



DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Marc Elrich
County Executive

Scott Bruton
Director

MEMORANDUM

February 15, 2024

TO: Andrew Friedson, Council President
Montgomery County Council

FROM: Scott Bruton, Director *SB*
Department of Housing and Community Affairs

SUBJECT: Annual Report on the Montgomery County Right of First Refusal Program

The Department of Housing and Community Affairs (DHCA) administers Montgomery County's Right of First Refusal (ROFR) Program. In effect for more than forty years, Section 53A-4 of the Montgomery County Code established that the owner of any rental housing property with four or more units must give the County, the Housing Opportunities Commission (HOC), and any certified tenant organization at the property a right of first refusal to purchase. The ROFR provides the County, the HOC, or a certified tenant organization with the right to match a contract in all executed significant terms.

When DHCA receives a ROFR notice, its Multifamily Housing Division uses five guiding principles to analyze the property:

- **Purpose:** Is there a public purpose associated with the purchase of the property that cannot be met otherwise?
- **Preservation:** Are units at risk of exiting the County's affordable housing stock, and what are the tools that can be used to preserve affordability including the capacity for the purchase be executed?
- **Property:** Does the property have redeeming or important facets to warrant a ROFR purchase, such as is it in a high-cost market area, is it near a metro or other resources, is it a rare vacant property that can meet a public purpose?
- **Price:** Is the price manageable for the County, given that the County must have cash available in the Housing Initiative Fund (HIF) for the full sales price and have HIF loan capacity to support long term affordability in addition to the current pipeline?
- **Partner:** As the County does not retain ownership in multifamily rental properties, does DHCA have a capable partner to whom to transfer ownership who can finance the property with minimal assistance; is fiscally capable and has experience managing/owning multifamily properties; and are the partner's goals compatible with those of DHCA?

Office of the Director

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DHCA received ROFR notices for 22 rental properties representing 3,619 units in 2023. The properties represented \$980,921,174 in total transactions and an average price of almost \$271,347 per unit. The following narrative explanations provide additional details about ROFR outcomes for 2023. Table 1 contains a list of all ROFR notices received in 2023. Table 2 contains comparative ROFR data for the years 2015-2023. Table 3 contains ROFR notices received by location for the years 2015-2023.

Total properties for which DHCA received ROFR notices: 22 properties / 3,615 units.

Exercised the Right of Refusal: 0

Issued Certificate of Compliance: 22 Properties with a total of 3,615 units

A Certificate of Compliance is a document issued by DHCA that is recorded in the Montgomery County Land Records certifying that transaction has met the requirements of Chapter 53-A, which enables the planned sale to proceed. Before issuing a Certificate of Compliance, DHCA evaluates each property with the guiding principles detailed above and determines not to act. Certificates of Compliance were recorded for all 22 properties for which the County did not execute its Right of First Refusal.

Though DHCA did not exercise their Right of First Refusal for any property in 2023, we maintained affordability in multiple projects using additional tools. For any properties receiving County financing for acquisition, covenants were subsequently recorded in relation to the new financing.

Preserved Existing Affordable Housing Through Agreements Not to Convert: 2 properties with a total of 189 units

Three properties received Agreements Not to Convert as an alternative to the Right of First Refusal. Under an Agreement Not to Convert, the purchaser agrees not to convert the rental units to condominiums, not to displace residents for at least 5 years after the transfer of the property, and to comply with agreed limitations on rent increases. Properties receiving Agreements Not to Convert are also issued Certificates of Compliance.

- Hampshire Village – Victory Housing, the non-profit partner in the Property purchased the Low Income Housing Tax Credit (LIHTC) syndicator interest and is responsible for complying with the remaining Extended Use Agreement compliance period requirements. In this transaction, the purchaser entered into new regulatory agreements with the County that required Covenants to retain the same level of affordability as currently exists on the property.
- MHP Frederick Avenue - For many affordable developments, the Owner of a Property will create a separate corporate entity to receive LIHTC credits and to operate the development. These transfers of ownership from the original Owner to the Owner-controlled new entity also trigger ROFR compliance. In those situations, the existing covenants, and requirements of LIHTC often exceed the requirements of the County's Agreements Not to Convert. That was the case with one ROFR review this past year. MHP N. Frederick was issued Agreements Not to Convert to comply with the transfer of ownership interests for its respective LIHTC syndication requirements. The LIHTC and Extended Use

Agreements exceed the Agreement Not to Convert requirements.

Preserved Existing Affordable Housing through Project Acquisition or Preservation Financing: 3 properties with a total of 549 units.

Though the County did not execute its Right of First Refusal to purchase, DHCA was made aware of these projects through the ROFR process and used other tools in the toolbox to maintain affordability. DHCA assisted in the financing of the following developments:

- Hampshire Village – DHCA provided Affordable Housing Opportunities Fund (AHOF) financing of \$4,175,000 and HOME Investment Partnership financing of \$5,000,000 to assist in the purchase and preservation of this property. Victory Housing, as a purchaser of this property, preserved 110 one- and two-bedroom units at 50% of Area Median Income (AMI) for 88 units and 30% of AMI for 22 units.
- Falkland Chase North – DHCA provided AHOF financing of \$8,540,000 and HIF financing of \$10,900,000 along with a “Standard Per Unit PILOT” to assist in the acquisition of this Property. The 3-year short term partial acquisition funding will retain affordability at 170 units at or below 60% of AMI. The new owner also retained the existing rental agreement for 12 units at 40% and 60% of AMI. DHCA will work with the new Purchaser, Arlington Partnership for Affordable Housing, Inc. (APAH), on the redevelopment of the Property.
- Falkland Chase South and West – DHCA provided a “Negotiated PILOT” for this property to assist in the purchase of the property and the new Purchaser retained the existing rental agreement for 135 units at 65% of AMI.

Rental Agreements: 2 properties with a total of 493 units (103 maintained as affordable).

- Towne Crest Apartments – The new Purchaser accepted assignment of the existing rental agreement for 33 units at 50% of AMI. That term will end in 2027, but may, and is expected to be, extended.
- Montgomery Apartments – The new Purchaser accepted assignment of the existing rental agreements to extend affordability of 70 units. Those units were historically Moderately Priced Dwelling Units whose covenants had expired in 2022. All units will be maintained with affordability at 65% of AMI. All affordable units are one- and two- bedroom units.

Properties with Current MPDUs: 0 properties

No ROFR submissions were properties with existing Moderately Priced Dwelling Units (MPDU) covenants.

Transactions Did Not Close: 0 properties

NB: Some of the data contained in tables 1, 2, and 3 changed for years 2015-2022 since the publication of the 2022 ROFR report due to data cleaning research conducted by a DHCA Summer Fellow during the summer of 2023.

Attachments

Table 1: List of All ROFR Notices Received in 2023

Project Name	City	Total Units	Status
Governor Square Apartment	Gaithersburg	238	Certificate of Compliance
Huntington at King Farm	Rockville	434	Certificate of Compliance
8308 Eastridge Avenue	Takoma Park	6	Certificate of Compliance
60 Pine Avenue	Takoma Park	10	Certificate of Compliance
Hampshire Village	Silver Spring	111	Agreement Not to Convert - participated in financing acquisition with AHOF funding for 88 units at 50% of AMI and 22 units at 30% of AMI
8212 Houston Court	Takoma Park	4	Certificate of Compliance
521, 523, and 525 Dale Drive	Silver Spring	4 residential, 2 commercial	Certificate of Compliance
4526-4530 Avondale Street	Bethesda	8	Certificate of Compliance
Chelsea Park	Gaithersburg	87	Certificate of Compliance
Falkland Chase North	Silver Spring	170	Certificate of Compliance - participated in financing of acquisition with AHOF funding, HIF funding, and Standard PILOT for 170 unit at 60% of AMI and assigned rental agreement to new owner for 12 units at 40% and 60% of AMI
Towne Crest Apartments	Gaithersburg	107	Certificate of Compliance - rental agreement assigned to new owner for 33 units at 50% of AMI
Falkland Chase South & West	Silver Spring	268	Certificate of Compliance - participated in financing acquisition with Negotiated PILOT and rental agreement assigned to new owner for 135 units at 65% of AMI
The Elm Apartment	Bethesda	456	Certificate of Compliance
Huntington at King Farm	Rockville	402	Certificate of Compliance
7803 Lockney	Takoma Park	6	Certificate of Compliance
The Montgomery Apartments	Bethesda	386	Certificate of Compliance - rental agreement assigned to new owner for 70 units at 65% of AMI
Rock Creek Terrace	Rockville	526	Certificate of Compliance
626 Silver Spring Avenue	Silver Spring	4	Certificate of Compliance
MHP Frederick Avenue	Gaithersburg	78	Agreement Not to Convert - Transfer of interest for LIHTC compliance
6624 Poplar Avenue	Takoma Park	5	Certificate of Compliance
Sligo House and Corona Apartments	Silver Spring	107	Certificate of Compliance
Amber Commons Apartments	Gaithersburg	198	Certificate of Compliance

Table 2: ROFR Data 2015-2023

Year	ROFRs Received	Total Units	Total Dollar Amount	Average Cost/Unit	Number of Properties on which ROFR was Exercised	Number of Agreements Not to Convert	Number of Rental Agreements Assumed of Created	Number of No Action Properties with MPDUs	Number of Capital Investments with Regulatory Agreement	PILOT Agreements	Transactions that did not Close
2023	22	3,615	\$980,921,174	\$271,347	0	2	4	0	3	1	0
2022	46	7,025	\$2,284,606,100	\$325,211	2 ^a	0	2	4	3	1	1
2021	62	12,725	\$3,632,135,923	\$284,726	1	7	3	12	3	4	2
2020	60	6,570	\$1,706,197,500	\$259,695	1	4	5	0	0	7	0
2019	44 ^b	7,498	\$1,767,103,200	\$235,677	0	0	4	0	0	0	2
2018	37	7,490	\$1,589,908,278	\$212,271	4	0	0	1	3	0	1
2017	34 ^c	7,205	\$1,504,336,753	\$208,791	1	1	5	3	1	0	3
2016	38 ^d	7,875	\$1,942,150,996	\$246,622	2	0	4	3	1	0	2
2015	28	5,748 ^e	\$1,123,992,200 ^e	\$195,545 ^e	1	1	2	1	3	0	3

^a The County exercised ROFR for Scarborough Square Townhouses and Apts. and acquired it in partnership with City of Rockville and Rockville Housing Enterprises (RHE). The County exercised ROFR for Westchester West on February 17, 2023.

^b DHCA received 48 ROFR notices in 2019 but 4 were determined to be exempt, so their information is not included in ROFRs Received, Total Units, Total Dollar Amount, and Average Cost/Unit.

^c DHCA received 35 ROFR notices in 2017 but 1 was determined to be exempt, so its information is not included in ROFRs Received, Total Units, Total Dollar Amount, and Average Cost/Unit.

^d DHCA received 39 ROFR notices in 2016 but 1 was determined to be exempt, so its information is not included in ROFRs Received, Total Units, Total Dollar Amount, and Average Cost/Unit.

^e The HOC property RAD6 Sandy Spring Meadows (52 units) filed a ROFR notice for its RAD conversion, which did not include a purchase price. Therefore, this ROFR is not included in Total Units, Total Dollar Amount, or Average Cost/Unit.

Table 3: ROFR Notices Received by Location 2015-2023

Location	2015	2016	2017	2018	2019	2020	2021	2022	2023
Adelphi	0	0	0	0	0	0	0	0	0
Bethesda	3	4	4	1	0	3	7	3	3
Chevy Chase	0	0	0	0	1	0	4	3	0
Clarksburg	0	0	0	0	0	0	1	0	0
Coleville	0	0	0	0	0	0	0	0	0
Damascus	0	0	1	0	0	2	0	0	0
Derwood	0	0	0	0	0	0	1	0	0
Fairland	0	0	0	0	0	0	0	0	0
Gaithersburg	3	6	4	2	5	2	7	7	5
Germantown	0	2	1	7	4	0	8	1	0
Hillandale	0	0	0	0	0	0	0	0	0
Montgomery Village	0	0	2	0	0	0	0	0	0
North Bethesda	1	0	2	0	3	0	1	3	0
Rockville	0	5	1	0	2	5	7	5	3
Silver Spring	15	12	13	20	12	26	6	14	6
Olney	1	0	0	2	2	0	1	0	0
Takoma Park	6	9	6	5	12	21	17	10	5
Wheaton	0	0	0	0	3	1	2	0	0
White Oak	0	0	0	0	0	0	0	0	0
Total	29	38	34	37	44	60	62	46	22