, or  
201 c. 30% plus .1% for each .1% increase in MPDUs above 20%.  
202 2. [[The increased residential density under this provision is limited to  
203 the first 15% of MPDUs in a project.]] Total density may be increased

204 above the number following the zoning classification on the zoning  
205 map by an amount equal to the residential density achieved under Sec.  
206 4.6.2.C.1.

207 3. Any increase in density allowed under this section must be calculated  
208 after the base density of the property has been increased under Sec.  
209 4.6.2.B for development using FAR Averaging.

210 ~~[[3]]~~4. To achieve an increase in density under Section 4.6.2.C, at least one  
211 more MPDU than would be required at 12.5% must be provided.

212 ~~[[4]]~~5. The floor area counted as MPDU floor area includes a proportional  
213 share of the gross floor area not devoted to residential units.

214 ~~[[5]]~~6. The height limit of the applicable zone and master plan does not apply  
215 to the extent required to provide the MPDUs. The additional height is  
216 calculated as the floor area provided for MPDUs above 12.5% divided  
217 by the average residential floor plate area, where each whole number  
218 and each remaining fraction allows an increase of 12 feet.

219 \* \* \*

220 **[C]D. Special Provisions for "T" Zones Translated from Certain Zones**  
221 **Existing Before October 30, 2014**

222 1. These special provisions apply to certain properties rezoned by  
223 District Map Amendment to implement this Chapter and are indicated  
224 on the zoning map as the zoning classification followed by a T, such  
225 as "EOF2.0 H60 T".

226 2. For Employment-zoned properties designated with a T, the following  
227 provisions apply:

228 a. [Residential density may be increased above the maximum  
229 allowed in the zone in proportion to any MPDU density bonus  
230 achieved under Chapter 25A for providing more than 12.5% of

231 the residential units as Moderately Priced Dwelling Units  
232 (MPDUs).

233 b.] In the LSC zone, to allow construction of all workforce housing  
234 units on-site, residential density may be increased by a  
235 maximum of 5% and building height may be increased up to a  
236 maximum building height of 200 feet. Density and building  
237 height may only be increased to the extent required for the  
238 number of workforce housing units that are constructed.

239 [c. In any case, to achieve a density bonus under Section 4.6.2.C.2,  
240 at least one more MPDU than would be required at 12.5% must  
241 be provided.

242 d]b. Any density increase under Section 4.6.2.C requires site plan  
243 approval under Section 7.3.4.

244 \* \* \*

245 **Section 4.6.4. Optional Method Development**

246 The LSC and EOF zone allow development under the optional method.

247 \* \* \*

248 B. Development Standards

249 \* \* \*

250 2. Lot, Density, and Height

251 a. Lot standards for detached house, duplex, and townhouse  
252 building types are established by the site plan approval process.

253 b. The maximum total FAR and the maximum height are  
254 established by the mapped zone unless increased under Section  
255 [4.7.3.D.6.c.]4.6.2.C or Section 4.6.2.D.

256 c. In the GR, NR, and EOF zones, gross floor area of all  
257 Household Living uses is limited to 30% of the gross floor area

258 on the subject site.

259 \* \* \*

260 **Sec. 4. DIVISION 59-4.7 is amended as follows:**

261 **Division 4.7. Optional Method Public Benefits**

262 \* \* \*

263 **Section 4.7.1. General Provisions**

264 \* \* \*

265 **B. General Public Benefit Considerations**

266 ~~[[Granting]]~~ Except for providing MPDUs exceeding 12.5% of a project's  
267 dwelling units, granting points as a public benefit for any amenity or project  
268 feature otherwise required by law is prohibited. In approving any incentive  
269 FAR based on the provision of public benefits, the Planning Board must  
270 consider:

271 \* \* \*

272 **Section 4.7.3. Public Benefit Descriptions and Criteria**

273 \* \* \*

274 **D. Diversity of Uses and Activities**

275 \* \* \*

276 **6. Moderately Priced Dwelling Units:** There is no limitation on the  
277 number of points for providing more than 12.5% of the residential  
278 units as MPDUs as required under Chapter 25A.

279 [a.] Points are calculated as follows:

280 [i]a. 12 points are granted for every 1% of MPDUs greater than  
281 12.5%. Any fraction of 1% increase in MPDUs entitles the  
282 applicant to an equal fraction of 12 points.

283 [ii]b. An additional 2 points are granted for every 1% of 2-bedroom

- 284 MPDUs not otherwise required.
- 285 [iii]c. An additional 5 points are granted for every 1% of 3-bedroom  
286 MPDUs.
- 287 [iv]d. In any case, for [density and] points to be awarded, at least one  
288 more MPDU than would be required at 12.5% must be provided  
289 to take advantage of the MPDU public benefit points in any  
290 zone.
- 291 [v]e. For a project providing a minimum of 15% MPDUs, one less  
292 benefit category than is required under Section 4.5.4.A.2 and  
293 Section 4.6.4.A.2 must be satisfied. A project that provides a  
294 minimum of 20% MPDUs does not have to satisfy any other  
295 benefit category under Section 4.5.4.A.2 and Section 4.6.4.A.2.
- 296 [b. In a zone with a "T" designation, if a project exceeds 12.5%  
297 MPDUs, residential density may be increased under  
298 Section 4.5.2.C in the Commercial/Residential zones or under  
299 Section 4.6.2.C in the Employment zones.
- 300 c. In a zone without a "T" designation:
- 301 i. If a project exceeds 12.5% MPDUs, the height limit of  
302 the applicable zone and master plan does not apply to the  
303 extent required to provide the MPDUs. The additional  
304 height is calculated as the floor area provided for MPDUs  
305 above 12.5% divided by the average residential floor  
306 plate area, where each whole number and each remaining  
307 fraction allows an increase of 12 feet.
- 308 ii. For a project providing less than 15% MPDUs, the gross  
309 floor area of any MPDUs provided above 12.5% is  
310 exempt from the calculation of FAR.

iii. For a project providing a minimum of 15% MPDUs, the gross floor area of all MPDUs provided is exempt from the calculation of FAR.]

\* \* \*

**Sec. 5. DIVISION 59-4.9 is amended as follows:**

**Division 4.9. Overlay Zones**

\* \* \*

**Section 4.9.17. Transferable Development Rights (TDR) Overlay Zone**

\* \* \*

**B. Optional Method**

**1. In General**

The TDR Overlay optional method of development permits an increase in the maximum residential density, if the development satisfies the requirements for optional method development using Transferable Development Rights under Section 4.9.17.B.

\* \* \*

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

i. A property developed under Section 4.9.17.B must satisfy Chapter 25A.

ii. [A density bonus allowed under Chapter 25A] Any increase in density allowed under the optional method of development for the provision of MPDUs is calculated after the base density of the property has been increased under Section 4.9.17.B through TDRs.

iii. In a Rural Residential or Residential zone with a TDR density designation of less than three units per acre, development using TDRs and providing MPDUs above

338 12.5% must follow the requirements under optional  
339 method MPDU Development. Any other optional method  
340 development in a Rural Residential or Residential zone  
341 must satisfy the requirements of Section 4.9.16.B.

342 \* \* \*

343 **Sec. 6. Effective date.** This ordinance becomes effective 20 days after the  
344 date of Council adoption.

345

346 This is a correct copy of Council action.

347

348

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349 Megan Davey Limarzi, Esq.  
350 Clerk of the Council



**MONTGOMERY COUNTY PLANNING BOARD**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

September 10, 2018

**TO:** The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

**FROM:** Montgomery County Planning Board

**SUBJECT:** Zoning Text Amendment No. 18-06 (Amended by Councilmember Floreen)

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**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 18-06 (ZTA 18-06), as revised by Councilmember Floreen (memorandum to the Planning Board dated August 24, 2018), at its regular meeting on September 6, 2018. By a vote of 4:0 (Commissioner Dreyfuss absent from the hearing), the Planning Board agrees with the modifications proposed by Councilmember Floreen to revise or establish Moderately-Priced Dwelling Unit (MPDU) density bonus standards for certain Residential, Commercial/Residential, Employment, and Overlay zones.

Councilmember Nancy Floreen’s proposed amendment to ZTA 18-06 would remove the 22 percent cap on bonus density for certain Residential, Commercial/Residential, Employment, and Overlay Zones. The proposed amendment would allow three tiers of bonus density, dependent on the percentage of Moderately Priced Dwelling Units (MPDUs) provided.

- Projects that provide more than 12.5 percent and up to 15 percent MPDUs are subject to the original provisions in ZTA 18-06 which would allow an .88 percent increase in density for every .1 percent increase in MPDUs, resulting in a maximum 22 percent bonus for providing 15 percent MPDUs.
- Projects that provide more than 15 percent and up to 20 percent MPDUs will have their bonus calculated as .16 percent for every .1 percent increase in MPDUs, with a maximum 30 percent bonus density. For example, a development providing 16 percent MPDUs would earn a density bonus of 23.6 percent (a 22 percent bonus for 15 percent MPDUs plus a 1.6 percent bonus for the 1 percent increase in MPDUs over 15 percent).
- Projects that provide more than 20 percent MPDUs will receive an increase in density equal to 30 percent plus 1 percent for each additional 1 percent of MPDUs provided in excess of 20 percent.

The Board believes that the three-tiered bonus density system proposed in the amendment to ZTA 18-06 meets the County’s goal to further incentivize the production of affordable housing. The three-tiered system uses three different methods to calculate bonus density based on the percentage of MPDU provided in a manner that incentivizes affordable housing but is also sensitive to the amount of density given. The current Commercial/Residential (C/R) and Employment zone rules regarding bonus density present a precedent to allow uncapped bonus density. The current C/R zone allows for





projects that exceed 15 percent MPDUs to have the gross floor area of all MPDUs to be exempt from the calculation of FAR. Currently, Residential zones under MPDU development are allowed a modest bonus density in some zones and relief from development standards (minimum lot sizes are reduced, and additional unit types are allowed for development with MPDUs). While some may be concerned about the new uncapped bonus density in the Residential zones, it will be difficult to achieve any significant bonus in the Residential zones due to the various requirements of the zones (i.e. setbacks and minimum lot sizes).

The amendment to ZTA 18-06 also includes a provision that allows projects in the C/R to receive public benefit points for providing more than 12.5 percent MPDUs, even in areas in which they are required to provide 15 percent MPDUs, except for the Bethesda Overlay Zone. Currently, ~~projects are not allowed to receive public benefit points for amenities that are legally required.~~ Effective October 31, 2018, Planning Areas where at least 45 percent of the United States Census Tracts have a median income 150 percent of Montgomery County's median income will have a legal requirement to provide 15 percent MPDUs. Under the proposed amendment, projects in these areas will be allowed to receive public benefit points for providing 15 percent, even though it is legally required. The Planning Board believes that this amendment is an important tool in further encouraging the production of affordable housing. This amendment is also consistent with the vision set forth in the recent Sector Plans that were approved by the Council, including the White Flint 2, Rock Spring, Grosvenor-Strathmore, and Westbard Sector Plans. These plans set 15 percent affordable housing as the highest priority public benefit for new residential development, which allows projects in these developments to receive their bonus density and public benefit points for providing 15 percent affordable housing.

#### CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Silver Spring, Maryland, on Thursday, September 6, 2018.

  
Casey Anderson  
Chair

CA:GR



Zoning Text Amendment (ZTA) No. 18-06, MPDU- Bonus Density, Amendments

- LG Lisa Govoni, Planner Coordinator, Research and Special Projects, [lisa.govoni@montgomeryplanning.org](mailto:lisa.govoni@montgomeryplanning.org), 301-650-5624
- GR Gregory Russ, Planner Coordinator, FP&P, [gregory.russ@montgomeryplanning.org](mailto:gregory.russ@montgomeryplanning.org), 301-495-2174
- PD Pam Dunn, Chief, FP&P, [pamela.dunn@montgomeryplanning.org](mailto:pamela.dunn@montgomeryplanning.org), 301-650-5649

Completed: 8/30/2018

**Description**

ZTA No. 18-06 amends the Montgomery County Zoning Ordinance to revise or establish Moderately-Priced Dwelling Unit (MPDU) density bonus standards for certain Residential, Commercial/Residential, Employment, and Overlay zones.

**Summary**

**Background/Analysis**

When the Planning, Housing, and Economic Development (PHED) Committee considered Bill 34-17 (Housing- Moderately-Priced Dwelling Units (MPDUs) - Amendments) on June 11, the Committee recommended deleting the bonus density table in Chapter 25A. The Committee recommended placing all bonus density provisions in the zoning code. ZTA 18-06 was introduced to implement the Committee-recommended revisions to Chapter 25A pertaining to the density bonus provisions. ZTA 18-06 would revise or establish Moderately Priced Dwelling Unit (MPDU) bonus density standards for certain Residential, Commercial/Residential, Employment, and Overlay zones and would generally amend provisions concerning MPDUs in the Zoning Ordinance. ZTA 18-06 uses the standards for bonus density currently in Chapter 25A and amends the Zoning Ordinance by allowing a project that includes 15 percent of the residential units as MPDUs to have a maximum bonus density of 22 percent. ZTA 18-06 would also apply a bonus density provision to optional method development in the R-200, R-90, R-60, R-40, and TLD zones (where currently there is not). In addition, bonus density would be calculated as units per acre versus units per acre of "usable area" of the site. The Planning Board approved ZTA 18-06 for transmittal to the County Council on July 19, 2018.

PHED Committee Chair Nancy Floreen has proposed an amendment to ZTA 18-06 that would remove the 22 percent cap on bonus density for certain Residential, Commercial/Residential, Employment, and Overlay Zones. The proposed amendment would allow three tiers of bonus density, dependent on the percentage of Moderately Priced Dwelling Units (MPDUs) provided.

- Projects that provide more than 12.5 percent and up to 15 percent MPDUs are subject to the original provisions in ZTA 18-06 which would allow an .88 percent increase in density for every .1 percent increase in MPDUs, resulting in a maximum 22 percent bonus for providing 15 percent MPDUs.

- Projects that provide more than 15 percent and up to 20 percent MPDUs will have their bonus calculated as .16 percent for every .1 percent increase in MPDUs, with a maximum 30 percent bonus density. For example, a development providing 16 percent MPDUs would earn a density bonus of 23.6 percent (a 22 percent bonus for 15 percent MPDUs plus a 1.6 percent bonus for the 1 percent increase in MPDUs over 15 percent).
- Projects that provide more than 20 percent MPDUs will receive an increase in density equal to 30 percent plus 1 percent for each additional 1 percent of MPDUs provided in excess of 20 percent.

Staff believes that the three-tiered bonus density system proposed in the amendment to ZTA 18-06 meets the County's goal to further incentivize the production of affordable housing. The three-tiered system uses three different methods to calculate bonus density based on the percentage of MPDU provided in a manner that incentivizes affordable housing but is also sensitive to the amount of density given. The current C/R and Employment zone rules regarding bonus density present a precedent to allow uncapped bonus density. The current C/R zone allows for projects that exceed 15 percent MPDUs to have the gross floor area of all MPDUs to be exempt from the calculation of FAR. Currently, Residential zones under MPDU development are allowed a modest bonus density in some zones and relief from development standards (minimum lot sizes are reduced, and additional unit types are allowed for development with MPDUs). While some may be concerned about the new uncapped bonus density in the Residential zones, it will be difficult to achieve any significant bonus in the Residential zones due to the various requirements of the zones (i.e. setbacks and minimum lot sizes).

The amendment to ZTA 18-06 also includes a provision that allows projects in the C/R to receive public benefit points for providing more than 12.5 percent MPDUs, even in areas in which they are required to provide 15 percent MPDUs, except for the Bethesda Overlay Zone. Currently, projects are not allowed to receive public benefit points for amenities that are legally required. Effective October 31, 2018, Planning Areas where at least 45 percent of the United States Census Tracts have a median income 150 percent of Montgomery County's median income will have a legal requirement to provide 15 percent MPDUs. The Planning Areas currently included in this requirement are Goshen, Lower Seneca, Darnestown, Travilah, Potomac, North Bethesda, and Bethesda-Chevy Chase. Under the proposed amendment, projects in these areas will be allowed to receive public benefit points for providing 15 percent, even though it is legally required. Staff believes that this amendment is an important tool in further encouraging the production of affordable housing. This amendment is also consistent with the vision set forth in the recent Sector Plans that were approved by the Council, including the White Flint 2, Rock Spring, Grosvenor-Strathmore, and Westbard Sector Plans. These plans set 15 percent affordable housing as the highest priority public benefit for new residential development, which allows projects in these developments to receive their bonus density and public benefit points for providing 15 percent affordable housing.

Attachments:

- A. Memo Councilmember Floreen
- B. Proposed Amendment Chart
- C. Draft changes to ZTA 18-06

## MEMORANDUM

August 8, 2018

TO: Jeffrey Zyontz, Senior Legislative Analyst  
FROM: Jane Lyons, Summer Council Fellow  
Subject: Density Bonuses for Moderately Priced Dwelling Units (MPDUs)

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### 1. Executive Summary

Density bonuses allow developers to increase the number of units in a project above what is otherwise permitted by zoning. Density bonuses are given by local governments to incentivize the development of affordable housing in jurisdictions where developers must set aside a certain percentage of units as below-market-rate (BMR), which are often called “inclusionary housing programs.” The additional market-rate units allow developers to offset the cost incurred when providing BMR units. Research published in 1980 found that a bonus of at least one market unit for each affordable unit generally is needed to generate developer participation.<sup>1</sup>

There is variation between density bonus regulations in the Washington region. Montgomery County’s regulations for density bonuses in exchange for Moderately Priced Dwelling Units (MPDUs) tends to be equal to the average of comparable jurisdictions. The following are notable differences that the county has with jurisdictions in Maryland and the Washington, D.C. metropolitan area with comparable requirements: Lower than average number of units that trigger affordable housing requirements (20 compared to 33.6); higher than average maximum percentage of affordable units possible to receive a density bonus (15 compared to 12.4); higher than average maximum possible density bonus (22 compared to 18.94); and lower than average minimum possible bonus (1 compared to 6.33).

When compared with similar successful programs nationwide, Montgomery County notably has a: Higher than average number of units that trigger affordable housing requirements (20 compared to 7.875); more general set of requirements by not differing bonuses based on location or type of development; lower than average minimum percentage of affordable units required to receive a density bonus (12.5 compared to 18)<sup>2</sup>; lower than average maximum percentage of affordable units possible to receive a density bonus (15 compared to 31.8); lower than average minimum possible density bonus (1 compared to 6.2)<sup>3</sup>; lower than average maximum possible density bonus (22 compared to 26); and lower rate of change (1 compared to 1.7).

This memorandum recommends that to improve the effectiveness of the MPDU program, Montgomery County should consider: (1) lowering the number of total units that trigger the affordability requirement; (2) increasing the maximum percentage of MPDUs possible to receive a density bonus and increase the maximum possible density bonus; and (3) differing density bonus requirements based on location, including proximity to transit.

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<sup>1</sup> Schwartz & R. Johnston, *Measures for Increasing the Supply of Moderate-Cost Housing in California 3* (1980) (published by the University of California, Davis, Institute of Governmental Affairs) cited in Johnston, Robert A., Seymour I. Schwartz, Geoffrey A. Wandesforde-Smith, and Michael Caplan. 1989. *Selling Zoning: Do Density Bonus Incentives for Moderate-Cost Housing Work*. Urban Law Annual.

[https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1268&context=law\\_urbanlaw](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1268&context=law_urbanlaw).

<sup>2</sup> Most jurisdictions surveyed did not have a minimum density bonus.

<sup>3</sup> Ibid.

## 2. Background

### Overview

There are 791 jurisdictions in the United States that have inclusionary housing programs, which aim to foster socioeconomic integration, as well as provide affordable housing.<sup>4</sup> An estimated 78% of programs provide at least one development incentive offer density bonuses, making density bonuses the most common incentive used to attract developers.<sup>5</sup> In Montgomery County, MD, density bonuses for the Moderately Priced Dwelling Unit (MPDU) program are currently calculated based on the total number of dwelling units on the site. “From 1989 to 2004, more than one-half of all developments with MPDUs contained no or minimum density bonuses; whereas, nearly one-fourth achieved the full 22% density bonus.<sup>6</sup> In a 2008 study based on a pro forma analysis, it was concluded that there is “little economic benefit to developers in building to bonus density under the MPDU program,” especially when other opportunities to receive a density bonus cost less than adding more MPDUs.<sup>7</sup>

### Montgomery County Density Bonuses

Montgomery County has a schedule that determines up to how much of a density bonus developers may receive for setting aside a certain percentage of units at BMR. The minimum possible density bonus is 1%, which can be achieved when providing 12.6% BMR units. The maximum possible density bonus is 22%, which can be achieved when providing 15% BMR units. The schedule has a 0.1 rate of bonus, except for between an achieved density bonus of 20% and 22%, when the rate of increase is 0.25.

### Montgomery County Density Bonus for MPDUs Schedule

| Achieved Density Bonus | MPDUs Required | Achieved Density Bonus | MPDUs Required |
|------------------------|----------------|------------------------|----------------|
| Zero                   | 12.5%          | Up to 11%              | 13.6%          |
| Up to 1%               | 12.6%          | Up to 12%              | 13.7%          |
| Up to 2%               | 12.7%          | Up to 13%              | 13.8%          |
| Up to 3%               | 12.8%          | Up to 14%              | 13.9%          |
| Up to 4%               | 12.9%          | Up to 15%              | 14.0%          |
| Up to 5%               | 13.0%          | Up to 16%              | 14.1%          |
| Up to 6%               | 13.1%          | Up to 17%              | 14.2%          |
| Up to 7%               | 13.2%          | Up to 18%              | 14.3%          |
| Up to 8%               | 13.3%          | Up to 19%              | 14.4%          |
| Up to 9%               | 13.4%          | Up to 20%              | 14.5%          |
| Up to 10%              | 13.5%          | Up to 22%              | 15.0%          |

Source: Montgomery County Code 25A-5(c)(3).

<sup>4</sup> Thaden, Emily, and Ruoni Wang. 2017. *Inclusionary Housing in the United States: Prevalence, Impact, and Practices (Working Paper)*. Lincoln Institute of Land Policy.

[https://www.lincolninst.edu/sites/default/files/pubfiles/thaden\\_wp17et1\\_0.pdf](https://www.lincolninst.edu/sites/default/files/pubfiles/thaden_wp17et1_0.pdf).

<sup>5</sup> *Ibid.*, 39.

<sup>6</sup> Trombka, Aron. 2004. *Council Staff Report on the MPDU Program*. Montgomery County Council.

[https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/singlefamily/mpdu/report\\_mpdu30yearreview.pdf](https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/singlefamily/mpdu/report_mpdu30yearreview.pdf).

<sup>7</sup> George, Roselle, Jacob Sesker, and Megan Taylor. 2008. *Housing Policy Element of the General Plan: Preliminary Pro Forma Analysis of MPDU Bonus Density*. Montgomery County Planning Department, 9. [http://www.montgomeryplanningboard.org/agenda/2008/documents/20080515\\_housing\\_policy\\_element-attachment2.pdf](http://www.montgomeryplanningboard.org/agenda/2008/documents/20080515_housing_policy_element-attachment2.pdf).

### Economics of Inclusionary Housing Programs

Inclusionary housing policies enforce price controls on BMR units, and this tax causes developers to lose profit. Therefore, developers are incentivized to ease this burden by either (1) building in other jurisdictions or regions, (2) passing the burden of the tax onto buyers by increasing the price of market-rate units, or (3) lowering the price they are willing to pay for land. This can ultimately cause the overall regional supply to decrease and the price of market-rate units throughout the region to increase.

Researchers have found that inclusionary housing policies in California “caused prices to increase 2% to 3% faster relative to jurisdictions without the policy,” reduced supply by 7%, and increased prices by 20%.<sup>8</sup> In the Boston region, Schuetz et al. found that inclusionary housing “reduced construction and caused higher house prices, but only during periods of rising rent prices,” and that, in the Bay Area, inclusionary housing “corresponds with higher house prices during periods of rising rent prices, but that it also contributes to lower rent prices during times of falling average prices.”<sup>9</sup>

To offset the profit lost from inclusionary housing requirements, jurisdictions can offer development incentives, such as density bonuses. The extent of the developer’s lost profits depends on: “(1) the ratio of bonus units to inclusionary units; (2) the developer’s savings in cost-of-land-improvements per lot resulting from the additional density, (3) the reductions in consumer valuations of project units resulting from both the increased project density and the presence of inclusionary units; (4) scale efficiencies (or inefficiencies) resulting from the construction of more dwelling units; and (5) whether the developer is permitted to downgrade the designs, floor areas, and lot areas of inclusionary units.”<sup>10</sup> When the value of the density bonuses outweighs the cost of providing BMR units, inclusionary housing policies have the potential to “increase the housing supply and reduce market-rate prices relative to the status quo.”<sup>11</sup> However, using a density bonus does not always mean a project will make up for the losses incurred by the BMR units. For example, additional units can require more parking, costing up to tens of thousands of dollars more.

Research of San Diego’s inclusionary housing program showed a significant correlation between certain neighborhood socioeconomic characteristics and density bonus usage: projects with density bonuses were more clustered in areas with a high share of minorities and multi-family units.<sup>12</sup> The research explained the concentration as a result of the public’s higher tolerance for higher density affordable housing developments in those neighborhoods in the 1980s. This finding shows a tradeoff between the quantity of affordable units and the dispersion of affordable units, especially in wealthier, white neighborhoods. Further, the clustering is also a result of

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<sup>8</sup> Hamilton, Emily. 2018. *Is Inclusionary Zoning Creating Less Affordable Housing*. April 11. <https://www.strongtowns.org/journal/2018/4/10/is-inclusionary-zoning-creating-less-affordable-housing>.

<sup>9</sup> Ibid.

<sup>10</sup> Ellickson, Robert C. 1981. *The Irony of Inclusionary Zoning*. Yale Law School Faculty Scholarship Series, 1180-1181. [http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1467&context=fss\\_papers](http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1467&context=fss_papers).

<sup>11</sup> Hamilton, Emily. 2018. *Is Inclusionary Zoning Creating Less Affordable Housing*.

<sup>12</sup> Ryan, Sherry, and Bridget Elaine Enderle. 2012. "Examining spatial patterns in affordable housing: the case of California density bonus" *The Journal of Housing and the Built Environment* 413-425.

developers being likelier to build in areas where land cost is lower and thus the opportunity cost of providing BMR units on prime real estate will not be an issue.

*Housing Market Impacts Associated with Local Inclusionary Housing Programs: Results from Key Evaluation Studies*

| Jurisdiction                                  | Period    | Impacts on Overall Housing Supply                                  | Impacts on Home Prices/Rents                            |
|---|-----------|--|---|
| California (28 programs)                      | 1981-2001 | No negative effect on housing starts                               | N/A   |
| California (65 programs)                      | 1988-2005 | No decline in single-family starts; increase in multifamily starts | Increase of 2.2% in single-family home prices           |
| California (125 programs)                     | 2007-2013 | N/A  | Stricter programs associated with 1.9% decline in rents |
| San Francisco (55 programs)                   | 1987-2004 | No negative effect on housing starts                               | No effect on home prices                                |
| Los Angeles and Orange counties (17 programs) | 1998-2005 | No negative effect on housing starts                               | N/A   |
| Boston area (99 programs)                     | 1987-2004 | Up to a 10% decline in housing starts                              | Increase of 1% in single-family home prices             |

Source: Williams, Stockton, Ian Carlton, Lorelei Juntunen, Emily Picha, and Mike Wilkerson. 2016. *The Economics of Inclusionary Development*. Washington, DC: Urban Land Institute. <https://uli.org/wp-content/uploads/ULI-Documents/Economics-of-Inclusionary-Zoning.pdf>.

### 3. Maryland and the Washington, D.C. Region Comparison

*Comparison of Density Bonuses for Affordable Units (AUs) in Maryland and Washington, D.C. Region*

| Jurisdiction                    | State | Avg. Units Produced Per Year | Total Project Unit # to Req. AUs | Development Type | Unit of Measure for AU % | Min. % AU | Max. % AU That Receives Bonus | Min. % Bonus | Max. % Bonus | % Rate of Bonus Increase |
|---------------------------------|-------|------------------------------|----------------------------------|------------------|--------------------------|-----------|-------------------------------|--------------|--------------|--------------------------|
| Montgomery County <sup>13</sup> | MD    | 368                          | 20                               | General          | Total units              | 12.6      | 15                            | 1            | 22           | 0.1                      |
| Annapolis <sup>14</sup>         | MD    | N/A                          | 1                                | For-sale         | Total units              | 12        | N/A                           | 15           | 20           | N/A                      |
|                                 |       |                              |                                  | Rental           | Total units              | 6         | N/A                           | 10           | 20           | N/A                      |
| Baltimore City <sup>15</sup>    | MD    | N/A                          | 30                               | General          | Total units              | 10        | N/A                           | N/A          | 20           | N/A                      |
| Frederick County <sup>16</sup>  | MD    | N/A                          | 25                               | General          | Total units              | 12.5      | 15                            | 1            | 22           | 0.1                      |

<sup>13</sup> n.d. "Montgomery County Code. Chapter 25A. Housing, Moderately Priced." [http://library.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:montgomeryco\\_md\\_mc](http://library.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:montgomeryco_md_mc).

<sup>14</sup> n.d. "City of Annapolis Code. Chapter 20.30 Moderately Priced Dwelling Units." Annapolis. [https://library.municode.com/md/annapolis/codes/code\\_of\\_ordinances?nodeId=TIT20SU\\_CH20.30MOPRDWUN\\_20.30.160DEBO](https://library.municode.com/md/annapolis/codes/code_of_ordinances?nodeId=TIT20SU_CH20.30MOPRDWUN_20.30.160DEBO).

<sup>15</sup> 2018. "Baltimore City Code. Article 13. Housing and Urban Renewal. § 2B-23. Other projects – 30 or more units." 49-50. <http://ca.baltimorecity.gov/codes/Art%2013%20-%20Housing.pdf>.

<sup>16</sup> n.d. "Frederick County Code. Chapter 1-6A: Moderately Priced Dwelling Units." [http://library.amlegal.com/nxt/gateway.dll/Maryland/frederickco\\_md/frederickcountymarylandcodeofordinances?f=templates&fn=default.htm&vid=amlegal:frederickco\\_md](http://library.amlegal.com/nxt/gateway.dll/Maryland/frederickco_md/frederickcountymarylandcodeofordinances?f=templates&fn=default.htm&vid=amlegal:frederickco_md).

|                                |    |     |                            |  |                                       |      |     |     |          |     |
|--------------------------------|----|-----|----------------------------|--|---------------------------------------|------|-----|-----|----------|-----|
| Rockville <sup>17</sup>        | MD | N/A | 50                         | General  | Total units                           | 12.6 | 15  | 1   | 22       | 0.1 |
| Washington <sup>18</sup>       | DC | 159 | 10                         | General  | Gross residential floor area          | 8    | N/A | N/A | 20       | N/A |
| Arlington County <sup>19</sup> | VA | N/A | 1.0 FAR                    | Special Exemption Site Plan within General Land Use              | Gross floor area                      | 5    | N/A | N/A | 25       | N/A |
|                                |    |     | Bonus density              | Special Exemption Site Plan above General Land Use – residential | Gross square footage of density bonus | 20   | 50  | N/A | 25       | N/A |
|                                |    |     | Bonus density              | Special Exemption Site Plan above General Land Use – commercial  | Gross square footage of density bonus | 20   | 50  | N/A | 0.25 FAR | N/A |
|                                |    |     | Bonus density              | Columbia Pike Neighborhoods Special Revitalization District      | Net new units                         | 20   | 30  | N/A | N/A      | N/A |
|                                |    |     | 1.0 FAR                    | Nauck Village Center Special Revitalization District             | Total units                           | 10   | N/A | N/A | 1.5 FAR  | N/A |
|                                |    |     | 10% of GFA ≥ 4,000 sq. ft. | Clarendon Revitalization District – residential rental           | Gross square footage of density bonus | 10   | N/A | N/A | 1.5 FAR  | N/A |
|                                |    |     | Bonus density              | Clarendon Revitalization District – mixed-use development        | Gross square footage of density bonus | 10   | N/A | N/A | 1.5 FAR  | N/A |

<sup>17</sup> n.d. "City of Rockville Code. Chapter 13.5 - Moderately Priced Housing."

[https://library.municode.com/md/rockville/codes/code\\_of\\_ordinances?nodeId=CICO\\_CH13.5MOPRHO](https://library.municode.com/md/rockville/codes/code_of_ordinances?nodeId=CICO_CH13.5MOPRHO).

<sup>18</sup> Donaldson, Polly. 2017. *Inclusionary Zoning Fiscal Year 2016 Annual Report*. Washington: DC Department of Housing and Community Development, 9.

[https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/DHCD%20FY2016%20IZ%20Annual%20Report\\_0.pdf](https://dhcd.dc.gov/sites/default/files/dc/sites/dhcd/publication/attachments/DHCD%20FY2016%20IZ%20Annual%20Report_0.pdf).

<sup>19</sup> 2018. "Zoning Ordinance." Arlington County, Virginia. 185-373. <https://building.arlingtonva.us/wp-content/uploads/sites/38/2016/06/ACZO.pdf>.



|                              |    |     |   |   |                                |           |      |     |    |     |
|------------------------------|----|-----|---|---|--------------------------------|-----------|------|-----|----|-----|
| Alexandria <sup>20</sup>     | VA | N/A | 1   | Special use permit development  | Increase achieved by the bonus | 33.3<br>3 | N/A  | N/A | 30 | N/A |
| Fairfax County <sup>21</sup> | VA | 122 | 50  | Single family   | Total units                    | N/A       | 12.5 | N/A | 20 | N/A |
|                              |    |     |   | Non-elevator multi-family or elevator multi-family of ≤ three stories                                 | Total units                    | N/A       | 6.25 | N/A | 10 | N/A |
|                              |    |     |   | Non-elevator multi-family or elevator multi-family of ≤ three stories                                 | Total units                    | N/A       | 12.5 | 10  | 20 | N/A |
|                              |    |     |   | Elevator multi-family of ≥ four stories with ≤ 50% of required parking provided in parking structures | Total units                    | N/A       | 6.25 | N/A | 17 | N/A |
|                              |    |     |   | Elevator multi-family of ≥ four stories with > 50% of required parking provided in parking structures | Total units                    | N/A       | 5    | N/A | 17 | N/A |
| Loudoun County <sup>22</sup> | VA | 64  | 50  | Single family   | Total units                    | N/A       | 12.5 | N/A | 20 | N/A |
|                              |    |     |   | Multi-family  | Total units                    | N/A       | 6.25 | N/A | 10 | N/A |
|                              |    |     |   | Multi-family  | Total units                    | N/A       | 12.5 | N/A | 20 | N/A |
|                              |    |     |   | Otherwise exempt developments   | Total units                    | N/A       | 12.5 | N/A | 20 | N/A |
| Gaithersburg                 | MD | N/A | Gaithersburg's MPDU program does not include a provision for density bonuses. |   |                                |           |      |     |    |     |

<sup>20</sup> n.d. "City of Alexandria Code. 7-702. When increases and reductions may be allowed."

[https://library.municode.com/va/alexandria/codes/zoning?nodeId=ARTVIISUZORE\\_7-702WHINREMABEAL](https://library.municode.com/va/alexandria/codes/zoning?nodeId=ARTVIISUZORE_7-702WHINREMABEAL).

<sup>21</sup> n.d. "Fairfax County Code. 2-800 Affordable Dwelling Unit Program." <https://www.fairfaxcounty.gov/planning-zoning/sites/planning-zoning/files/assets/documents/zoning/zoning%20ordinance/art02.pdf>.

<sup>22</sup> 2018. "Loudoun County Revised Zoning Ordinance. Article 7. Administration and Regulation of Affordable Dwelling Unit Developments." February 14. 936-944. <https://www.loudoun.gov/DocumentCenter/View/99645>.

### Summary

There are ten jurisdictions in Maryland and the Washington, D.C. metropolitan region that offer density bonuses in exchange for affordable housing. Among them, there is no standard method of determining density bonuses. The total project units that trigger affordable housing requirements range from any new residential development (Annapolis), to 50 units (Loudoun County, Fairfax County, and Rockville), to the developer's application for a special use permit to build above the allowed density (Arlington County). The average number of units that trigger affordable housing requirements for all general development is 33.6 units. Half of the jurisdictions have a program that applies generally to all new residential development.

Forty percent of jurisdictions have requirements that distinguish between development type or location, such as single- or multi-family (Loudoun County, Fairfax County), rental or for-sale (Annapolis), or special revitalization districts (Arlington County). When determining the percentage of affordable units, seven jurisdictions divide the number of affordable units by the total number of units and one jurisdiction divides by the gross residential floor area, a similar measure. Alexandria determines the percentage of affordable units by dividing the total number of affordable units by the increase achieved by the density bonus. Arlington County has four ways of determining their unit of measure, depending on which of their seven categories of development type the project is. The most common method is to divide the affordable units by the total units. The second most common is to divide by the gross square footage of the density bonus. In this circumstance, developers first apply for the density bonus and then the amount of the bonus determines the number of affordable units that must be constructed.

Not all jurisdictions have minimums for the percentage of affordable units required or maximums for the percentage of affordable units required to receive the maximum allowed density bonus, but all Maryland jurisdictions have minimum requirement. The average minimum percentage of affordable units required across jurisdictions with comparable percentage calculations is 12.07% and the maximum average is 12.4%. Half of the jurisdictions have no minimum density bonus and all have a maximum. Among those who do have a minimum, the minimum is 6.33%. The average maximum bonus is 20%. Four of the types of possible density bonuses in Arlington County are calculated based on the floor area ratio (FAR), with the median maximum bonus being 1.5 FAR.

Both Rockville's and the City of Frederick's programs mimic Montgomery County's program and are thus the only other two programs that have a minimum affordable unit requirement, a maximum for the percentage of affordable units that will yield a density bonus, and a minimum and maximum density bonus. Therefore, the rate of change cannot be calculated for any programs that are not identical to Montgomery County, which has a 0.1 rate of bonus increase.

In addition to having varied structures for their density bonus programs, the jurisdictions also have different income requirements for affordable units. Whereas Montgomery County's program is targeted for those with moderate incomes, other programs are targeted at lower incomes, such as 50% area median income (AMI). Lower income units pose a higher tax on

developers, thus needing a greater density bonus to offset the lost income. If a jurisdiction had a different density bonus requirement for moderate-income units, only the requirements for moderate-income units have been included in this analysis.

### Notes on Specific Jurisdictions

- *Annapolis* – Density bonuses have been difficult to achieve due to site constraints.<sup>23</sup>
- *Arlington County* – The County Board decides whether and how much of a density bonus a project can receive. Requirements vary in special revitalization districts. In Columbia Pike Neighborhoods Special Revitalization District, the percentage of affordable housing is calculated as the total number of proposed units (new construction and existing) over the maximum number of units permitted by the greater of: (1) the existing underlying zoning, or (2) the number of units existing on the site on the time of adoption.<sup>24</sup>
- *Baltimore City* – City zoning is already so permissive that it makes it difficult to provide many density bonuses.<sup>25</sup> Density bonuses are only allowed if the project would not be economically feasible without them.<sup>26</sup>
- *Fairfax County* – Developments are exempted from the Affordable Dwelling Unit program if it does not take a density bonus, is less than 50 units, is one dwelling unit or less, is a high-rise, or is not local in an approved sewer service area.<sup>27</sup> Minimum percentage of ADUs required is determined by a formula:  
[(Approved Density minus Low End of Density Range)/(High End of Adjusted Density Range minus Low End of Adjusted Density Range)] X (Max. % Target Units)
- *Loudoun County* – The county's Affordable Dwelling Unit program does not apply to any multiple family dwelling unit structure with four stories or more and having an elevator.
- *Prince George's County* – The county's inclusionary zoning ordinance was repealed in 1996, and so is not included. It provided a 10% density bonus for setting aside 10% of units as affordable.

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<sup>23</sup> City of Annapolis. n.d. *Annapolis Comprehensive Plan, Chapter 8 - Housing*. Annapolis: City of Annapolis, 107. <https://www.annapolis.gov/DocumentCenter/View/1233/Chapter-8-Housing-PDF>.

<sup>24</sup> Arlington County, Virginia. 2016. "Columbia Pike Neighborhoods Special Revitalization District Form Based Code." 65. <https://arlingtonva.s3.dualstack.us-east-1.amazonaws.com/wp-content/uploads/sites/31/2014/06/2nd-to-last-link.pdf>.

<sup>25</sup> Citizens Planning & Housing Association. 2016. "Inclusionary Housing Forum Report." Baltimore, 4. <http://ihusa.org/wp-content/uploads/Baltimore-City-Inclusionary-Housing-Forum-Report.pdf>.

<sup>26</sup> 2018. "Baltimore City Code. Article 13. Housing and Urban Renewal. § 2B-22. Project benefitting from significant land use authorization or rezoning." Baltimore, 47-48. <https://ca.baltimorecity.gov/codes/Art%2013%20-%20Housing.pdf>.

<sup>27</sup> Fairfax County Department of Planning and Zoning, Planning Division. 2018. "Affordable Housing Fact Sheet." March 7. <https://www.fairfaxcounty.gov/planning-zoning/sites/planning-zoning/files/assets/documents/compplanamend/trainingcentersite/meetings/03-07-2018/affordable%20housing%20-%20tcstf%20handout.pdf>.

#### 4. Nationwide Comparison

*Nationwide Comparison of Density Bonuses for Affordable Units (AUs)*

| <u>Jurisdiction</u>             | <u>State</u> | <u>Avg. Units Produced Per Year</u> | <u>Total Project Unit # to Req. AUs</u>               | <u>Development Type</u>  | <u>Unit of Measure for AU %</u> | <u>Min. % AU</u>                | <u>Max. % ADU That Receives Bonus</u> | <u>Min. % Bonus</u> | <u>Max. % Bonus</u> | <u>% Rate of Bonus Increase</u> |
|---------------------------------|--------------|-------------------------------------|---|--|---------------------------------|---------------------------------|---------------------------------------|---------------------|---------------------|---------------------------------|
| Montgomery County <sup>28</sup> | MD           | 368                                 | 20  | General  | Total units                     | 12.6                            | 15                                    | 1                   | 22                  | 0.1                             |
| New York City <sup>29</sup>     | NY           | 346                                 | Bonus density   | Inclusionary Housing (IH) Designated Areas   | Total residential floor area    | N/A                             | 20                                    | N/A                 | 33 FAR              | N/A                             |
|                                 |              |                                     |   | R10 Districts outside of IH Designated Areas (no public funding, new construction) | N/A                             | N/A                             | N/A                                   | N/A                 | 12 FAR              | 3.5                             |
|                                 |              |                                     |   | R10 Districts outside of IH Designated Areas (no public funding, preservation)     | N/A                             | N/A                             | N/A                                   | N/A                 | 12 FAR              | 2                               |
|                                 |              |                                     |   | R10 Districts outside of IH Designated Areas (with public funding)                 | N/A                             | N/A                             | N/A                                   | N/A                 | 12 FAR              | 1.25                            |
| Huntington Beach <sup>30</sup>  | CA           | 134                                 | Bonus density requested in development with ≥ 5 units | General  | Total units                     | 10 (for moderate income option) | 40                                    | 5                   | 35                  | 1                               |
| San Francisco                   | CA           | 130                                 | 3   | Local Affordable Housing Bonus Program   | Total units                     | 30                              | N/A                                   | N/A                 | 2 stories           | N/A                             |

<sup>28</sup> n.d. "Montgomery County Code. Chapter 25A. Housing, Moderately Priced."

<sup>29</sup> The City of New York. 2018. *Zoning Resolution*. New York: The City of New York, 31-34.

<https://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/art02c03.pdf?v=2>.

<sup>30</sup> Huntington Beach, California. n.d. *Huntington Beach Charter and Codes. 230.14 Affordable Housing Density Bonus*. Huntington Beach: Huntington Beach, California.

[http://www.qcode.us/codes/huntingtonbeach/view.php?topic=zoning\\_code-23-230-i-230\\_14](http://www.qcode.us/codes/huntingtonbeach/view.php?topic=zoning_code-23-230-i-230_14).

|                            |    |     |   |                               |                                  |                             |     |        |         |     |
|----------------------------|----|-----|---|-------------------------------|----------------------------------|-----------------------------|-----|--------|---------|-----|
| San Diego <sup>31</sup>    | CA | 109 | 5 <sup>32</sup>   | For-sale (moderate income)    | Total pre-density bonus units    | 10                          | 44  | 5      | 50      | 1   |
|                            |    |     |   | Condominium conversion        | Total units                      | 33                          | N/A | N/A    | 25      | N/A |
| Boston                     | MA | 108 | Base FAR 1  | JP/Rox <sup>33</sup>          | Residential GSF of bonus density | 13                          | 30  | N/A    | 2 FAR   | N/A |
|                            |    |     | Base FAR 2  | JP/Rox                        | Residential GSF of bonus density | 13                          | 35  | N/A    | 2 FAR   | N/A |
|                            |    |     | N/A   | Dorchester Ave. <sup>34</sup> | Added density                    | 60                          | N/A | 40 ft. | 300 ft. | N/A |
| San Clemente <sup>35</sup> | CA | 90  | Density bonus   | Common interest development   | Total units                      | 10                          | 40  | 5      | 35      | 1   |
| Chapel Hill <sup>36</sup>  | NC | 77  | 5   | Balance of Planning Area      | Total units                      | 15                          | N/A | N/A    | 15      | N/A |
| Burlington <sup>37</sup>   | VT | 71  | 5 for new construction and substantial rehab; 10 for adaptive reuse | General                       | Total units                      | 15, 20, or 25 <sup>38</sup> | N/A | 15     | 25      | N/A |

<sup>31</sup> San Diego. 2018. *San Diego Municipal Code. Article 3: Supplemental Development Regulations. Division 7: Affordable Housing Regulations.* San Diego.

<http://docs.sandiego.gov/municode/MuniCodeChapter14/Ch14Art03Division07.pdf>.

<sup>32</sup> San Diego's legislation applies to any development where current zoning allows for five or more dwelling units, not including density bonus units.

<sup>33</sup> City of Boston. 2017. *Plan JP/Rox: Washington St., Columbus Ave.* Boston: City of Boston, 53-54, 127.

<http://www.bostonplans.org/getattachment/12d03f9b-3cf2-4722-8b82-af8395df96b6>.

<sup>34</sup> Ibid.

<sup>35</sup> San Clemente. n.d. "Code of Ordinances. 17.24.070 - Density Bonuses and Other Incentives for Affordable and Senior Housing Projects."

[https://library.municode.com/ca/san\\_clemente/codes/code\\_of\\_ordinances?nodeId=TIT17ZO\\_CH17.24GEDEST\\_17.24.070DEBOOTINAFSEHOPR](https://library.municode.com/ca/san_clemente/codes/code_of_ordinances?nodeId=TIT17ZO_CH17.24GEDEST_17.24.070DEBOOTINAFSEHOPR).

<sup>36</sup> Chapel Hill. 2010. *An Ordinance Amending the Chapel Hill Land Use Management Ordinance to Establish Inclusionary Zoning Regulations for Residential Development.* Chapel Hill: Chapel Hill, North Carolina.

<http://www.townofchapelhill.org/home/showdocument?id=6988>.

<sup>37</sup> CZB. 2017. *Evaluation of the City of Burlington's Inclusionary Zoning Ordinance.* City of Burlington.

<https://www.burlingtonvt.gov/sites/default/files/u308/IZDRAFTReportJanuary2017.pdf>.

<sup>38</sup> 15% of all dwelling units must be affordable at the ordinance's income targets (65% AMI for rental units and 75% AMI for sale units) if the average sale or rental price within the development is affordable to households at or below 139% of AMI. That base requirement rises to 20% if the development's average unit is affordable between 140% and 179% of AMI, and to 25% if the development is in a waterfront district or if the average unit is affordable at 180+% of AMI.

|                       |    |    |         |                                 |             |     |     |     |                             |                 |
|-----------------------|----|----|---------|---------------------------------|-------------|-----|-----|-----|-----------------------------|-----------------|
| Chicago <sup>39</sup> | IL | 67 | FAR ≥ 5 | DC, DX, and DR zoning districts | N/A         | N/A | N/A | N/A | 20, 25, or 30 <sup>40</sup> | 4 <sup>41</sup> |
| Santa Fe              | NM | 54 | 10      | For-sale                        | Total units | 20  | N/A | N/A | 15                          | N/A             |
|                       |    |    | 1       | Rental                          | Total units | 15  | N/A | N/A | 15                          | N/A             |

Summary

Based on a literature review, 11 jurisdictions that produce an average of over 50 units per year were chosen for the nationwide comparison. The calculation of average annual affordable unit production is intended to be an indicator for general success but should not be solely used to determine the success of jurisdictions because the averages are not calculated over a standard period of time. However, among the measures that were found, Montgomery County produces the highest average amount of units per year.

Of the 11 jurisdictions, eight have affordability requirements that are triggered after either a certain number of units or a certain FAR. The average number of trigger units is 7.875. Only three jurisdictions have a statute that applies generally to all new residential development and does not have specific density bonus requirements depending on the type of development (for-sale or rental) or the location. Nearly every jurisdiction sets the affordability percentage by dividing the affordable units or square footage by the total units or square footage. The only jurisdiction that divides by the density bonus is Boston, which is currently in the pilot stages of offering density bonuses.

The average minimum percentage of affordable units required is 18% and the average maximum is 31.8%. Most jurisdictions do not have a minimum density bonus. Of the five that have a minimum percentage, the average minimum is 6.2%. The average maximum density bonus for those that have percentages is 26%. The rate of change for the bonus increase could only be calculated in six jurisdictions, of which the average was 1.7% and the median was 1%. Of those six jurisdictions, the average maximum bonus density cap was a 31% density bonus.

In addition to having varied structures for their density bonus programs, the jurisdictions also have different income requirements for the tenants of affordable units. Lower income units pose a higher tax on developers, thus needing a greater density bonus to offset the lost income. If a jurisdiction had different density bonus requirements for moderate-income units, only the requirements for moderate-income units have been included in this analysis.

<sup>39</sup> Chicago Department of Planning & Development. n.d. *Affordable Housing Zoning Bonus: Administrative Regulations and Procedures*. Chicago Department of Planning & Development. <https://www.cityofchicago.org/content/dam/city/depts/dcd/general/housing/AdmRule.pdf>.

<sup>40</sup> The maximum allowed bonus depends on the location.

<sup>41</sup> Developments with on-site units receive four square feet of market-rate bonus space for every foot of affordable housing provided. Therefore, the bonus floor area achieved via affordable housing bonus is equal to the sum of the floor area in affordable units multiplied by four.

## Notes on Specific Jurisdictions

- *Boston* – Boston has only started piloting density bonuses in January 2017. Therefore, the city’s affordability requirement’s success should not be seen as indicative as the density bonus policy’s success.
- *Chapel Hill* – Chapel Hill does not provide a density bonus for new development in its Town Center, but it does require a 10% set aside for affordable housing.
- *New York City* – The city also has a mandatory inclusionary housing program that requires all developments over 10 units to set aside a minimum of 10% of units as affordable.
- *San Diego* – San Diego is the largest producer of affordable rental units in the country. Montgomery County is the largest producer of affordable for-sale units.<sup>42</sup> Due to recent legislation, developers not requesting a waiver/incentive to enlarge the building envelope are entitled to an additional 10% density bonus above the maximum, provided the added density does not cause a need for a waiver or an incentive to enlarge the building envelope.<sup>43</sup> Further, projects of entirely efficiency units located within a Transit Priority Area are entitled to a 100% bonus density.
- *San Francisco* – Of the 30% of units made affordable through the density bonus, 12% must be for low- or moderate-income households and 18% must be for middle-income households. Additionally, two-bedroom units must make up a minimum of 40% of the total number of units in the building. Further, San Francisco also has a special Affordable Housing Bonus Program for 100% Affordable Projects, wherein all units must be able available to those making 80% of AMI or less. Those projects are eligible to receive a density bonus of up to three stories above the existing height limits.

## **5. State Density Bonus Laws**

### California

California’s 1979 Density Bonus Law “requires local governments to provide density bonuses and other incentives to developers of: (1) affordable housing for very low-, low-, and moderate-income households; (2) senior housing; (3) developments that include child care centers; and (4) particular land donations.<sup>44,45</sup> The policy applies to residential projects of five or more units and does not require local governments to report on the use and impact of the density bonuses.

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<sup>42</sup> Thaden, Emily, and Ruoni Wang. 2017. *Inclusionary Housing in the United States: Prevalence, Impact, and Practices (Working Paper)*, 33.

<sup>43</sup> San Diego Planning. 2017. *HousingSD: Amendments to the City's Affordable Housing Density Bonus Regulations*. San Diego: City of San Diego.

[https://onbase.sandiego.gov/OnBaseAgendaOnline/Documents/ViewDocument/Staff%20Report%20for%20-%20\(\).pdf?meetingId=1079&documentType=Agenda&itemId=21313&publishId=50018&isSection=false](https://onbase.sandiego.gov/OnBaseAgendaOnline/Documents/ViewDocument/Staff%20Report%20for%20-%20().pdf?meetingId=1079&documentType=Agenda&itemId=21313&publishId=50018&isSection=false).

<sup>44</sup> Thaden, Emily, and Ruoni Wang. 2017. *Inclusionary Housing in the United States: Prevalence, Impact, and Practices (Working Paper)*, 27.

<sup>45</sup> California. 2016. *AB-2501 Housing: density bonuses*. California Legislative Information. [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160AB2501](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB2501).

*Target Group, Required Affordable Units for Density Bonus, and Number of Concessions or Incentives to Be Granted for California's State Density Bonus Law*

| Target Group  | Min. Target Units | Min. Density Bonus | % Rate of Bonus Increase |
|---|-------------------|--------------------|--------------------------|
| Very Low-Income <sup>(1)</sup>                                      | 5%                | 20%                | 2.5                      |
|   | 10%               | 33%                |                          |
|   | 15% or above      | 35%                |                          |
| Lower Income <sup>(2)</sup>   | 10%               | 20%                | 1.5                      |
|   | 20%               | 35%                |                          |
|   | 30% or above      | 35%                |                          |
| Moderate Income (condominium or planned development) <sup>(3)</sup> | 10%               | 5%                 | 1                        |
|   | 20%               | 15%                |                          |
|   | 30% or above      | 25%                |                          |

Source: Thaden, Emily. 2017. *Inclusionary Housing in the United States: Prevalence, Impact, and Practices (Working Paper)*. Lincoln Institute of Land Policy, 28.

<sup>(1)</sup> For each 1% increase over 5% of the Target Units the Density Bonus shall be increased by 2.5% up to a maximum of 35%.

<sup>(2)</sup> For each 1% increase over 10% of the Target Units the Density Bonus shall be increased by 1.5% up to a maximum of 35%.

<sup>(3)</sup> For each 1% increase over 10% of the Target Units the Density Bonus shall be increased by 1% up to a maximum of 35%.

New Jersey

The 1983 decision in *Mount Laurel II (Southern Burlington County NAACP et al. v. Township of Mount Laurel, 92 NJ 158, 456 A.2d 390)* held that “affirmative governmental decides... including lower-income density bonuses and mandatory set asides” (92 NJ 217) were required if the opportunity for lower income housing was to be a realistic one.<sup>46</sup> This sentiment was then codified in the New Jersey Fair Housing Act. Due to this, New Jersey has one of the highest rates of municipalities with inclusionary housing programs, but a high rate of socioeconomic segregation persists due to poor enforcement, wealthy residents’ negative attitudes towards low- and moderate-income development, and a concentration of Low-Income Housing Tax Credit (LIHTC) financed development in low-income areas.<sup>47</sup> As of 2002, fewer units had been built than were deemed necessary and many of the units that were built ended up in urban areas rather than the intended suburban areas.<sup>48</sup> Regional Contribution Agreements allowed municipalities to “transfer... up to 50% of its fair share to another municipality within its housing region.”<sup>49</sup>

<sup>46</sup> Calavita, Nico, Kenneth Grimes, and Alan Mallach. 1997. "Inclusionary Housing in California and New Jersey: A Comparative Analysis." *Housing Policy Debate* (Fannie Mae Foundation) 8 (1): 115.

[https://www.innovations.harvard.edu/sites/default/files/hpd\\_0801\\_calavita.pdf](https://www.innovations.harvard.edu/sites/default/files/hpd_0801_calavita.pdf).

<sup>47</sup> Moreira, Jason J. 2015. *Socioeconomic Segregation and the Cost of Inequality: In Search of a New Paradigm for Education Reform in New Jersey*. Rutgers University.; O'Dea, Colleen. 2016. *Interactive Map: Segregation Continues to Be NJ's State of the State*. December 2. Accessed 2018.

<http://www.njspotlight.com/stories/16/12/01/interactive-map-segregation-continues-to-be-nj-s-state-of-the-state/>;

Biglin, Brian N. 2011. "More Affordable Housing, But Where, and for Whom? A New Jersey Study revealing the Low Income Housing Tax Credit's Impact, and the Ongoing Concentration of the Poor." *Cornell Real Estate Review* (Cornell Real Estate Review) 48-63.

<sup>48</sup> Sternman, Matthew Shiers. 2011. *Integrating the Suburbs: Harnessing the Benefits of Mixed-Income Housing in Westchester County and Other Low-Poverty Areas*. PhD Thesis, Columbia School of Law.

<sup>49</sup> Ibid.



There have been some success stories of inclusionary rental developments being built in more affluent neighborhoods, which was found to not affect surrounding property values, crime, or property taxes; instead, “total average income increased significantly for those given the opportunity to live in Mount Laurel.”<sup>50</sup>

### Massachusetts

Chapter 40B, enacted in 1969, was intended to make at least 10% of the housing stock in each community affordable for moderate-income households. The state statute allows developers to apply to the municipal zoning authority for a comprehensive permit on a for-sale development, as long as 25% of the units or more will be affordable to households at 80% of AMI, and on a rental development, as long as 20% of units or more are affordable to households at 50% AMI. The Zoning Board of Appeals can then approve the project with a greater density to make it financially feasible.<sup>51</sup>

## **6. Conclusion and Recommendations**

Montgomery County has one of the most successful inclusionary housing programs in the country, but this is not to say that it cannot be strengthened further, adapted to better fit an everchanging economic landscape, or used to meet other county priorities. The following three recommendations would bring Montgomery County in line with regional and national standards, as well as make participation in the MPDU program more economically feasible for developers.

### 1. Lower the number of total units that trigger the affordability requirement.

Lowering the number of units that triggers the affordability requirement will include more residential developments, thus expanding the county’s capacity for MPDU creation. Montgomery County has a lower than average number of units that trigger the affordability requirement when compared to programs nationally (20 compared to 7.875), but a higher than average number when compared locally (20 compared to 33.6), although this is highly influenced by the high 50-unit trigger point in Loudon County, Fairfax County, and Rockville.

### 2. Increase maximum percentage of MPDUs possible to receive a density bonus and increase the maximum possible density bonus.

By increasing the maximum percent of affordable units possible to receive a density bonus, the county would open the potential for developers to set aside more than 15% of units for BMR housing. At the same time, this would allow developers to have a greater flexibility to select the set-aside percentage and density bonus that works best for their project. Montgomery County has a lower than the national average maximum percentage of affordable units possible to receive a density bonus (15 compared to 31.8), although leads in the region with a higher than average maximum percentage of affordable units possible to receive a density bonus (15 compared to 12.4).

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<sup>50</sup> Franzese, Paula A., and Richard Brown. 2018. *The Color of Law: A Forgotten History of How Government Segregated America*. May 10. <https://www.law.com/njlawjournal/2018/05/10/the-color-of-law-a-forgotten-history-of-how-government-segregated-america/>.

<sup>51</sup> Thaden, Emily, and Ruoniu Wang. 2017. *Inclusionary Housing in the United States: Prevalence, Impact, and Practices (Working Paper)*, 29-30.

Increasing the maximum possible density bonus would need to be done in conjunction with increasing the maximum percentage of affordable units possible to receive a density bonus. Montgomery County has a lower than national average maximum possible density bonus (22 compared to 26), although is slightly higher than the regional maximum of 18.94%. When changing one of these variables, the other variable could be adjusted to maintain the same rate of increase in the density bonus.

### 3. Differ density bonus requirements based on location, including proximity to transit.

Of the jurisdictions that were examined both nationally and regionally, four have different density bonus regulations based on the area the project is located or only offer density bonuses in a certain area (Arlington, Boston, Chapel Hill, Chicago, and Boston). This allows the jurisdiction more control over concentrating development in a certain area, such as by increasing the maximum possible density bonuses in downtown areas or central business districts. No jurisdictions reviewed had separate provisions for areas within a certain distance of transit, but increasing density bonuses around Metrorail and bus rapid transit (BRT) stations would contribute to the county's commitment to transit-oriented development.

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