

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY
SITTING AS THE DISTRICT COUNCIL

March 11, 2025

Zoning Text Amendment (ZTA) 25-02, Workforce Housing - Development
Standards

Testimony of Lloyd Guerci

Council President Stewart and Councilmembers:

Thank you for the opportunity to testify.

First, **let R-60 zoning be R-60.** R-60 (as well as R-40, R-90 and R-200) should not be amended such that R-60 means one thing on one lot and another thing on another lot. If legislation goes forward, there needs to new residential detached zones and any rezoning of specific lots should be through the Master Plan process.

Second, **there is an elephant in the room, namely the pending State Housing for Jobs Act,** SB 430 and HB 503. ZTA 25-02 must be considered in the context of these bills. As noted in a County Council briefing on February 24 (pp. 4-5) these are “sweeping preemption” bills that are intended “to force” local jurisdictions to approve housing projects. Under these bills, the State law overrides County zoning except in six, limited conditions or circumstances. One is the project does not comply with objective written development standards.

But, as the Maryland Association of Counties recognized, zoning standards with discretionary decision-making are not among those that are saved from a preemptive State override. The use of the optional method in ZTA 25-02 opens properties subject to it to a sweeping State override of the ZTA itself. The approach of ZTA 25-02 must be revised to preclude this, and any new approach placed before the public for comment. Attached is my testimony on the State legislation, and in particular, please see its attached explanatory Fact Sheet Re “Housing for Jobs Act,” SB0430 / HB0503 (2025)

Third, **ZTA 25-02 does not specify any amount of parking, much less sufficient parking.** Parking, which Councilmembers recognized was a major issue in the discussion of the Planning Board’s Attainable Housing Strategies (AHS), needs to

be specified *with* minimum requirements added to the ZTA. Bear in mind, there isn't room for more parked cars on nearby, local streets.

I live south of Bethesda, on the first block off of State Route 355 (Wisconsin Ave.), a designated roadway segment under ZTA 25-02. *See*, ZTA 25-02 Workforce Housing - Development Standards, Council Packet for March 11, 2025 hearing @ circle 34. At the Wisconsin Avenue end of our street is Concord Hill School (6050 Wisconsin Ave.) on a R-60 lot amounting to 37,489 square feet. It is the largest lot designated under ZTA 25-02 on Wisconsin Avenue between Bradley Blvd and Washington, DC, other than Chevy Chase Club which realistically will not be developed and the property near the Saks department store which is expected to be rezoned in the ongoing Friendship Heights sector plan amendment process. *See*, [Applicable Parcels: ZTA 25-02 Workforce Housing - Development Standards](#).

More specifically, as I explained in my comments on the Planning Board's AHS Report (via email to then Council President Friedson, September 30, 2024):

To provide a feel for the real-world parking problems, consider the block where I live. There are 27 houses on this block, which is roughly 750 feet long. . . . There are 28 on-street parking spaces on this block, all on one side [of the narrow street]. In general, the vast majority of these spaces now are occupied at night. Sometimes a few remain open and on occasion, for on-street parking, it is necessary to park on the next block. In the daytime, spaces become available, but many of them are used by delivery trucks and vehicles operated by trades people and service people such as renovators, landscapers and HVAC technicians.

As to implementation, the Planning Board and its Director cannot be trusted to take local parking conditions into account. The Planning Board's AHS report swept comments on parking aside and relegated them to a secondary concern without addressing their substance, saying broadly: **"The Planning Board received a lot of correspondence out of concern for parking and took this concern seriously, but ultimately one of the goals of this initiative is to make housing more attainable, and reducing parking requirements has the potential to help achieve that goal."** (Bold in original) p. 44.

Also, for future needs for charging electric vehicles, onsite parking areas with chargers are critical. Assumptions of street parking are inconsistent with electric vehicles of the future which are critical to mitigating climate change. Thank you.

Testimony: Housing for Jobs Act SB 0430 and HB 0503

By Lloyd Guerri, a Montgomery County resident
Senate Education, Energy, and the Environment Committee
House Environmental and Transportation Committee

March 4, 2025

Position: Opposed

Dear Chair Feldman and Members of the Education, Energy, and the Environment Committee
and

Chair Korman and Members of the Environment and Transportation Committee:

Thank you for the opportunity to submit this written testimony. I have lived in Montgomery County for about 30 years and have been active in land use issues for decades.

Five of the reasons to report unfavorably on these identical Bills, as elucidated below, are:

- This legislation is opposed by many residents.
- These Bills would force Montgomery County to allow various types of multi-family housing in neighborhoods zoned for single-family detached homes. Given an application for a multi-family housing project in a single-family-zoned neighborhood, the County could be required to approve it peremptorily without any consideration of long-standing provisions in its zoning code that address important concerns such as out-of-scale, incompatible multi-family housing structures that loom over neighboring single-family homes; inadequate parking; and standards focused on environmental sustainability such as stormwater management.
- These Bills do not require affordable units in multi-family housing developments or provide developers with incentives to build affordable units.
- The County would be required to devote new governmental resources to resolve whether proposed projects satisfy the provisions of the Bills and to report to the State.
- These Bills lack a necessary foundation to understand how they would apply in the context of very complex zoning codes that balance interests, and how they would work.

There is Substantial Community Opposition to These Bills

The Citizens Coordinating Committee on Friendship Heights (CCCFH), a coalition of 18 community organizations in southwestern Montgomery County representing about 20,000 residents, opposes this legislation in emails to the Committee chairs.

These Bills Would Enable Multi-Family Housing Development in Neighborhoods Zoned for Single-Family Detached Homes Without Necessary Guardrails or Public Input on Projects.

These Bills would force Montgomery County and other jurisdictions to allow various types of multi-family housing in neighborhoods zoned for single-family detached homes if their assigned region and the individual county have a specified jobs-to-housing ratio. Under these Bills, if a multi-family housing project in a single-family-zoned neighborhood were the subject of a future application, the County could be required to approve it peremptorily without any consideration of long-standing provisions in its zoning code that address important concerns in its single-family neighborhoods.

These include, for example, height and density limitations that prevent construction of out-of-scale, incompatible multi-family housing structures that loom over neighboring single-family homes; on-site parking requirements that reduce the number of vehicles parked on the narrow, one through lane streets that are prevalent in older communities such as where I live; and standards focused on environmental sustainability such as stormwater management.

The Bills' provisions would override zoning code provisions by prohibiting Montgomery and other counties from denying multi-family housing applications on grounds in their codes that include subjective or discretionary criteria rather than objective development standards. Even if based on objective standards, the Bills would further require the jurisdiction to present clear and convincing evidence that its rationale for denial outweighs the need for the proposed housing.

It is critical to understand local zoning. In addition to objective standards, such as those on building height and setbacks, in provisions that allow that construction by right, Montgomery County has discretionary provisions in its complex zoning code for approving multi-family housing in single-family zones. For example, multi-family housing units (e.g., duplexes and townhouses) are allowed as limited uses in single-family zones subject to various discretionary requirements for the optional method of development for both moderately-priced dwelling units (MPDUs) and for cluster housing. In addition, duplexes, townhouses, and apartment buildings are allowed as conditional uses in single-family zones pursuant to similar discretionary requirements. There are approval processes requiring subjective findings and conclusions.

Under the proposed legislation, if a Montgomery County housing developer applied for approval of a multi-family project as a limited or conditional use on a property in a single-family zone such as the very common residential R-60 zone, it appears that the County would have no choice but to approve the project because the approval standards for those uses in those zones are based on subjective findings and conclusions.

It is necessary to ask what standards would apply to the project? That is unspecified. Would these Bills *give unbridled discretion to the developer*, without limitations that would protect the neighbors? The Bills do provide for input by impacted neighboring property owners on the project.

These are Not Affordable Housing Bills

This legislation would not solve Montgomery County's affordable housing shortfall. It does not require affordable units in multi-family housing developments or provide developers with incentives to build affordable units in such housing.

These Bills Would Impose New, Unfunded Obligations on the County

In an era when County resources are stretched and uncertain, the Bills would also require the County to find and devote new governmental resources to administer applications and resolve claims by developers that proposed projects satisfy the provisions of the Bills.

These Bills Lack a Necessary Foundation to Understand the Circumstances where a State Override of a County Zoning Ordinance Might be Required and How They Bills Would Be Implemented

In informal communications, residents have expressed their concerns on impacts of the Bills to single-family neighborhood. The response, attributed to the Administration, suggests no such impact. The response did not include an analysis or citations. That response appears to be inconsistent with the language of the bills viewed in the context of the Montgomery zoning code. And it begs the question, if the Bills would not override local zoning to produce additional multi-family housing for jurisdictions that have jobs-to-housing ratios above that in the Bills, what's the point?

In addition, the Bills do not consider unintended consequences. There are obvious problems. Once the County's zoning standards are set to the side due to the existence of discretion, what standards apply. Are they sufficient? Has sufficiency been tested by likely scenarios?

The attached FACT SHEET RE "HOUSING FOR JOBS ACT," SB0430 / HB0503 (2025) provides more information on these Bills.

Thank you.

FACT SHEET RE “HOUSING FOR JOBS ACT,” SB0430 / HB0503 (2025)

Q: What is the legislative background of SB0430 and HB0530?

A: The “Housing for Jobs Act of 2025” (HB0503) and a companion Senate Bill (SB0430) were introduced on January 21, 2025, at the request of Governor Wes Moore. The Bills, which have an effective date of January 1, 2026, were referred to the House Environmental and Transportation Committee chaired by Delegate Marc Korman (D-16), and to the Senate Education, Energy, and Environment Committee, chaired by Senators Brian Feldman (D-15) and Cheryl Kagan (D-17). The bills are on the hearing schedules for the Senate and House for March 4 at 1 p.m.

According to the Governor, some local jurisdictions have development processes that adversely affect the ability of government agencies, non-profits, and developers to provide the housing, especially multi-family housing, needed to attract jobs. These housing providers are significantly less likely to obtain development approvals for new housing projects where development standards are discretionary and subjective. These non-objective approval standards have also produced a substantial gap between the housing available to support workers seeking jobs in the State and the number of unfilled jobs available to those workers.

The Bills would thus establish strict guidelines intended to reduce the gap between available housing and available jobs by strictly limiting local jurisdictions’ ability to deny housing development applications on any grounds that are discretionary rather than objective, and by requiring clear and convincing evidence that a jurisdiction’s rationale for denying a proposed housing project, even if based on objective standards, outweighs the need for the proposed housing.

This legislation is meeting with strong opposition from numerous single-family neighborhoods across Montgomery County, because it would force local jurisdictions, which includes counties and municipalities, with a jobs to housing gap that exceeds the ratio specified in its provisions to allow various types of multi-family housing in neighborhoods zoned for single-family detached homes based on what are clearly flawed factual assumptions and insufficiently defined approval procedures. In addition, the bills would enable lawyers for well-financed developers to build market-rate projects where there now is lower cost, naturally occurring affordable housing, facilitated by the inability of local residents to afford to participate in the Circuit Court, where under the bills disputes would be resolved.

Q: What are the basic provisions of SB0430 and HB0530?

A: SB0430 and HB0503 would require the Maryland Department of Housing and Community Welfare and the Maryland Department of Planning to divide the State into six regions, with the Washington region comprised of Montgomery, Prince Georges, and Frederick Counties. A “Jobs

to Housing Ratio” would then be calculated by dividing the number of jobs by the number of housing units in each region.

If there is a regional housing infrastructure gap, which would exist where the Jobs to Housing Ratio exceeds 1.5, the housing shortfall would be apportioned to the region’s local jurisdictions based on their percentage share of regional jobs. Each jurisdiction within the region that contributes to the housing infrastructure gap would then be required to expeditiously approve new housing units unless there is a reason for denial that is specifically authorized in the legislation. However, in calculating the ratio, no consideration would be given to the number of approved new housing units that are in the jurisdiction’s “development pipeline” (i.e., housing units on sites within the jurisdiction for which only a building permit is needed for construction).

To justify a denial of a housing application, a local jurisdiction would be required to establish at least one of the following six specific conditions or circumstances:

- (i) Specific adverse impact to the health/safety of residents of the project;
- (ii) Noncompliance with specific State or Federal law; (iii) Inadequate water or sewer facilities to serve the project; (iv) Location in an area zoned for heavy industrial use, conservation, or agricultural land; (v) Insufficient school capacity; or (vi) Development does not comply with objective written development standards at the time of application submission.

For all except (iv) and (v) above, the jurisdiction would also have to show that there was “no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the housing development project financially infeasible.” A “specific adverse impact” would have to be “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions.” Significantly, there are no provisions in the legislation giving the local community any opportunity to be heard on these issues.

The legislation also includes provisions allowing regions to reduce their housing-to-job ratios by providing more housing. For example, each standard housing unit built after its ratio was determined would reduce its regional housing gap on a one-to-one basis. In addition, a local gap reduction of 1.5 units would also be credited for each new unit that either meets specified affordable housing criteria or is within 0.75 miles of a passenger rail station, including a Metro station.

Q: Are multi-family housing units currently permitted by right in Montgomery County’s single-family residential zones?

A: No. Only single-family residential units are currently permitted by right in single-family residential detached zones (e.g., R-40, R-60, R-90, R-200) under the current Montgomery County zoning code. Multi-family housing units (e.g., duplexes and townhouses) are only allowed as

limited uses subject to the demanding requirements of the optional method of development for moderately-priced dwelling units (MPDUs) and for cluster housing. Duplexes, townhouses, and apartment buildings are allowed as conditional uses subject to even more demanded procedures for approval.

The procedural standards for conditional uses include detailed applications, public notices (by posting and publication), direct notices to neighbors, public meetings, reports and recommendations by Planning Board staff, public hearings before hearing examiners, and reports and decisions by the hearing examiners, which are subject to appeal to the Board of Appeals, whose decisions are subject to court review.

The optional method of development for multi-family housing in single-family zones requires parcels of three to ten acres, previously approved site plans, and approval by local planning authorities pursuant to complex and time-consuming procedures. The procedures for both conditional uses and the optional method of development also require the decision-maker to make detailed factual findings to support approval.

Q: What are the specific provisions in SB0430 and HB0530 that would allow multi-family units in single-family neighborhoods?

A: SB0430 and HB0503 would turn the County's zoning code on its head and permit multi-family housing types (duplexes, townhouses, and apartment buildings) anywhere in single-family zones unless the jurisdiction's approval process for single-family units is based on totally objective development standards, and the jurisdiction can show that there is no feasible method to comply with the standards without rendering the development financially infeasible. The precise language can be found in Section 12-203E(6), which provides:

(E) A local jurisdiction shall cite at least one of the following as a justification to deny a housing development project application that clearly outweighs the need for housing . . .

(6) (i) The housing development project does not comply with objective written development standards at the time of application submission; and

(ii) there is no feasible method to comply without rendering the development financially infeasible.

Thus, if a housing developer asserts that the provisions in the County zoning code for conditional uses and/or optional method development in single-family zones do not meet the objective standards of Section 12-203E (6) and that there is no feasible method to meet those standards, the developer's multi-family project in a single-family residential neighborhood would have to be approved.

Q: What are “objective written development standards” that jurisdictions can use to deny multi-family developments in single-family zones?

A: According to the legislation, “objective written development standards” means objective, quantifiable, written development standards, conditions, and policies” that are:

- (I) not subject to personal or subjective judgment by a public official;
- (II) uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by the housing development project applicant; and
- (III) applied to facilitate and accommodate development at the density permitted on the site. (Section 12-203(A)(9)).

These terms -- “objective,” “quantifiable standards,” “conditions,” “not subject to personal or subjective judgment by a public official” – have been criticized as vague and ambiguous, open to abuse and mischaracterization, and clearly in need of further definition. This legislation is the product of poor drafting and should not be seriously considered by either of the House or Senate Committees in its present form.

Q: Are the standards for allowing multi-family units in single-family zones in Montgomery County based on “objective written development standards?”

A: No. As indicated above, multi-family housing units are allowed in Montgomery County only as “condition uses” or pursuant to an optional method of development for MPDUs or cluster housing. The substantive standards for approval of a condition use require the hearing examiner, Board of Appeals, and/or a court to make numerous subjective findings.

These include findings that the proposed development will not cause undue harm to the use, peaceful enjoyment, economic value, or the development potential of either abutting and confronting properties or the general neighborhood, or to the health, safety, or welfare of neighboring residents, visitors, or employees.

Under the optional method of development, approval of townhouse MPDUs in a single-family zone require subjective findings that the greater number of living units are “more desirable for environmental reasons” and that the proposed townhouses will be “compatible with adjacent development.” The optional method for cluster development in a single-family zone required a subjective finding that the development “substantially conforms” to the recommendations of the applicable master plan as well as to any design guidelines approved by the Planning Board that implement the applicable master plan.

The standards in the County’s single-family zones thus include provisions for MPDU and cluster development that are discretionary in nature and that require subjective judgments by public officials.

Q: What evidence would show that there is no “feasible method” to comply with the provisions of SB0430 and HB0503 without rendering the proposed multi-family development “financially infeasible?”

A: There is no discussion or definition of what would qualify as either a “feasible” or “financially infeasible” multi-family housing development. However, anyone familiar with financial statements that forecast future revenues and expenses, even those prepared using “GAAP” accounting principles, understands that they are based on numerous assumptions, estimates, and projections that can significantly exaggerate the very metrics they are intended to disclose. Thus, it is distinctly possible that housing developers could provide public officials with misleading – even grossly inaccurate – economic “feasibility” analyses.

Q: What additional information or clarification of SB0430 and HB0503 is necessary to enable members of the Maryland legislature, as well as their Montgomery County constituents, to understand it terms and potential impacts on the County’s single-family neighborhoods?

A: If passed by the Maryland Legislature as currently drafted, SB0430 and HB0503 are likely to be challenged in Maryland courts as “void for vagueness.” The following is a list of questions regarding some of the operational and definitional issues that need to be addressed before the legislations can be seriously considered by the relevant House and Senate Committees:

- Why was the 1.5 Jobs to Housing Ratio selected as the trigger for permitting multi-family housing units in communities that are zoned for single-family residential housing?
- Why aren’t approved housing units that are in a jurisdiction’s “development pipeline” included in the calculation of the Jobs to Housing Ratios (i.e., approved housing units on sites within the jurisdiction for which only a building permit is needed for construction)?
- Why do the reasons for denial that involve the legislation’s potential impacts on single-family neighborhoods include only lack of water, sewer, and school capacity?”
- How will the new legislation operate procedurally?
 - For example, what would be the process for deciding whether a local jurisdiction’s zoning code standards for single-family zoning are based on “objective written development standards” that are “quantifiable,” “uniformly based on external and uniform benchmarks” that are “available and knowable” by “a public official?”
 - What would be the criteria for deciding whether a specific adverse impact is a “significant, quantifiable, direct, and unavoidable impact based on objective, identified, written public health or safety standards, policies or conditions?”

- What would be the process for deciding whether a proposed housing project either is “feasible” or “infeasible?”
 - What would be the process for the local jurisdiction to object to or rebut a housing developer’s arguments that the jurisdiction wrongfully denied a proposed multi-family housing development?
 - Would residents of the affected neighborhoods be afforded an opportunity to be heard on a proposal to locate a multi-family housing development in their community?
- Finally, would this legislation incentivize developers to build more affordable housing types, such as MPDUs and/or workforce housing (other than affordable units which reduce s jurisdiction’s Jobs to Housing Ratio), or would it merely encourage construction of more multi-family housing units for sale or rental at market prices?