

MEMORANDUM

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Emergency Bill 33-02, Moderately Priced Dwelling Units - Optional Construction

Council President Silverman intends to introduce Emergency Bill 33-02, Moderately Priced Dwelling Units - Optional Construction on September 24. A public hearing is scheduled for October 10 at 8 pm.

Bill 33-02 clarifies that the moderately priced dwelling unit law, Chapter 25A, does not prohibit a developer from voluntarily building MPDU's, and using the optional development standards for developments with MPDU's, in developments with fewer than 35 dwelling units.

This issue arose when the Planning, Housing, and Economic Development Committee considered Bill 18-02. At the hearing on that bill, a representative of Elm Street Development Corp. proposed an amendment to resolve a legal issue raised by the attorney for neighbors of a proposed development at the Goodwill Industries site in Bethesda (see Knopf memo, ©6-8). As we will explain further in the memo for the hearing on this bill, Council staff does not agree with Mr. Knopf's argument. Historically, the Planning Board has approved a number of developments with less than 50 units using the MPDU optional method (see Code §59-C-1.6). A partial list of those developments provided by Planning staff is on ©9; we expect them to provide a more complete list before the hearing.

At its September 19 worksession on Bill 18-02, the Committee decided to set aside the amendment so that Council President Silverman could introduce it separately as this bill.

This packet contains:	<u>Circle #</u>
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Emergency Bill No. 33-02
Concerning: Moderately Priced Dwelling
Units - Optional Construction
Revised: 9-23-02 Draft No. 1
Introduced: September 24, 2002
Expires: March 24, 2004
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President Silverman

AN EMERGENCY ACT to:

- (1) revise the requirements for building moderately priced dwelling units in certain zones;
- (2) generally amend the law governing moderately priced dwelling units.

By amending

Montgomery County Code
Chapter 25A, Housing, Moderately Priced
Section 25A-5

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

(1)

1 **Sec. 1. Section 25A-5 is amended as follows:**

2 **25A-5. Requirement to build MPDU's; agreements; alternatives.**

3 * * *

4 (m) Nothing in this Chapter prohibits an applicant from voluntarily
5 building one or more MPDUs in a development with fewer than 35
6 dwelling units at one location, and in so doing from qualifying for an
7 optional method of development under Chapter 59. A development
8 with fewer than 35 dwelling units where an applicant voluntarily
9 builds MPDUs must comply with any procedures and development
10 standards that apply to a larger development under this Chapter and
11 Chapter 59.

12 **Sec. 2. Emergency Effective Date.**

13 The Council declares that an emergency exists and that this legislation is
14 necessary for the immediate protection of the public health and safety. This Act
15 takes effect on the date on which it becomes law.

16 *Approved:*

17

Steven A. Silverman, President, County Council

Date

18 *Approved:*

19

Douglas M. Duncan, County Executive

Date

20 *This is a correct copy of Council action.*

21

Mary A. Edgar, CMC, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Emergency Bill 33-02

Moderately Priced Dwelling Units – Optional Construction

- DESCRIPTION:** Clarifies that the moderately priced dwelling unit law, Chapter 25A, does not prohibit a developer from voluntarily building MPDU's, and using the optional development standards for developments with MPDU's, in developments with fewer than 35 dwelling units.
- PROBLEM:** Attorneys for neighbors of a proposed subdivision challenged the long-held assumption that a developer could build MPDU's in a development with fewer than the minimum number of dwelling units that are required to include MPDU's (in current law, 50 units, but pending Bill 18-02 would reduce the minimum to 35 units). The law should be clarified to let the Planning Board know what requirements apply to proposed subdivisions.
- GOALS AND OBJECTIVES:** To confirm that developers can include MPDU's in developments of any size and use the optional development standards in Chapter 59.
- COORDINATION:** Planning Board, Department of Housing and Community Affairs, Housing Opportunities Commission
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** To be researched.
- SOURCE OF INFORMATION:** Michael Faden, Senior Legislative Attorney, 240-777-7905
- APPLICATION WITHIN MUNICIPALITIES:** Applies in Brookeville, Chevy Chase View, Chevy Chase Sec. 3, Chevy Chase Sec. 5, Martin's Additions, North Chevy Chase, Takoma Park.
- PENALTIES:** Not applicable.

- (9) Every indication is that, given the proper incentive, the private sector is best equipped and possesses the necessary resources and expertise required to provide the type of moderately priced housing needed in the County;
- (10) Rapid regional growth and a strong housing demand have combined to make land and construction costs very high and to have an effect on the used housing market by causing a rise in the prices of those units;
- (11) In past years efforts have been made to encourage moderately priced housing construction through zoning incentives permitting greater density and through relaxation of some building and subdivision regulations. Very little moderately priced housing had resulted; and
- (12) In some instances existing housing for persons of low and moderate income is substandard and overcrowded. (1974 L.M.C., ch. 17, § 1; 1979 L.M.C., ch. 21, § 1; 1989 L.M.C., ch. 27, § 1.)

Sec. 25A-2. Declaration of public policy.

The County Council hereby declares it to be the public policy of the County to:

- (1) Implement the Montgomery County housing policy and the general plan goal of providing for a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and family sizes;
- (2) Provide for low- and moderate-income housing to meet existing and anticipated future employment needs in the County;
- (3) Assure that moderately priced housing is dispersed within the County consistent with the general plan and area master plans;
- (4) Encourage the construction of moderately priced housing by allowing optional increases in density in order to reduce land costs and the costs of optional features that may be built into such moderately priced housing;
- (5) Require that all subdivisions of 50 or more dwelling units include a minimum number of moderately priced units of varying sizes with regard to family needs;
- (6) Ensure that private developers constructing moderately priced dwelling units under this Chapter incur no loss or penalty as a result thereof, and have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus provision of Chapter 59 and, in certain zones, the optional development standards; and

- (7) Allow developers of residential units in qualified projects more flexibility to meet the broad objective of building housing that low- and moderate-income households can afford by letting a developer, under specified circumstances, comply with this Chapter by contributing to a County Housing Initiative Fund. (1974 L.M.C., ch. 17, § 1; 1989 L.M.C., ch. 27, § 1.)

Sec. 25A-3. Definitions.

The following words and phrases, as used in this Chapter, have the following meanings:

- (a) *Applicant* means any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities, and any transferee of all or part of the land at one location, who:
- (1) Submits for approval or extension of approval a preliminary plan of subdivision under Chapter 50, which plan provides for the development of a total of 50 or more dwelling units at one location in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of development, regardless of whether any part of the land has been transferred to another party; or
 - (2) Submits to the Planning Board or to the Director of Permitting Services a plan of housing development for any type of site review or development approval required by law, which plan includes construction or development of 50 or more dwelling units at one location; or
 - (3) With respect to all land in zones not subject to subdivision approval or site plan review, applies for a building permit or permits under Chapter 8, which permit is or permits are for the construction of a total of 50 or more dwelling units at one location.

In determining whether a development contains a total of 50 or more dwelling units for the purpose of applying this Chapter, all land at one location within the County available for building development under common ownership or control by an applicant, including land owned or controlled by separate corporations in which any stockholder or family of the stockholder owns 10 percent or more of the stock, must be included. An applicant must not avoid this Chapter by submitting piecemeal applications or approval requests for subdivision plats, site or development plans or building permits. Any applicant may submit a preliminary plan of subdivision for approval, site or development plans for approval, record plat or request for building permits for less than 50 dwelling units at any time; but the applicant must agree in writing that upon the next such application or request the applicant will comply with this Chapter when the total number of dwelling

Sh...

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June 13, 2002

VIA FACSIMILE & MAIL
(301) 495-1304

Chairman Arthur Holmes, Jr.
and Commissioners
Maryland National Park and
Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

RECEIVED
JUN 13 2002

OFFICE OF THE CHAIRMAN
THE MARYLAND NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

RE: Good Will Property - Preliminary
Plan of Subdivision No. J-02038

Dear Chairman Holmes and Commissioners:

This law firm represents Sarah and James Gilligan, Melanie Killen and Rob Tycko, homeowners within the immediate vicinity of the proposed subdivision.

We respectfully request that the Board DENY the subdivision application as the Board legally has no authority to authorize such a subdivision under §59-C-1.6.

Approval of the preliminary plan of this subdivision is sought pursuant to §59-C-1.6. That section provides for an optional method of development which permits in the R-60 zone construction of townhouses and moderate priced dwelling units at a greater density than for the normal detached single family home development. As a matter of law, this optional method of development is not available to the instant project. The proposal before the Board is for under 50 dwelling units (about 28 units). The governing statutory provision makes clear that the optional method of development is applicable only for development of 50 or more dwelling units.

Specifically, §59-C-1.61, "Purpose and Description", states that:

"Where moderately priced dwelling units are included in a development in accordance with Chapter 25A of this Code, as amended, this optional method of development is permitted in order to facilitate the construction of those units." [emphasis added]

(b)

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Thus, by its express terms, the optional method is available only for development in accordance with Chapter 25A, and Chapter 25A applies solely to subdivisions of 50 or more dwelling units. §25A-2(5) & §25A-3(a).

Other provisions of Chapter 25A make clear that this optional method of development provided for in the Zoning Code is applicable solely to projects in which the applicant "must" build MPDUs. §25A-6(a) "Optional Zoning Provisions", states that the District Council has enacted zoning standards in Chapter 59 which establish optional density bonus provisions and permits alternative dwelling unit types. The Section further provides that these standards apply only in a specified situation:

"Land upon which the applicants must build MPDUs may, at the applicant's election, be subject to optional zoning provisions." [emphasis added]

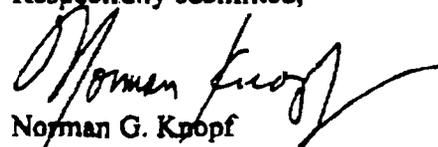
The express language of this provision is in accord with its purpose. Additional density and townhouse units in a R-60 zone are authorized to compensate the developer for constructing the required MPDUs. As noted, the MPDU requirement exists solely for the developments of 50 or more dwelling units.

Ignoring the plain language of these provisions in order to apply the optional method to this property would also be inconsistent with Council policy expressed in other zoning code provisions. The property involved here is under 5 acres. The proposed project would not only provide for cluster development, but townhouses, MPDUs and increased density. Normally cluster development in an R-60 zone, §59-C-1.532, permits houses to be clustered but they remain single family detached or semi-detached, not townhouses, and the density is not increased. Even with these limitations, the Council has determined, as a matter of policy, that a land area of at least 5 acres must be the subject of the cluster development in order to provide sufficient room and flexibility to assure that the cluster development is compatible with adjacent development. Here, as noted, we do not have 5 acres but we do have additional density and townhouse development. Clearly, this is contrary to the Council's policy of having a minimum sized parcel of 5 acres for even less intense development. A 50 dwelling unit development, as required in Chapter 25A for the MPDUs, assures that the optional method of development under §59-C-1.6 would occur on greater than 5 acres.

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For the above stated reasons, the application must be denied for failure to meet the statutory requirements of §59-C-1.61, "Optional Method of Development".

Respectfully submitted,



Norman G. Knopf

cc: Sarah and James Gilligan
Melanie Killen
Rob Tycko

Preliminary Plan Approvals With Less Than 50 Units Using the MPDU Development Option

Preliminary Plan Name	Location	No. of Units	Zone	Year Approved
Wyndcrest	South Side MD 108, west of New Hampshire Ave., Sandy Spring/Ashton	26	R-90	1992
Fairland Square	South Side Fairland Road nr. Fairridge Road, Fairland	39	R-200	1992
Plantations II	West Side MD 124, Damascus	21	R-200	1993
Tanglewood	Briggs Chaney Road, Fairland	27	R-200	1999
Brodsky Property	Hoyles Mill Road at Crossview Road, Germantown	32	R-200	2002
Bonifant Park	North Side Bonifant Road east of Layhill Road, Aspen Hill	25	R-200	2002
Layhill Village East	East side of Layhill Road south of Bonifant Road, Aspen Hill	30	R-200	2002
Goodwill Property	West Side of Wisconsin Ave. north of Cedar Lane, Bethesda Chevy-Chase	28 Proposed	R-60	Pending