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Submitted Electronically Via County Council Website

Council President Hucker and Members of the Montgomery County Council
Council Office Building
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: Zoning Text Amendment No. 21-07 – Density and Height Allocation-Development with Moderately Priced Dwelling Units (the “ZTA”)

Dear Council President Hucker and Members of the Montgomery County Council:

On behalf of Sligo 42 LLC and Sligo 60 LLC (“Sligo”), we are submitting this written testimony in support of the ZTA. The ZTA, as introduced and if approved, would exclude projects in the CR or CRT zones from the mapped floor area ratio (“FAR”) limits of the underlying zone, provided the maximum density does not exceed 2.5 FAR, if they provide 100% of the units under a government regulation or binding agreement that limits for at least 30 years the price or rent charged for each unit such that the average cost of all units is affordable to households earning less than 60% of the area median income (“AMI”), adjusted for family size. The members of Sligo are affordable housing developers, and strongly believe the ZTA will help to encourage development of additional affordable housing in Montgomery County, particularly at deeply affordable levels, while still limiting projects to fairly low densities that are compatible with any range of surrounding and nearby uses.

This ZTA is necessary due to the large-scale changes that were undertaken by Montgomery County to Chapter 25A of the Montgomery County Code and portions of Chapter 59 of the County Code (the “Zoning Ordinance”) related to moderately priced dwelling units (“MPDUs”) in fall of 2018. Prior to fall 2018, the Zoning Ordinance had provided in Section 59-4.7.3.D.6.c.iii that “[f]or a project providing a minimum of 15% MPDUs, the gross floor area of all MPDUs provided is exempt from the calculation of FAR.”

As part of the 2018 revisions to the Zoning Ordinance, the quoted language above was removed and instead, Section 59-4.5.2.C.1 currently states that “[f]or 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. Except in the Bethesda Overlay zone, residential density may be increased above the mapped residential FAR by:
 - a. 0.88% for each 0.1% increase in MPDUs above 12.5%, up to and including 15%;



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- b. 22% plus 0.16% for each 0.1% increase in MPDUs above 15%, up to and including 20%; or
- c. 30% plus 0.1% for each 0.1% increase in MPDUs above 20%.”

Applying the revised formula above, 100% MPDUs would garner a 110% increase in permissible residential density. This is a very different result from the Zoning Ordinance’s previous language, in which a project with 100% MPDUs would have theoretically been able to achieve unlimited density (though the height limitations of the zone, plus any applicable additional height on the basis of the MPDUs provided, and height compatibility requirements of Section 59-4.1.8.B of the Zoning Ordinance would still serve to constrain the actual achievable density).

It seems this was an unintended consequence of the revisions undertaken to the Zoning Ordinance in 2018. Illustrative of this is an excerpt from the staff report accompanying the Montgomery County Council’s Planning, Housing, and Economic Development (“PHED”) Committee worksession on September 20, 2018, which states in part, “[i]n 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.”¹ However, that is an inaccurate statement. Not counting MPDUs as FAR does not result in 100% bonus density; it theoretically results in unlimited density if all units are MPDUs.

Preceding the above quotation from the staff report is a sentence contemplating the ramification of the change that was ultimately made to the Zoning Ordinance and is in effect today, stating “[a] 100% MPDU project would be allowed a 110% bonus.” While that in itself is an accurate statement, it reveals that the true effect of these changes on 100% MPDU projects was not understood at the time. The exemption of the gross floor area of all MPDUs provided from the calculation of FAR, as the previous language provided, and the current language which permits a 110% residential density increase for 100% MPDU projects, are completely different and result in completely different permitted densities.

This ZTA seeks to address this unintended consequence of the 2018 revisions, as drafted by excluding applications that provide 100% of the units under a government regulation or binding agreement that limits for at least 30 years the price or rent charged for each unit such that the average cost of all units is affordable to households earning less than 60% of the area median income (AMI), adjusted for family size, from the mapped FAR limits of the underlying zone, provided the maximum density does not exceed 2.5 FAR. As drafted, this change would only apply to properties that are in the CR or CRT zones. The height limitations of the zone, plus any applicable additional height on the basis of the MPDUs provided per Section 59-4.5.2.C.7 and height compatibility requirements of Section 59-4.1.8.B, would still serve to constrain the actual achievable density of a project.

¹ See page 3 here:

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2018/PHED/20180920/20180920_PHED2.pdf.



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Due to the unintended deleterious effects the 2018 revisions had on 100% affordable residential projects, and in order to further encourage much-needed affordable housing in Montgomery County, particularly at deeply affordable levels, Sligo strongly supports this ZTA. We thank you for your consideration of our comments. Please do not hesitate to contact us if you have any questions or need any additional information.

Sincerely,

Wire Gill LLP

A handwritten signature in black ink that reads "Heather Dlhopsky". The signature is written in a cursive, flowing style.

Heather Dlhopsky