

Ordinance No.: _____
Zoning Text Amendment No.: 23-02
Concerning: Regulatory Approvals –
Mixed-Use Housing
Community
Revised: 3/14/2023 Draft No.: 1
Introduced: March 28, 2023
Public Hearing: _____
Adopted: _____
Effective: _____

**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: Councilmembers Sayles and Friedson
Co-Sponsors: Councilmembers Luedtke and Stewart

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- (1) define a Mixed-Use Housing Community;
- (2) provide an expedited approval process for a Mixed-Use Housing Community plan;
and
- (3) generally amend the development standards for mixed-use properties.

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

Division 1.4.	“Defined Terms”
Section 1.4.2.	“Specific Terms and Phrases Defined”
Division 3.1.	“Use Table”
Section 3.1.6.	“Use Table”
Division 4.4.	“Residential Zones”
Section 4.4.2.	“Optional Method Development”
Division 4.5.	“Commercial/Residential Zones”
Section 4.5.4.	“Optional Method Development”
Division 7.3.	“Regulatory Approvals”
Section 7.3.3.	“Sketch Plan”
Division 7.5.	“Notice Standards”
Section 7.5.1.	“Noticed Required”

And by adding the following sections:

Section 3.3.4.
Section 7.3.7.

“Mixed-Use Housing Community”
“Mixed-Use Housing Community”

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 59-1.4 is amended as follows:

Division 1.4. Defined Terms

* * *

Section 1.4.2. Specific Terms and Phrases Defined

* * *

Mixed-Use Housing Community: See Section 3.3.4.

* * *

Sec. 2. DIVISION 59-3.1 is amended as follows:

Division 3.1. Use Table

* * *

Section 3.1.6. Use Table

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.

14

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential				Residential												Commercial / Residential			Employment				Industrial		
							Residential Detached								Residential Townhouse			Residential Multi-Unit										
		AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM	IH
* * *																												
RESIDENTIAL																												
* * *																												
Accessory Residential Uses	3.3.3																											
* * *																												
Mixed-Use Housing Community	3.3.4															⌋	⌋	⌋	⌋	⌋	⌋	⌋	⌋	⌋				
* * *																												

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Sec. 3. Division 59-3.3 is amended as follows:

Division 3.3. Residential Uses

* * *

Section 3.3.4. Mixed-Use Housing Community

A. Defined

Mixed-Use Housing Community means at least 150,000 square feet of new commercial and residential floor area containing Multi-Unit Living under Section 3.3.1.E and at least 2 commercial uses allowed in the underlying zone. A Mixed-Use Housing Community must have 30 or more dwelling units and either:

1. 50% of the units must satisfy the requirements for an MPDU in Chapter 25A or a DHCA equivalent; or
2. 35% of the units must satisfy the requirements for an MPDU in Chapter 25A or a DHCA equivalent with 15% of the total units affordable to a household with a household income of 30% percent of Area Median Income (AMI) or below for at least 30 years.

B. Exemptions

1. A sketch plan and a site plan are not required for a Mixed-Use Housing Community if the Planning Board approves a Mixed-Use Housing Community plan under Section 7.3.7.
2. After a Mixed-Use Housing Community is approved, subsequent additions or expansions of the Mixed-Use Housing Community building or buildings, in any size or amount, will be processed under Section 7.3.7 as amendments. The plan, as amended, must still qualify as a Mixed-Use Housing Community plan under Section 3.3.4.A.
3. No off-street parking is required for a Mixed-Use Housing Community that is located on property:

- a. within a red policy area including contiguous properties
separated from a red policy area only by a public right-of-way;
or
- c. within ½ mile of a planned or existing Bus Rapid Transit route
including the Corridor Connectors.

4. The Planning Board may grant a waiver of the commercial use
requirement if:

- a. the maximum residential density allowed is used; and
- b. the commercial space requirement would result in particular or
unusual practical difficulty, exceptional or undue hardship, or
significant economic burden.

* * *

Sec. 4. Division 59-4.4 is amended as follows:

Division 4.4. Residential Zones

* * *

Section 4.4.2. Optional Method Development

* * *

A. Optional Method MPDU Development

* * *

1. Development Approval Procedure

Site plan approval under Section 7.3.4 is required unless a Mixed-Use
Housing Community plan is approved under Section 7.3.7.

* * *

Sec. 5. DIVISION 59-4.5 is amended as follows:

Division 4.5. Commercial/Residential Zones

* * *

Section 4.5.4. Optional Method Development

The CRT and CR zones allow development under the optional method.

A. General Requirements

1. Procedure for Approval

A sketch plan must be approved under Section 7.3.3, unless a Signature Business Headquarters plan is approved under Section 7.3.5, [or] a Biohealth Priority Campus plan is approved under Section 7.3.6, or a Mixed-Use Housing Community plan is approved under Section 7.3.7. A site plan must be approved under Section 7.3.4 for any development on a property with an approved sketch plan.

* * *

Sec. 6. DIVISION 59-4.6 is amended as follows:

Division 4.6. Employment Zones

Section 4.6.4. Optional Method Development

The LSC and EOF zones allow development under the optional method.

A. General Requirements

1. Procedure for Approval

A sketch plan must be approved under Section 7.3.3, unless a Signature Business Headquarters plan is approved under Section 7.3.5, [or] a Biohealth Priority Campus plan is approved under Section 7.3.6, or a Mixed-Use Housing Community plan is approved under Section 7.3.7. A site plan must be approved under Section 7.3.4 for any development on a property with an approved sketch plan.

* * *

Sec. 7. DIVISION 59-7.3 is amended as follows:

Division 7.3. Regulatory Approvals

* * *

Section 7.3.3. Sketch Plan

A. Applicability and Description

1. Development under optional method in the CRT, CR, EOF, or LSC zone requires approval of a sketch plan, unless the development is approved as a Signature Business Headquarters plan under Section 7.3.5, [or] a Biohealth Priority Campus plan under Section 7.3.6[,], or a Mixed-Use Housing Community plan under Section 7.3.7.

* * *

Section 7.3.7. Mixed-Use Housing Community Plan

A. Applicability and Description

A Mixed-Use Housing Community plan provides a detailed overview of a proposed Mixed-Use Housing Community. A Mixed-Use Housing Community plan review will be used to determine if the proposed development satisfies current laws, regulations, and this Chapter, and substantially conforms with the intent of the applicable master plan and approved guidelines.

B. Application Requirements

1. Ownership

- a. An applicant must own the subject property or be authorized by the owner to file the application.
- b. If any land or right-of-way encompassed by a Mixed-Use Housing Community plan application is owned or controlled by the State, County, or any other entity or agency, a written agreement or authorization from that entity or agency must be submitted with the Mixed-Use Housing Community plan application.

2. A Mixed-Use Housing Community plan application must include:

- a. a legally binding commitment or other evidence accepted by the Planning Director that the Mixed-Use Housing Community will meet the requirements of Section 3.3.4;
- b. an application form and fees required by the Planning Director;
- c. a vicinity map at 1" = 200", and a site map showing existing buildings, structures, circulation routes, significant natural features, historic resources, and zoning and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;
- d. a list of abutting and confronting property owners in the State tax records;
- e. a list of any civic, homeowners, and renters associations that are registered with the Planning Department and located within ½ mile of the site;
- f. documentation of property interest in the proposed development site under Section 7.3.7.B.1 and, if applicant is not the property owner, documentation from the property owner authorizing the application;
- g. a statement of justification outlining how the proposed development satisfies the standards and criteria required to grant the application;
- h. verification that the applicant has posted notice on the property, notified affected properties, and held a pre-submittal community meeting that followed the Planning Department's Administrative Procedures for Development Review process;
- i. a Traffic Statement or Study accepted by the Planning Director, if not submitted with a previous or concurrent application;

- j. environmental documentation or exemption for:
 - i. an approved Natural Resources Inventory/Forest Stand Delineation;
 - ii. a Stormwater Management Concept Application or, if required, a Water Quality Plan Application; and
 - iii. a final Forest Conservation Plan application;
- k. existing and proposed dry and wet utility plan;
- l. plans of proposed development showing:
 - i. use, ground-floor layout, building footprints, massing, and heights of all on-site buildings and structures, and approximate footprints and height for buildings located on abutting and confronting lots;
 - ii. required open spaces and recreational amenities;
 - iii. detailed layout and dimensions for all sidewalks, trails, paths, roadways, parking, loading, and bicycle storage areas;
 - iv. grading;
 - v. landscaping and lighting; and
- m. a development program and inspection schedule detailing the construction schedule for the project.

3. The applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness within 3 business days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.

4. The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness within 2 business days after receipt.

5. Once the Planning Director verifies that the application is complete, the applicant must file the final application with the Planning Director, who will accept the application and establish a hearing date under Section 7.3.7.C.

6. Public notice is required under Division 7.5.

C. Hearing Date

The Planning Board must schedule a public hearing to begin 60 to 65 days after the date an application is accepted. If the next regularly scheduled hearing date would fall after the 60- or 65-day period due to a holiday or recess, then the next regularly scheduled hearing date should be used. The applicant may request an extension with Planning Director approval. Any extension of the public hearing must be noticed on the hearing agenda with the new public hearing date indicated.

D. Review and Recommendation

1. State and County Agencies

a. Reviewing State and County agencies and utilities must submit comments within 15 days after the date an application is accepted. If no comments are submitted within that time, the reviewing agency or utility's portion of the application is deemed approved.

b. The applicant must submit revised drawings to address the comments a minimum of 25 days before the date of the hearing. The Planning Director may extend the deadline if the applicant

submits a written request within 5 days after the revised drawings were due.

2. Planning Director

The Planning Director must publish a report and recommendation a minimum of 10 days before the Planning Board hearing.

3. Withdrawal of an Application

The Planning Board must send a notice to all parties entitled to notice of the hearing when an applicant withdraws an application for an Mixed-Use Housing Community plan.

E. Necessary Findings

To approve a Mixed-Use Housing Community plan, the Planning Board must find that the proposed development:

1. satisfies any previous approval that applies to the site, unless exempt under Section 3.3.4 or amended;
2. satisfies the applicable use and development standards and general requirements of this Chapter;
3. satisfies the applicable requirements of Chapter 19 and Chapter 22A;
4. provides safe, well-integrated parking, circulation patterns, building massing, and site amenities;
5. substantially conforms with the intent of the applicable master plan, existing and approved or pending adjacent development, the requirements of this chapter, and any guidelines approved by the Planning Board that implement the applicable plan;
6. if on a property in a master plan area that requires staging based on Non-Auto Driver Mode Share (NADMS), is exempt from the staging requirement if:

- a. the applicant agrees to enter into a Transportation Demand Management plan that provides an action plan for substantial achievement of the applicable NADMS goal;
 - b. parking below the minimum required under Section 6.2.4 is provided; and
 - c. transit, bicycle, and pedestrian infrastructure required by the applicable stage of the master plan is funded in the Capital Improvements Program or Consolidated Transportation Program, or provided by the applicant; and
7. will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

F. Decision

1. The Planning Board must act upon the close of the record of the public hearing by majority vote of those present to approve, approve with modifications or conditions, or deny the application. The Planning Board must issue a resolution reflecting its decision within 7 days of the Planning Board vote.
2. Any party aggrieved by a decision of the Planning Board may file a petition for judicial review of the decision within 30 days after the Planning Board's action.
3. Within 30 days of submission, the final Mixed-Use Housing Community plans must be certified by the Planning Director to confirm that the drawings reflect the Planning Board's approval. If the certified plans do not address or comply with the Planning Board's approval, the plans will be rejected with comments for the applicant to

address. If no action is taken by the Planning Director within 30 days,
the plan is deemed approved and certified.

G. Conforming Permits

For any development requiring a Mixed-Use Housing Community plan, DPS must
not issue a sediment control permit, building permit, or use-and-occupancy permit
unless the Planning Board has approved a Mixed-Use Housing Community plan
and a bond has been approved under Section 7.3.7.K.4.

H. Duration of Approval

1. A Mixed-Use Housing Community plan expires unless a certified
Mixed-Use Housing Community plan is approved by the Planning
Director within 24 months after the date the resolution is mailed.
2. A Mixed-Use Housing Community plan does not become effective
until a record plat, if required, is recorded that satisfies any approved
subdivision plan for the subject property. If no record plat is required,
then the Mixed-Use Housing Community plan becomes effective
upon certification under Section 7.3.6.F.3.
3. Development activities under Section 7.3.6 must satisfy the certified
Mixed-Use Housing Community plan and any conditions of approval.
4. If the Planning Board approves a Mixed-Use Housing Community
plan, the applicant must have a building permit application, accepted
by DPS, that includes the core and shell of the principal building
within two years of the date of the Planning Board's resolution.
Within two years after DPS accepts the building permit application
that includes the core and shell of the principal building, the applicant
must obtain that building permit.
5. The deadlines under Section 7.3.6.H may be extended with approval
of the Planning Board by up to 18 months.

6. If an applicant fails to comply with any of the deadlines within this section, the Mixed-Use Housing Community plan approval shall be revoked. The applicant may request reinstatement of a revoked approval within 30 days of revocation. After holding a hearing on the reinstatement, the Planning Board may reinstate the approval and extend the deadline for good cause shown.

I. Recording Procedures

The certified Mixed-Use Housing Community plan and Planning Board resolution must be maintained in the permanent files of the Planning Department.

J. Amendments

Any property owner may apply for a Mixed-Use Housing Community plan amendment to change a certified Mixed-Use Housing Community plan. There are two types of amendments: a major and a minor amendment.

1. Major Amendment

a. A major amendment includes any request to:

- i. increase density or height by more than that allowed under a minor amendment (Section 7.3.6.J.2);
- ii. decrease open space;
- iii. deviate from a condition of approval; or
- iv. alter a basic element of the plan.

b. Public notice is required under Division 7.5.

c. A major amendment must follow the same hearing procedures and satisfy the same necessary findings as the original Mixed-Use Housing Community plan.

2. Minor Amendment

a. A minor amendment includes any request to:

- i. increase density by up to 10% or 15,000 square feet, provided the increase is less than or equal to the total mapped density, including any density increases or bonuses;
- ii. increase height by up to 10%, provided the height is less than or equal to the height and any increases allowed under Section 3.5.8.D;
- iii. change an ancillary use, a parking or loading area, landscaping, sidewalk, recreational facility or area, configuration of open space, or any other plan element that will have a minimal effect on the overall design, layout, quality or intent of the plan; or
- iv. a reduction in approved parking to satisfy Article 59-6, but not any change that prevents circulation on any street or path.
- b. Public notice is required under Division 7.5.
- c. A minor amendment may be approved by the Planning Director without a public hearing if no objection to the application is received within 15 days after the application notice is sent. If an objection is received within 15 days after the application notice is sent, and the objection is considered relevant, a public hearing is required. A public hearing must be held under the same procedures as an original application.

K. Compliance and Enforcement

- 1. If the Planning Board finds, after holding a public hearing or designating a hearing officer to hold a public hearing, that a property

under development is not in compliance with a certified Mixed-Use Housing Community plan, it may:

- a. impose a civil fine or administrative civil penalty authorized by Chapter 50 (Section 50.10.6.D);
- b. suspend or revoke the non-compliant portion of the Mixed-Use Housing Community plan approval;
- c. order a compliance program that would permit the applicant to take corrective action to satisfy the certified Mixed-Use Housing Community plan;
- d. allow the applicant to propose modifications to the certified Mixed-Use Housing Community plan; or
- e. take any combination of these actions.

2. If the Planning Board or its designee finds that the applicant has failed to comply with a compliance program approved under Section 7.3.6.K.1.c, the Planning Board may, without holding any further hearing, take any of the actions identified in Section 7.3.6.K.1.a through Section 7.3.6.K.1.e.

3. If the Planning Board suspends or revokes all or any portion of a Mixed-Use Housing Community plan, DPS must immediately suspend any applicable building permit under which construction has not been completed or withhold any applicable use-and-occupancy permit, until the Planning Board reinstates the applicable portion of the Mixed-Use Housing Community plan or approves a new plan for the development.

4. The Planning Board may require the applicant to post a commercially acceptable form of surety securing compliance with and full implementation of specified features of the certified Mixed-Use

360 Housing Community plan in an amount set by the Planning Board. If
361 such surety is required, DPS must not issue a building permit or use-
362 and-occupancy permit until such surety is accepted.

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Sec. 8. DIVISION 59-7.5 is amended as follows:

Division 7.5. Notice Standards

Section 7.5.1. Notice Required

Notice is required for each application according to the following table:

Application	Newspaper	Pre-Submittal Meeting	Application Sign	Application Notice	Hearing Notice	Resolution Notice	Building Permit Sign Notice	Website Posting
* * *								
Regulatory Approvals								
* * *								
Site Plan		X	X	X	X	X		X
Signature Business Headquarters Plan		X	X	X	X	X		X
Biohealth Priority Campus Plan		X	X	X	X	X		X
<u>Mixed-Use Housing Community</u>		X	X	X	X	X		X
* * *								
Amendments to Approvals								
* * *								
Minor Site Plan Amendment				X				X
Major Signature Business Headquarters Plan Amendment			X	X	X	X		X

Minor Signature Business Headquarters Plan Amendment				x				
Major Biohealth Priority Campus Plan <u>Amendment</u>			x	x	x	x		x
Minor Biohealth Priority Campus Plan <u>Amendment</u>				x				
<u>Major Mixed-Use Housing Community Plan Amendment</u>			<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>x</u>
<u>Minor Mixed-Use Housing Community Plan Amendment</u>				<u>x</u>				

368 **KEY:** x = Required

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370 **Sec. 9. Effective date.** This ordinance becomes effective 20 days after the
371 date of Council adoption.

372 **Sec. 10. Short Title.** This text amendment may be cited as “Opening
373 Pathways to Economic Necessity (O.P.E.N.).”

This is a correct copy of Council action.

Judy Rupp
Clerk of the Council