

Ordinance No.: 19-26
Zoning Text Amendment No.: 21-07
Concerning: Density and Height
Allocation –
Development with
Moderately Priced
Dwelling Units
Draft No. & Date: 3 – 10/27/2021
Introduced: October 5, 2021
Public Hearing: November 9, 2021
Adopted: January 18, 2022
Effective: February 9, 2022

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

Lead Sponsors: then-Council President Hucker and Councilmember Riemer
Co-Sponsor: Councilmember Rice

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- exempt applications with 100% moderately-priced dwelling units (MPDUs) or 9% Low-Income Housing Tax Credit (LIHTC) from mapped FAR limits; and
- generally amend the density provisions for MPDUs and other income-restricted housing.

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

Division 4.5	“Commercial/Residential Zones”
Section 4.5.2.	“Density and Height Allocation”

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.*

OPINION

Zoning Text Amendment (ZTA) 21-07, Density and Height Allocation – Development with Moderately Priced Dwelling Units, lead sponsors then-Council President Hucker and Councilmember Riemer, co-sponsor Councilmember Rice, was introduced on October 5, 2021. ZTA 21-07 will allow projects in the CR or CRT zones to have residential density up to 2.5 FAR if 100% of the units are income-restricted for at least 30 years as MPDU's or 9% Low-Income Housing Tax Credits (LIHTC).

The Planning Board reviewed ZTA 21-07 at its regular meeting on November 4, 2021 and unanimously (5-0) recommended approval with amendments.

The County Council held a public hearing on November 9, 2021. One speaker testified in support, stating that increased density would help affordable projects compete with market-rate developers. The Council received one letter in support and one letter in opposition. The letter in support, from a developer, stated that ZTA 21-07 would encourage the development of affordable housing while limiting projects to densities compatible with surrounding uses. The letter in opposition, from the Office of Agriculture, expressed concern that this ZTA would deemphasize the use of transferable development rights (TDRs) and building lot terminations (BLTs).

The PHED Committee held a worksession on December 13, 2021. At the suggestion of Planning and Council Staff, the PHED committee recommended amendments to: 1) add "Other Income-Restricted Housing" to the title of the section; 2) explicitly limit the ZTA to MPDU's and 9% LIHTC; and 3) exclude properties in the TDR Overlay zone.

At a District Council session on January 18, 2022, the Council agreed with the recommendation of the Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 21-07 will be approved as amended.

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 is amended as follows:

* * *

Section 4.5.2. Density and Height Allocation

* * *

C. Development with Moderately Priced Dwelling Units and Other Income-Restricted Housing

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. 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%;
 - 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%.
2. In the Bethesda Overlay zone, residential density may be increased above the mapped residential FAR by 17.5% plus 0.1% for each 0.1% increase in MPDUs above 17.5%.
3. 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.
4. 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.
5. 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.

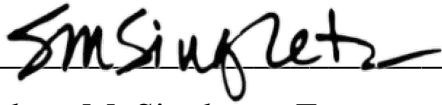
- 28 6. The floor area counted as MPDU floor area includes a proportional
29 share of the gross floor area not devoted to residential units.
- 30 7. The height limit of the applicable zone and master plan does not apply
31 to the extent required to provide the MPDUs. The additional height is
32 calculated as the floor area provided for MPDUs above 12.5% divided
33 by the average residential floor plate area, where each whole number
34 and each remaining fraction allows an increase of 12 feet.
- 35 8. In the CR or CRT zones an application is exempt from the total FAR
36 limits of the underlying zone, provided the maximum residential
37 density does not exceed 2.5 FAR and maximum commercial density
38 does not exceed the mapped commercial FAR of the property,
39 [[with]]if 100% of the units are income-restricted for at least 30 years
40 under a government regulation or binding agreement developed
41 per[[that limits for at least 30 years the price or rent charged for each
42 unit such that the average cost of all units is affordable to households
43 earning less than 60% of the area median income (AMI), adjusted for
44 family size,]]:
- 45 a. the MPDU requirements of Chapter 25A; or
46 b. an award of 9% Low-Income Housing Tax Credits (LIHTC).
47 This exemption does not apply in the TDR Overlay zones.

48 * * *

49 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
50 date of Council adoption.

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This is a correct copy of Council action.

A handwritten signature in black ink, appearing to read "SM Singleton", is written over a horizontal line.

Selena M. Singleton, Esq.
Clerk of the Council