

Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

ZTA 22-07: RESIDENTIAL MULTI-UNIT LOW DENSITY, R-30 – OPTIONAL METHOD DEVELOPMENT

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment 22-07 could have a small, favorable impact on racial and social inequities in the County if it increases the supply of affordable housing units for low- and moderate-income households.

PURPOSE OF RESJ IMPACT STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a process that focuses on centering the needs, leadership, and power of communities of color and low-income communities with a goal of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF ZTA 22-07

The purpose of ZTA 22-07 is to award developers increased flexibilities in new construction or redevelopment of properties in Residential 30 (R-30) zones in exchange for increasing the share of units allocated to affordable housing. Toward this end, ZTA 22-07 amends the optional method development standards for apartment building projects in the R-30 zone that allocate at least 30 percent of their units to the Moderately Priced Dwelling Unit (MPDU) Program.

The intent of the R-30 zone is to provide designated areas of the County for higher-density, multi-unit residential uses. The R-30 zone is one of several zoning categories in which optional methods of development is allowed. Optional method development may allow more density and greater flexibility than is allowed under the standard method and generally requires more discretionary review from Montgomery Planning.³

MPDUs refer to residential units offered for sale or rent to eligible low- or moderate-income households through the Department of Housing and Community Affairs.⁴ The MPDU program requires that 12.5 to 15.0 percent of new housing units in projects with 20 or more units to be affordable to households earning up to 65 to 70 percent of the area median income (AMI).^{5,6} The required affordability period for MPDUs is 30 years for units sold and 99 years for units rented.⁷

Per the Planning Board's approval, the increased flexibilities (modified standards) that ZTA 22-07 would provide to developers in exchange for increasing MPDUs from 12.5 to 30.0 percent include the following:

- Increased lot coverage from 18 to 30 percent for apartments providing at least 30 percent MPDUs;
- Increased building heights of apartments from 35 to 45 feet;
- Reduced setbacks where the Planning Board may reduce front or side street setback for surface parking lots; and
- New provisions for common open space under optional method developments allowing design flexibility.

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ZTA 22-07 was introduced to the County Council on June 14, 2022.

AFFORDABLE HOUSING, DEVELOPMENT, AND RACIAL EQUITY

Inequities in wealth, homeownership, and income by race and ethnicity have fostered a greater need for affordable housing among Black and Latinx residents in Montgomery County. These same inequities also foster disparities in construction business ownership such that apartment developers that could potentially benefit from ZTA 22-07 are predominantly White. This section describes inequities in housing and construction business ownership by race and ethnicity to begin to unpack the potential RESJ implications of ZTA 22-07.

Housing Inequities. Historically, zoning laws and other government policies have restricted the supply of affordable housing and exacerbated the racial wealth gap.⁸ Collectively exclusionary zoning, restrictive covenants, redlining, New Deal housing policies, the Federal Housing Administration and GI bill created two disparate housing systems where:⁹

- Government subsidized White-only enclaves enabled many White families to build home equity and inter-generational wealth; and
- Underinvested communities for People of Color where residents actually paid more for lesser housing and fewer amenities and were in turn denied opportunities to build family wealth.

Although the Fair Housing Act of 1968 eliminated racially explicit segregation in housing, the policies that built the segregated housing market “have never been remedied and their effects endure.”¹⁰ The wealth gap by race and ethnicity is staggering in the Metropolitan Washington region where White households had more than 80 times the wealth of Black households and 21 times the wealth of Latinx households in 2014.¹¹ Moreover, residents of color still experience discrimination in the housing market due to predatory lending practices and bias in the rental and real estate markets.¹² As such, racial disparities in housing security by race and ethnicity, as described below, persist.¹³

- Nationwide, there are only 30 units of housing affordable and available for every 100 extremely low-income Americans. “Extremely low-income family” is defined as a very-low-income family whose income does not exceed the higher of the poverty guidelines or 30 percent of the median family income for the area.¹⁴
- Federal housing assistance only serves one-quarter of those who qualify for it.
- The U.S. loses two affordable apartments each year for everyone created.
- State and local housing programs can be quite volatile because they are often dependent on revenue from market-driven private sources instead of federal funding.

Montgomery County households with low-incomes experience high rates of housing insecurity. More than 20,000 households earning under \$31,000 per year are severely house burdened because they spend more than half their incomes on rent.¹⁵ Additionally, 80 percent of County households earning up to \$70,000 per year are housing cost burdened, meaning they expend more than 30 percent of their household income on housing.¹⁶ Local data on three metrics of housing insecurity – rent-burdened households, rental assistance during the pandemic, and homelessness – demonstrate that Black and Latinx households in Montgomery County are especially housing insecure.

- Among renter households in 2019, rent-burden (expending 30 percent or more of income on rent) was experienced among 66 percent of Latinx renters and 60 percent of Black renters compared to 40 percent of White renters and 33 percent of Asian renters.¹⁷

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- Among COVID Relief Rental Program clients (approved as of April 4, 2021), 43 percent were Black, and 37 percent were Latinx while 9 percent were White, and 3 percent were Asian or Pacific Islanders.¹⁸
- Among adults experiencing homelessness in 2020, 60 percent were Black, 30 percent were White, 17 percent were Latinx, and 5 percent were Asian and Pacific Islanders.¹⁹ Among families experiencing homelessness, 78 percent were Black, 15 percent were White, 9 percent were Latinx, and 2 percent were Asian.²⁰

Construction Business Ownership Inequities: Prior research shows a variety of factors adversely impact people of color as they consider starting and growing businesses, including disparities in educational attainment, personal wealth, access to mainstream capital, and exposure to entrepreneurship in family and social networks.²¹ For example, a study by the Small Business Administration found that Black- and Latinx-owned businesses are more likely to have been denied credit, to receive only a portion of the funding requested, or to refrain from applying for needed funding out of fear their applications will be rejected.²² Other factors that explain the disparity in capital include discriminatory lending practices, less wealth to leverage, recent financial challenges, and lower credit scores.²³

Available local data provides evidence of disparities in entrepreneurship by race and ethnicity, particularly with respect to revenue. For example, while the 2012 Survey of Business Owners indicated that Black and Latinx firms each accounted for 15 percent of local firms in Montgomery County and Asian firms accounted for 14 percent of County firms, Asian firms accounted for 4 percent of local business revenue, Black firms accounted for 1.7 percent of local business revenue, and Latinx firms accounted for 1.5 percent of local business revenue.²⁴

The 2014 Montgomery County Disparity Study also demonstrates disparities by race and ethnicity in the Metropolitan Washington, D.C. construction market serving Montgomery County.²⁵ Among the 3,499 construction businesses able to potentially serve as prime contractors for construction projects with the County, 79 percent of such businesses were White-owned compared to 11 percent that were Black-owned, 6 percent that were Latinx-owned, 3 percent that were Asian-owned, and a half-percent that were Indigenous-owned.²⁶

ANTICIPATED RESJ IMPACTS

Within the context of racial and ethnic inequities in housing and construction business ownership, it is important to consider two questions to understand the anticipated impact of ZTA 22-07 on RESJ in the County:

- Who are the primary beneficiaries of this ZTA?
- What racial and social inequities could passage of this ZTA weaken or strengthen?

For the first question, OLO considered the demographics of households needing affordable housing and developers. Since Black and Latinx households experience the highest rates of housing insecurity in the County based on measures of housing burden, requests for rental assistance, and homelessness, OLO anticipates Black and Latinx residents will disproportionately benefit from the increase in MPDUs in R-30 zones anticipated by this ZTA. Since it remains unclear, however, how many new MPDUs might result from this ZTA as well as how many of these units would be affordable to the lowest income residents, the favorable impact of this ZTA on Black and Latinx residents could be small.

With White-owned businesses accounting for 8 in 10 construction businesses in the Washington Metropolitan Region, OLO anticipates White apartment developers will disproportionately benefit from the changes in zoning allowed under ZTA 22-07. Nevertheless, it is important to note that building affordable housing units is a complicated process where government subsidies alone are inadequate to make the building of apartments with more affordable units profitable.²⁷

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Most affordable housing financing deals involve a mortgage, tax credits, and two or three other sources of money. Moreover, it is not uncommon for developers to rely on upward of 20 financing sources as they try to fill the gap between what it costs to build affordable housing and the financial resources, they have available.²⁸ Thus, while this ZTA primarily benefits White developers, its benefits are small relative to the constraints associated with apartment building.

For the second question, OLO considered data on housing and entrepreneurship disparities. OLO finds that ZTA 22-07 could diminish disparities in housing insecurity by race and ethnicity, but its impact is minimal given the few additional MPDUs likely to result. OLO also finds that ZTA 22-07 is unlikely to have a measurable impact on disparities in construction business ownership by race and ethnicity as the benefits primarily accrued to White apartment developers are relatively small given the costs of building apartments in general and affordable housing units more specifically.

Taken together, OLO anticipates ZTA 22-07 could narrow racial and social disparities in the County as its benefits to Black and Latinx residents in need of affordable housing exceeds its benefits to predominantly White-owned construction businesses. Overall, OLO anticipates a small impact of this ZTA on RESJ in the County.

RECOMMENDED AMENDMENTS

The Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments to bills aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements.²⁹ OLO anticipates that ZTA 22-07 could narrow racial and social inequities in the County if it increases the supply of affordable housing units for low- and moderate-income households. OLO, however, anticipates a small impact of this ZTA on RESJ in the County.

Should the Council seek to improve the magnitude of the favorable RESJ impact of ZTA 22-07 with companion legislation or recommended amendments, the following policies can be considered:

- **Create incentives for the building of MPDUs for lower-income households (below 65 – 70 percent AMI).** Data from the 2020 Montgomery County Preservation Study demonstrates a shortage of affordable housing in the County, especially for low-income households. It notes that “(t)he private market does not effectively provide rental housing options that are affordable to renters in the lower income bands, as 78 percent of households earning below 65 percent of AMI are housing cost-burdened, paying more than 30 percent of their household” income.³⁰ The 2017 Rental Housing Study also found a deficit of 20,830 units for households earning below 30 percent of AMI.³¹ Policy actions aimed at increasing the number of units affordable to households earning well below the MPDU affordability threshold of 65 to 70 AMI will help increase access to affordable housing for County households with the lowest incomes and unmet need for affordable housing.
- **Create incentives for the building of larger (3 bedroom +) MPDU units.** The 2017 Rental Housing Study finds larger households with the lowest incomes experience difficulty in finding affordable units of appropriate size.³² Only a small number of three bedroom or more units are affordable to households earning below 80 percent of AMI and new developments typically do not have three-bedroom units at all. Policy actions aimed at increasing the number of larger MPDU units with three bedrooms or more will help increase access to affordable housing for County households with the largest households and unmet need for affordable housing.

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CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the bill under consideration.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools.

<https://www.raciaequitytools.org/glossary>

² Ibid

³ Chapter 59, Section 4.1. Montgomery County Zoning Ordinance (2014)

⁴ Chapter 25A. Housing, Moderately Priced. Montgomery County Regulations.

⁵ Aseem Nigam, Annual Report on MPDU's Covering Calendar Year 2020, Department of Housing and Community Affairs.

https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/affordable/publications/mpdu/annual_report_mpdu-2020.pdf

⁶ Montgomery County Department of Housing and Community Affairs–2022 Rent and Income Limits. Area Median Income (for a family of four) is \$142,300 (effective June 15, 2022).

⁷ Montgomery Planning. 2020. Montgomery County Preservation Study. July 16.

<https://montgomeryplanning.org/wp-content/uploads/2020/07/200716-Mont.-County-Preservation-Presentation.pdf>

⁸ Richard Rothstein, The Color of Law: A Forgotten History of How Government Segregated America, 2017

⁹ Oliver, Melvin and Thomas Shapiro, “Disrupting the Racial Wealth Gap” Sociology for the Public, May 7, 2019; Kilolo Kijakazi, et. al, The Color of Wealth in the Nation's Capitol, November 2016. As Cited in OLO RESJ statement for ZTA 21-07. As Cited in OLO RESJ statement for ZTA 21-07. https://www.urban.org/sites/default/files/publication/85341/2000986-2-the-color-of-wealth-in-the-nations-capital_8.pdf

¹⁰ Rothstein

¹¹ Kijakazi

¹² Keeanga-Yamahtta Taylor, Race for Profit: How Banks and the Real Estate Industry Undermine Black Homeownership, 2019; Urban Institute, Exposing Housing Discrimination. As Cited in OLO RESJ statement for ZTA 21-07.

<https://www.urban.org/features/exposing-housing-discrimination>

¹³ Poverty USA. A History of Discrimination, Redlining, And Affordable Housing Work in Washington, D.C. CCHD 50th Anniversary. 2022 Poverty USA.org. <https://www.povertyusa.org/stories/affordable-housing-dc>

¹⁴ Leading Age. 2021. HUD posts FY2021 Income Limits. April 2. <https://leadingage.org/regulation/hud-posts-fy2021-income-limits>

¹⁵ Montgomery County Department of Housing and Community Affairs. 2021. Annual Report for Fiscal Year 2020 and 2021, July 1, 2019 – June 30, 2021. <https://www.montgomerycountymd.gov/DHCA/reports.html>

¹⁶ Ibid

¹⁷ American Community Survey, Gross Rent as a Percentage of Household Income, 2019 1-Year Estimates, United States Census Bureau. Table ID S0201.

¹⁸ Linda McMillan memorandum to County Council regarding FY22 Operating Budget: Homeless Services, Rental Assistance, and Housing Initiative, May 11, 2021 (Agenda Item #30, Joint Committee Worksession), see page circle 13.

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20210512/20210512_30.pdf

¹⁹ Ibid, see page circle 8.

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²⁰ Ibid

²¹ Joyce Klein, “Bridging the Divide: How Business Ownership Can Help Close the Racial Wealth Gap” Washington: The Aspen Institute 2017; Robert Fairlie and Alicia Robb, “Why Are Black-Owned Businesses Less Successful than White-Owned Businesses? The Role of Families, Inheritance, and Business Human Capital,” Journal of Labor Economics 25(2) 2017; “Kaufmann Compilation: Research on Race and Entrepreneurship,” Kaufmann Foundation, December 2016

²² Stephen Roblin, “COVID-19 Recovery Outlook: Minority-Owned Businesses,” Office of Legislative Oversight, September 21, 2020. <https://www.montgomerycountymd.gov/OLO/Resources/Files/2020%20Reports/COVID-19RecoveryOutlook-MinorityOwnedBusinesses.pdf>

²³ Robert Fairlie and Alicia Robb, “Disparities in Capital Access between Minority and Non-Minority-Owned Businesses: A Troubling Reality of Capital Limitations Faced by MBE’s,” U.S. Department of Commerce, January 2010 <https://www.mbda.gov/sites/default/files/migrated/files-attachments/DisparitiesinCapitalAccessReport.pdf>

²⁴ Jupiter Independent Research Group, Racial Equity Profile Montgomery County, OLO Report 2019-7, Office of Legislative Oversight, July 15, 2019 https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2019/20190611/20190611_3.pdf

²⁵ Griffin and Strong, Montgomery County Disparity Study, 2014 <https://www.montgomerycountymd.gov/cat/services/disparitystudy.html>

²⁶ Ibid

²⁷ IBID

²⁸ Blumenthal, Pamela, Ethan Handelman, Alexandra Tilsley. 2016. How affordable housing gets built. Urban Institute. July 26.

²⁹ Bill 27-19, Administration – Human Rights – Office of Racial Equity and Social Justice – Racial Equity and Social Justice Advisory Committee – Established, Montgomery County Council.

³⁰ Montgomery County Preservation Study

³¹ Montgomery County Rental Housing Study, June 2017 https://montgomeryplanning.org/wp-content/uploads/2017/07/RHS_Strategy-Document.pdf

³² Ibid