PHED Item 3
February 23, 2009
Worksession 5

MEMORANDUM

TO: Planning, Housing and Economic Development Committee

FROM: Michael Faden, Senior Legislative Attorney
Linda McMillan, Senior Legislative Analyst

SUBJECT: **Worksession 5:** Bill 38-07, Moderately Priced Housing - Amendments
Bill 13-07, Moderately Priced Housing - Amendments

Bill 13-07, Moderately Priced Dwelling Units (MPDU) - Amendments, sponsored by Councilmembers Leventhal, Andrews and Trachtenberg, was introduced on June 26, 2007. A public hearing was held on July 19, 2007, and a Committee worksession was held on July 23, 2007.

Bill 13-07 would allow the Director of the Department of Housing and Community Affairs (DHCA) to set aside certain specially equipped moderately priced dwelling units (MPDUs) for eligible disabled persons. Bill 13-07 also would repeal the Director's authority to approve "buyouts" or alternative payment agreements, in which a developer pays a certain amount into the County Housing Initiative Fund (HIF) instead of building some or all of the required MPDU's.

Bill 38-07, Moderately Priced Housing - Amendments, sponsored by the Council President at the request of the County Executive, was introduced on December 11, 2007. A public hearing was held on February 5, 2008. Committee worksessions were held on September 25, October 13, November 24, and December 1, 2008.

Bill 38-07 would revise the standards for setting sales prices for moderately priced dwelling units. The bill would also repeal the Director's authority to approve "buyouts". In addition, the bill would revise the control periods for the sale or rent of MPDUs, the standards for building certain MPDUs in alternative locations, and various other standards, procedures, and terminology in the MPDU law.

The Office of Legislative Oversight released its Study of Moderately Priced Dwelling Unit Program Implementation (OLO Report 2007-9) on July 19, 2007. This Committee held worksessions on that report on November 5, 2007, and March 13, 2008. Many of the issues presented in Bill 38-07 were raised and discussed in the OLO report.

Combined redraft

At the most recent Committee worksession, held on December 1, 2008, the Committee finished its review of pending amendments. The attached redraft combines the 2 pending bills, which differed in only one significant respect (the amendment in Bill 13-07 to give priority for certain accessible units to eligible households with disabled persons), and incorporates all amendments that the Committee approved, including technical amendments submitted by DHCA staff.

In the order they appear in the combined redraft, this Bill includes the following substantive (and other technical, conforming, and stylistic) amendments to the MPDU law, County Code Chapter 25A:

§25A-2 Statement of policy

Lines 13-14 adds policy that MPDU's should be dispersed in each subdivision as well as the County generally. This is guidance to DHCA and the Planning Board but does not require any specific formula or distance.

Lines 23-37 replaces current "no loss or penalty" and "reasonable prospects of profit" language with broader "financially viable mixed-income communities" goal.

§25A-4 Income and eligibility standards

Lines 134-137 gives Executive discretion whether to use different income eligibility standards for buyers and renters (current law requires it). Removes Executive's discretion to set different income standards for higher-cost housing.

Lines 140-145 directs DHCA to draft regulations to give priority to eligible households with disabled persons for units that federal law requires to be accessible to mobility-impaired persons.

Lines 146-149 deletes Executive's authority to base eligibility standards on the units' sale price or rent (later provisions turn this around and base the unit's price on the eligible household's income).

§25A-5 Requirement to build MPDU's

Lines 168-175 clarifies that regulations can set minimum specifications for MPDU's, such as unit size, number of bedrooms and bathrooms, and other minimum requirements.

Lines 193-195 requires that, if the number of market-rate units in a subdivision is increased from the base density, the subdivision must include at least one additional MPDU.

§25A-5A Alternative payment agreement

Lines 291-312 continues DHCA's "buyout" authority with significant changes:

- buyouts are limited to high-rise buildings (defined in lines 94-95 as buildings higher than 4 stories);
- the Alternative Review Committee (ARC) no longer must issue findings before DHCA can approve a buyout – in fact, the ARC has no further role in the buyout approval process;
- the former policy-based standards for approving buyouts, such as high condominium fees or site-specific environmental constraints (see lines 262-274), are deleted, effectively making the buyout an entitlement for any high-rise developer who wants to pay the price;
- the buyout payment is a percentage, set by regulation approved by the Council, of the difference between the sales prices for the market price units and MPDU's;
- buyout funds received should be used to buy or build MPDU's in the same planning area as the original development, but DHCA could use them elsewhere.

§25A-5B Alternative location agreement

Lines 322-345 modifies DHCA's alternative site approval authority in several ways:

- deletes the former policy-based standards for approving alternative sites (see lines 322-327);
- requires the alternative site to include at least 15% MPDU's (15% of the units in the original building), instead of "at least the same number" of MPDU's;
- allows the alternative MPDU's to be located at more than one location;
- caps the number of MPDU's at the alternative locations at 1/3 of the total number of units there;
- requires the MPDU's at the alternative sites to have at least as many bedrooms as would have been required at the original site.

§25A-6. Optional zoning provisions; waiver of requirements.

Lines 367-368 deletes requirement that the Department of Permitting Services or the Planning Board consult DHCA before waiving the number of MPDU's to be built because of zoning constraints (this waiver has rarely if ever been issued).

§25A-7. Maximum prices and rents.

Lines 381-391 removes specific production cost-based criteria for setting MPDU maximum sale prices (see lines 392-436), and replaces them with a general standard of affordability to households of moderate income, with details to be filled in by regulation. The new maximum

price standards would not apply to any MPDU for which DHCA approved an offering agreement before this Bill takes effect (see lines 761-765).

Line 438 excludes tenant-paid parking from maximum MPDU rents set by DHCA.

Lines 444-448 deletes DHCA authority to set different rents for high-rise MPDU's.

Lines 449-465 deletes specific criteria for setting MPDU maximum rents.

§25A-8. Sale or rental of units.

Lines 552-553 lets DHCA waive preference for MPDU-eligible buyers for good cause in age-restricted developments.

Lines 578-581 requires each MPDU bought or leased by a government agency or non-profit organization to be occupied by an eligible household.

Issues

1) **Maximum sale price: standards and effective date (grandfathering)** We expect the Maryland-National Capital Building Industry Association (BIA) to offer further objections and alternatives to the Bill's maximum sale price provisions (©16, lines 386-391) and the timing of their implementation (see lines 761-765). Attorneys Kaufman and Brown, representing the developers of Clarksburg Town Center, also objected to the timing (see letter, ©31-33) and asked for a specific exemption or grandfather clause.

2) **Change in development type** DHCA staff (see email, ©34, first bullet) questioned whether a buyout agreement would still be in effect if a building is changed from a condominium to a rental building. Of the 3 options DHCA staff suggested, Council staff recommends option 1: the builder must provide the required number of rental MPDU's, either on-site or off-site.

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Bill No. 13/38-07
Concerning: Moderately Priced Housing - Amendments
Revised: 1-30-09 Draft No. 4
Introduced: June 26, 2007/December 11, 2007
Expires: June 11, 2009
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Leventhal, Andrews, and Trachtenberg/
Council President at the Request of the County Executive

AN ACT to:

(1) [[allow]] require the Director of the Department of Housing and Community Affairs to set aside certain specially equipped moderately priced dwelling units for eligible disabled persons;

[[(1)]] (2) revise the standards for setting sales prices for moderately priced dwelling units (MPDUs);

[[(2)]] (3) [[repeal]] modify the authority of the Director of the Department of Housing and Community Affairs to allow an applicant to pay into the Housing Initiative Fund instead of building MPDUs in a proposed subdivision;

[[(3)]] (4) revise the control periods for the sale or rent of MPDUs;

[[(4)]] (5) revise the standards for building certain MPDUs in alternative locations; and

[[(5)]] (6) revise other standards and procedures for, and generally amend County law governing, the moderately priced dwelling unit program.

By amending
Montgomery County Code
Chapter 25A, Housing, Moderately Priced
Sections 25A-2, 25A-3, 25A-4, 25A-5, 25A-5A, 25A-5B, 25A-6, 25A-7, 25A-8, 25A-9, 25A-10, and 25A-12

[[By repealing
Section 25A-5A]]

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 25A-2, 25A-3, 25A-4, 25A-5, 25A-5A, 25A-5B, 25A-6, 25A-7, 25A-8, 25A-9, 25A-10, and 25A-12 are amended[[, and Section 25A-5A is repealed,]] as follows:

25A-2. Declaration of Public Policy.

The County Council hereby declares [[it to be]] that the public policy of the County is to:

(1) Implement the [Montgomery] County housing policy and the general plan goal of providing for a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and [family] household sizes;

* * *

(3) Assure that moderately priced housing is dispersed within the County consistent with the general plan and area master plans, and dispersed within each individual subdivision;

(4) Encourage the construction of moderately priced housing by allowing optional increases in density in order to reduce land costs and the costs of optional features that may be built into [such] moderately priced housing; [[and]]

(5) Require that all subdivisions of [35] 20 or more dwelling units include a minimum number of moderately priced units of varying sizes with regard to [family] household needs, and encourage subdivisions with fewer than [35] 20 units to do the same[;] [[.]] and

[(6) Ensure that private developers constructing moderately priced dwelling-units under this Chapter incur no loss or penalty as a result thereof, and have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus provision of Chapter 59 and, in certain zones, the optional development standards;

28 (7) Allow developers of residential units in qualified projects more
29 flexibility to meet the broad objective of building housing that low-
30 and moderate-income households can afford by letting a developer,
31 under specified circumstances, comply with this Chapter by
32 contributing to a County Housing Initiative Fund.]
33 (6) strive for, by the use where applicable of the MPDU density bonus
34 allowed under Chapter 59 and, in certain zones, optional development
35 standards and other flexible development practices, financially viable
36 mixed-income communities that offer a broad range of housing
37 opportunities throughout the County.
38 **25A-3. Definitions.**
39 * * *
40 (g) Control period means the time an MPDU is subject to either resale
41 price controls and owner occupancy requirements or maximum rental
42 limits, as provided in Section 25A-9. [The control period is 30 years
43 for sale units and 99 years for rental units, and begins on the date of
44 initial sale or rental. If a sale MPDU is sold to an eligible person
45 within 30 years after its initial sale, and if (in the case of a sale MPDU
46 that is not bought and resold by a government agency) the unit was
47 originally offered for sale after March 1, 2002, the unit must be
48 treated as a new sale MPDU and a new control period must begin on
49 the date of the sale.]
50 (1) For an MPDU originally offered for sale or rent before March 1,
51 2002:
52 (A) the control period for each sale MPDU is 10 years after
53 the date of the original purchase; and

54 (B) the control period for each rental MPDU is 20 years after
55 the date of original rental.
56 [[(2) For an MPDU originally offered for sale or rent in a Growth
57 Policy area before March 1, 2002:
58 (A) the control period for each sale MPDU is 15 years after the
59 date of the original purchase; and
60 (B) the control period for each rental MPDU is 15 years after
61 the date of original rental.]]
62 [[(3)]] (2) For an MPDU originally offered for sale or rent between
63 March 1, 2002 and March 31, 2005:
64 (A) the control period for each sale MPDU is 10 years after the
65 original settlement date and 10 years after the settlement
66 date of each later sale if that sale occurs during the existing
67 control period; and
68 (B) the control period for each rental MPDU is 20 years after
69 the date of original rental.
70 [[(4)]] (3) For an MPDU originally offered for sale or rent on or after
71 April 1, 2005:
72 (A) the control period for each sale MPDU is 30 years after the
73 date of the original purchase and 30 years after the
74 settlement date of each later sale if that sale occurs during
75 the existing control period; and
76 (B) the control period for each rental unit is 99 years after the
77 date of original rental.
78 (h) Date of original [sale] purchase means the date of settlement [for
79 purchase of a moderately priced dwelling unit].

80 (i) Date of original rental means the date [[the first lease agreement for a
81 moderately priced dwelling unit takes effect]] that covenants binding
82 the MPDU rental units were recorded in the County land records.
83 * * *
84 (l) Dwelling unit means a building or part of a building that provides
85 complete living facilities for one [family] household, including at a
86 minimum facilities for cooking, sanitation, and sleeping.
87 (m) Eligible [person] buyer means a [person or] household whose income
88 qualifies the [person or] household to [participate] buy a sale unit in
89 the MPDU program, and who holds a valid certificate of eligibility
90 from the Department which entitles the [person or] household to buy
91 [or rent] an MPDU during the priority marketing period.
92 (n) Eligible renter means a household whose income qualifies the
93 household to rent a unit in the MPDU program.
94 (o) High rise building means any multiple-family residential or mixed-use
95 building that is higher than 4 stories.
96 [(n)] (p) Housing Initiative Fund means a fund established by the County
97 Executive to achieve the purposes of Section 25B-9.
98 [(o)] (q) Low income means levels of income within the income range for
99 "very-low income families" established from time to time by the U.S.
100 Department of Housing and Urban Development for the Washington
101 metropolitan area, under federal law, or as defined by [executive
102 regulations] regulation.
103 [(p)] (r) Moderate income means those levels of income, established [in
104 executive regulations] by regulation, which prohibit or severely limit
105 the financial ability of persons to buy or rent housing in
106 [Montgomery] the County.

107 [(q)](s) Moderately priced dwelling unit or MPDU means a dwelling unit
108 which is:
109 (1) offered for sale or rent to eligible [persons] buyers or renters
110 through the Department, and sold or rented under this Chapter;
111 or
112 (2) sold or rented under a government program designed to assist
113 the construction or occupancy of housing for [families]
114 households of low or moderate income, and designated by the
115 Director as an MPDU.
116 [(r)](t) Optional density bonus provision means any increase in density
117 under Chapter 59, in a zoning classification that allows residential
118 development, above the amount permitted in the base or standard
119 method of development density, whether by exercise of the optional
120 provisions of Chapter 59 or by any special exception.
121 [(s)](u) Planning Board means the Montgomery County Planning Board.
122 (v) Planning Area means a geographic area of the County defined in the
123 County's Growth Policy or otherwise defined by the Planning Board.
124 (w) Policy Area means a geographic area of the County defined in the
125 County's Growth Policy.
126 [(t)] (x) Priority marketing period is the period an MPDU must be offered
127 exclusively for sale or rent to eligible [persons] buyers or renters, as
128 provided in Section 25A-8.
129 **25A-4. Income and eligibility standards.**
130 (a) The County Executive must set and annually revise standards of
131 eligibility for the MPDU program by regulation. These standards
132 must specify moderate-income levels for varying sizes of households
133 which will qualify a [person or] household to buy or rent an MPDU.

134 The Executive [must] may set different income eligibility standards
135 for buyers and renters and for age-restricted housing. [The Executive
136 may set different income eligibility standards for buyers and renters of
137 higher-cost or age-restricted housing, as defined by regulation.] [[The
138 regulations may also allow the Director to set aside certain units for
139 eligible persons with disabilities if the units are specially equipped for
140 occupancy by disabled persons.]] For any MPDU that is required by
141 federal law to be accessible to persons with a mobility impairment, the
142 regulation must require the MPDU to be offered to each eligible
143 applicant whose household is appropriately sized for the MPDU and
144 includes a person with a mobility impairment before the MPDU is
145 offered to any other applicant.
146 (b) In establishing standards of eligibility and moderate-income levels,
147 the Executive must consider:
148 [(1) the price established for the sale or rental of MPDUs under this
149 Chapter,]
150 [(2)] (1) the term and interest rate that applies to the financing of
151 MPDUs,
152 [(3)] (2) the estimated levels of income necessary to carry a mortgage
153 on an MPDU, and
154 [(4) family] (3) household size and number of dependents.
155 * * *
156 **25A-5. Requirement to build MPDU's; agreements.**
157 * * *
158 (b) Any applicant, in order to obtain a building permit, must submit to the
159 Department of Permitting Services, with the application for a permit, a

160 written MPDU agreement approved by the Director and the County
161 Attorney. Each agreement must require that:
162 * * *
163 (3) in [multi-family] multiple-family dwelling unit subdivisions,
164 the number of efficiency and one-bedroom MPDUs each must
165 not exceed the ratio that market-rate efficiency and one-
166 bedroom units respectively bear to the total number of market-
167 rate units in the subdivision.
168 [[(4)]] The Director must not approve an MPDU agreement that
169 reduces the number of bedrooms required by this subsection in any
170 MPDU, or that does not meet minimum specifications for MPDUs
171 established by regulation from time to time. The minimum
172 specifications may include the overall basic unit size, the number of
173 bedrooms and bathrooms, minimum room dimensions, and other
174 minimum requirements for appliances, interior finishes, and exterior
175 architectural features.
176 (c) When the development at one location is in a zone where a density
177 bonus is allowed; and
178 (1) is covered by a plan of subdivision,
179 (2) is covered by a plan of development or a site plan, or
180 (3) requires a building permit to be issued for construction,
181 the required number of moderately priced dwelling units is a variable
182 percentage that is not less than 12.5 percent of the total number of
183 dwelling units at that location, not counting any workforce housing
184 units required under Chapter 25B. The required number of MPDUs
185 must vary according to the amount by which the approved
186 development exceeds the normal or standard density for the zone in

which it is located. Chapter 59 permits bonus densities over the presumed base density where MPDUs are provided. If the use of the optional MPDU development standards does not result in an increase over the base density, the Director must conclude that the base density could not be achieved under conventional development standards, in which case the required number of MPDUs must not be less than 12.5 percent of the total number of units in the subdivision. If the number of market rate units is increased from the base density, the subdivision must include at least one additional MPDU. The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPDUs, as follows:

* * *

(e) The Director may approve an MPDU agreement that[:]:

[(1) allows an applicant to reduce the number of MPDUs in a subdivision only if the agreement meets all requirements of Section 25A-5A; or

(1) allows an applicant to reduce the number of MPDUs in a subdivision only if the agreement meets all requirements of Section 25A-5A; or

(2)] (2) allows an applicant to build the MPDUs at another location only if the agreement meets all requirements of Section [25A-5B] [[25A-5A]] 25A-5B.

[[* * *]]

(f) * * *

(3) Notwithstanding any other provisions of [the] this subsection, the County may reject an election by an applicant to transfer land to the County in whole or in part whenever the public

214 interest would best be served thereby. [Any rejection and the
215 reasons for the rejection may be considered by the] The
216 Planning Board or the Director of Permitting Services may
217 consider any rejection and the reasons for it in deciding whether
218 to grant [the applicant] a waiver [of this Chapter] under Section
219 [25A-7(b)] 25A-6(b).
220 (4) Any transfer of land to the County [hereunder] under this
221 subsection is not subject to [Section 11B-33] Chapter 11B, and
222 any land so transferred is not property subject to [Section 11B-
223 31A] Chapter 11B regulating the disposal of surplus land. The
224 Director may dispose of the [lots] land in a manner that furthers
225 the objectives of this Chapter.
226 * * *
227 (k) The applicant must execute and [record] cause to be recorded
228 covenants assuring that:
229 * * *
230 (l) (1) In any purchase and sale agreement and any deed or instrument
231 conveying title to an MPDU, the grantor must clearly and
232 conspicuously state, and the grantee must clearly and
233 conspicuously acknowledge, that:
234 (A) the conveyed property is [a] an MPDU and is subject to
235 the restrictions contained in the covenants required under
236 this Chapter during the control period until the
237 restrictions are released; and
238 * * *
239 (3) When a deed or other instrument conveying title to an MPDU is
240 recorded in the land records, the grantor must cause to be filed

241 in the land records a notice of sale for the benefit of the County
242 in the form provided by [state] State law.
243 (m) Nothing in this Chapter prohibits an applicant from voluntarily
244 building MPDUs, as calculated under subsection (c), in a development
245 with fewer than 20 dwelling units at one location, and in so doing
246 from qualifying for an optional method of development under Chapter
247 59. A development with fewer than 20 dwelling units where an
248 applicant voluntarily builds MPDUs must comply with any
249 procedures and development standards that apply to a larger
250 development under this Chapter and Chapter 59. Sections 25A-5A[,
251 25A-5B,], 25A-5B, and 25A-6(b) do not apply to an applicant who
252 voluntarily builds MPDU['']s under this subsection and in so doing
253 qualifies for an optional method of development.
254 **[25A-5A. Alternative payment agreement.**
255 (a) The Director may approve an MPDU agreement that allows an
256 applicant, instead of building some or all of the required number of
257 MPDUs in the proposed subdivision, to pay to the Housing Initiative
258 Fund an amount computed under subsection (b), only if an Alternative
259 Review Committee composed of the Director, the Commission's
260 Executive Director, and the Director of Park and Planning, or their
261 respective designees, by majority vote finds that:
262 (1) either:
263 (A) an indivisible package of services and facilities available
264 to all residents of the proposed subdivision would cost
265 MPDU buyers so much that it is likely to make the
266 MPDUs effectively unaffordable by eligible buyers; or

267 (B) environmental constraints at a particular site would
268 render the building of all required MPDUs at that site
269 economically infeasible; and
270 (2) the public benefit of additional affordable housing outweighs
271 the value of locating MPDUs in each subdivision throughout
272 the County, and accepting the payment will further the
273 objective of providing a broad range of housing opportunities
274 throughout the County.
275 (b) Any payment to the Housing Initiative Fund under this Section must
276 equal or exceed 125% of the imputed cost of land for each unbuilt
277 MPDU. Except as further defined by Executive regulation, the
278 imputed land cost must be calculated as 10% (for high-rise units) or
279 up to 30% (for all other housing units) of the actual sale price charged
280 for each substituted unit. If the substituted unit will be a rental unit,
281 the Director must calculate an imputed sale price under applicable
282 regulations, based on the rent actually charged.
283 (c) Any payment to the Housing Initiative Fund under this Section may
284 be used only to buy or build more MPDUs in the same planning
285 policy area (as defined in the County Growth Policy) as the
286 development for which the payment was made, and must not be used
287 to reduce the annual County payment to the Fund.
288 (d) Any subdivision for which a payment is made under this Section is
289 not eligible for any density bonus for which it would otherwise be
290 eligible under Chapter 59.]
291 **25A-5A. Alternative payment agreement.**
292 (a) The Director may approve an MPDU agreement that allows an
293 applicant for development of a high-rise residential or mixed-use

294 building, instead of building some or all of the required number of
295 MPDUs for sale in the proposed subdivision, to pay to the Housing
296 Initiative Fund an amount computed under subsection (b).
297 (b) Any payment to the Housing Initiative Fund under this Section must
298 be based, for each unbuilt MPDU, on a percentage, which must not
299 exceed 100%, of the difference between the actual sale price charged
300 for each market price unit and the price that would be charged for the
301 same unit if it were an MPDU. The Executive by regulation must
302 further specify the methodology to compute this payment, including
303 the percentage of the price difference which applies, and when this
304 payment must be made.
305 (c) Any payment to the Housing Initiative Fund under this Section should
306 be used to buy or build the same number or more MPDUs in the same
307 planning area as the development for which the payment was made,
308 and must not be used to reduce the annual County payment to the
309 Fund.
310 (d) Any subdivision for which a payment is made under this Section is
311 not eligible for any density bonus for which it would otherwise be
312 eligible under Chapter 59.
313 **[25A-5B.] [[25A-5A.]] 25A-5B. Alternative location agreement.**
314 (a) The Director may approve an MPDU agreement that allows an
315 applicant for development of a high-rise residential or mixed-use
316 building (the "original building,") instead of [[building]] locating
317 some or all of the required number of MPDUs [on-site,] [[within the
318 boundaries of the project plan, preliminary plan, or site plan for the
319 development,]] in the original building, to provide [at least the same

320 number of] MPDUs at [[another location]] one or more other locations
321 in the same planning [[or policy]] area, only if the Director finds that:
322 [(1) the public benefit of locating MPDUs at the proposed
323 alternative location outweighs the value of locating MPDUs in
324 each subdivision throughout the County; and
325 (2) building the MPDUs at the proposed alternative location will
326 further the objective of providing a broad range of housing
327 opportunities throughout the County.]
328 (1) the applicant has agreed to provide at one or more proposed
329 alternative locations:
330 (A) a number of MPDUs equal to at least [[20]] 15 percent of
331 the total approved units in the [[high-rise]] original
332 building, and
333 (B) at least one more MPDU than would have been built if
334 12.5% of the units in the original building were MPDU's;
335 (2) no more than [[30 percent]] one-third of the total number of
336 units at the proposed alternative location or locations will be
337 MPDUs; and
338 (3) the MPDUs at the proposed alternative location or locations
339 have at least as many bedrooms as would have been required
340 under Section 25A-5(b)(3) if all MPDUs had been located on
341 the site of the [[high-rise]] original building.
342 (b) To satisfy the requirements of this Section, an applicant may:
343 (1) build, or convert from non-residential use, the required number
344 of new MPDUs at [[a site]] one or more sites approved by the
345 Director;

346 (2) buy, encumber, or transfer, and rehabilitate as necessary,
347 existing market rate housing units that meet all standards for
348 use as MPDUs; or
349 (3) return to MPDU use, and rehabilitate as necessary, existing
350 MPDUs for which price or rent controls have expired.
351 (c) Any subdivision for which an alternative location agreement is
352 approved under this Section is not eligible for any density bonus for
353 which it would otherwise be eligible under this Chapter or Chapter 59.
354 [[(c)]] (d) Each agreement under this Section must include a schedule,
355 binding on the applicant, for timely completion or acquisition of the
356 required number of MPDUs, in accordance with Section 25A-5(i).
357 [[* * *]]
358 **25A-6. Optional zoning provisions; waiver of requirements.**
359 * * *
360 (b) *Waiver of requirements.* Any applicant who presents sufficient
361 evidence to the Director of Permitting Services in applying for a
362 building permit, or to the Planning Board in submitting a preliminary
363 plan of subdivision for approval or requesting approval of a site or
364 other development plan, may be granted a waiver from part or all of
365 Section 25A-5. The waiver must relate only to the number of MPDUs
366 to be built, and may be granted only if the Director of Permitting
367 Services or the Board[, after consulting with the Department of
368 Housing and Community Development Affairs,] finds that the
369 applicant cannot attain the full density of the zone because of any
370 requirements of [the zoning ordinance] Chapter 59 or the
371 administration of other laws or regulations. When any part of the land
372 that dwelling units cannot be built on for physical reasons is used to

373 compute permitted density, the applicant's inability to use the optional
374 density bonus provisions is not in itself grounds [for waiving the] to
375 waive any MPDU [requirements] requirement. Any waiver must be
376 strictly construed and limited.

377 **25A-7. Maximum prices and rents.**

378 Moderately priced dwelling units must not be sold or rented at prices or rents
379 that exceed the maximum prices or rents established under this Section.

380 (a) *Sales.*

381 [(1)] The sale price of any MPDU, [including closing costs and
382 brokerage fees,] including any closing costs paid by the builder,
383 must not exceed an applicable maximum sale price
384 [[established]] which the Director must set from time to time
385 [by the County Executive in regulations adopted under method
386 (1)] in accordance with Executive regulations. The applicable
387 regulation must identify the methodology which the Director
388 must use to set maximum sales prices so that the resulting
389 prices are affordable to households of moderate incomes,
390 considering those households' ability to buy and finance
391 housing.

392 [(2) The County Executive in issuing MPDU sale price regulations
393 must seek appropriate information, such as current general
394 market and economic conditions and the current minimum sale
395 prices of private market housing in the County, and must
396 consult with the building industry, employers, and professional
397 and citizen groups to obtain statistical information which may
398 assist in setting a current maximum sale price. The County
399 Executive must, from time to time, consider changes in the

400 income levels of persons of low and moderate income and their
401 ability to buy housing. The County Executive must also
402 consider the extent to which, consistent with code requirements,
403 the cost of housing can be reduced by the elimination of
404 amenities, the use of cost-reducing building techniques and
405 materials, and the partial finishing of certain parts of the units.
406 (3) The County Executive must issue maximum sale prices for
407 MPDUs which continue in effect until changed by later
408 regulation. The maximum sale prices must be based on the
409 necessary and reasonable costs required to build and market the
410 various kinds of MPDUs by private industry. The sale prices
411 for any succeeding year must be based on a new finding of cost
412 by the County Executive, or on the prior year's maximum
413 MPDU price adjusted by the percentage change in the relevant
414 cost elements indicated in the Consumer Price Index.
415 (4) The County Executive may make interim adjustments in
416 maximum MPDU sale prices when sufficient changes in costs
417 justify an adjustment. Any interim adjustment must be based
418 on the maximum MPDU sale prices previously established,
419 adjusted by the percentage change in the relevant cost elements
420 indicated in the Consumer Price Index.
421 (5) If the Director finds that other conditions of the design,
422 construction, pricing, or amenity package of an MPDU project
423 will lessen the ability of eligible persons to afford the MPDUs,
424 the Director, under executive regulations, may restrict those
425 conditions that will impose excessive mandatory homeowner or
426 condominium fees or other costs that reduce the affordability of

427 the MPDUs.

428 (6) The Director may let an applicant increase the sale price of a
429 MPDU when the Director, under executive regulations, finds in
430 exceptional cases that a price increase is justified to cover the
431 cost of modifying the external design of the MPDUs when a
432 modification is necessary to reduce excessive marketing impact
433 of the MPDUs on the market rate units in the subdivision. The
434 Director must approve the amount of any increase for this
435 purpose, which must not exceed 10 percent of the allowable
436 base price of the unit.]

437 (b) *Rents.*

438 [(1)] The rent, [including parking but] excluding utilities and parking
439 when they are paid by the tenant, for any MPDU must not
440 exceed a maximum rent for the dwelling unit set [by] by the
441 Director in accordance with Executive regulations. Different
442 rents must be set for units when utility costs are paid by the
443 owner and included in the rent. Different rents may be set for
444 age-restricted units. [Different rents also may be set for high-
445 rise rental units, but those rents must not apply unless the
446 Director finds that no other reasonable means is available to
447 finance the building of all required MPDUs at a specific
448 development.]

449 [(2) The County Executive, in setting the maximum rent, must
450 consider the current cost of building MPDUs, available interest
451 rates and debt service for permanent financing, current market
452 rates of return or investments in residential rental properties,
453 operating costs, vacancy rates of comparable properties, the

454 value of the MPDU at the end of the control period, and any
455 other relevant information. The County Executive must consult
456 with the rental industry, employers and professional and citizen
457 groups to obtain statistical information and current general
458 market and economic conditions which may assist in setting a
459 current maximum rent. The County Executive must consider
460 the extent to which, consistent with County codes and housing
461 standards, the cost of rental housing can be reduced by the
462 elimination of amenities. The County Executive must also
463 consider from time to time changes in the income levels of
464 persons of low and moderate income and their ability to rent
465 housing.]

466 **25A-8. Sale or rental of units.**

467 (a) *Sale or rental to general public.*

468 (1) [Every] During the priority marketing period, every moderately
469 priced dwelling unit required under this Chapter must be
470 offered to [the general public for sale or rental to a good-faith
471 purchaser] an eligible buyer or renter to be used for his or her
472 own residence, except units offered for sale or rent with the
473 assistance of, and subject to the conditions of, a subsidy under a
474 federal, state or local government program, identified in
475 regulations, [adopted by the County Executive under method
476 (1)] whose purpose is to provide housing for persons of low or
477 moderate income.

478 (2) Before offering any moderately priced dwelling units, the
479 applicant must notify the Department of the proposed offering
480 and the date on which the applicant will be ready to begin the

481 marketing to eligible [persons] buyers or renters. The notice
482 must [set forth] specify the number of units offered, the
483 bedroom mix, the floor area for each unit type, [a description
484 of] the amenities offered in each unit, and [a statement of] the
485 availability of each unit for sale or rent, including information
486 regarding any mortgage financing available to buyers of the
487 designated unit. The applicant must also give the Department a
488 vicinity map of the offering, a copy of the approved
489 development, subdivision or site plan, as appropriate, and such
490 other information or documents as the Director finds necessary.
491 The Department must maintain a list of eligible [persons]
492 buyers of moderate income and, in accordance with procedures
493 established by the County Executive, must [notify eligible
494 persons] post a notice of the offering for eligible buyers and
495 renters.
496 (3) After receiving the offering notice, the Department must notify
497 the Commission of the offering. If the Department finds that
498 the offering notice is complete, it must decide whether the
499 offering of the units to eligible [persons] buyers or renters will
500 be administered by [lottery] random selection drawing or by
501 another method that will assure eligible [persons] buyers or
502 renters an equitable opportunity to buy or rent [a] an MPDU.
503 The Department must notify the applicant of the method and
504 when the 90-day priority marketing period for the MPDUs may
505 begin.
506 (4) The Executive may by regulation establish a buyer [and renter]
507 selection system which considers household size, County

residency, employment in the County, and length of time since the [[person]] household was certified for the MPDU program. Each eligible [person] buyer must be [notified of the availability of any MPDU which would meet that [[person's]] household's housing needs, and be] given an opportunity to buy [or rent] an MPDU during the priority marketing period in the order of that person's selection priority ranking.

(5) The priority marketing period for new units ends 90 days after the initial offering date approved by the Department. The priority marketing period for resold or rerented units ends 60 days after the Department notifies the seller of the approved resale price or vacancy of the rental unit. The Department may extend a priority marketing period when eligible [persons] buyers or renters are interested in buying or renting a unit.

(6) [Moderately priced dwelling units] MPDUs, except those built, sold, or rented under a federal, state, or local program designated by regulation, must not be offered for rent by an applicant during the priority marketing period, except in proportion to the market rate rental units in that subdivision as follows:

(A) In a subdivision containing only single-family dwellings, the proportion of rental MPDUs to all MPDUs must not exceed the proportion of market rate rental units to all market rate units.

* * *

[[(D)]] [Applicants] Each applicant must make a good-faith effort to enter into contracts with eligible [persons] buyers or renters

535 during the priority marketing period and for an additional
536 period necessary to negotiate with eligible [persons] buyers or
537 renters who indicate a desire to buy or rent an MPDU during
538 that period.

539 (7) Every buyer or renter of an MPDU must occupy the unit as his
540 or her primary residence during the control period. Each buyer
541 and renter must certify before taking occupancy that he or she
542 will occupy the unit as his or her primary residence during the
543 control period. The Director may require an owner who does
544 not occupy the unit as his or her primary residence to offer the
545 unit for resale to an eligible [person] buyer under [the resale
546 provisions of Section 25A-9] Section 25A-10.

547 * * *

548 (10) [An] During the priority marketing period, an applicant must
549 not sell [or lease] any unit without first obtaining a certificate of
550 eligibility from the buyer [or lessee]. A copy of each certificate
551 must be furnished to the Department and maintained on file by
552 the Department. The Director may waive this requirement in an
553 age-restricted development for good cause. Before the sale by
554 an applicant or by the Commission or a designated housing
555 agency or nonprofit corporation to any buyer of any MPDU
556 who does not possess a certificate of eligibility, the applicant,
557 the Commission, or the agency or corporation must ask the
558 Department whether the certificates on file show that the
559 proposed buyer had previously bought another MPDU. A
560 person who previously bought and owned an MPDU must not
561 buy a second MPDU unless no first-time buyer is qualified to

562 buy that unit. The Director may waive this restriction for good
563 cause.
564 (11) If an MPDU owner dies, at least one heir, legatee, or other
565 person taking title by will or by operation of law must occupy
566 the MPDU during the control period under this Section, or the
567 owner of record must sell the MPDU as provided in Section
568 25A-9. After the control period expires, the owner of record
569 must comply with Section 25A-9(c).
570 (b) *Sale or rental to government agencies or nonprofit corporations.*
571 (1) In view of the critical, long-term public need for housing for
572 [families] households of low and moderate income, the
573 Department, the Commission, or any other housing
574 development agency or nonprofit corporation designated by the
575 County Executive may buy or lease, for its own programs or
576 programs administered by it, up to 40 percent of all MPDUs
577 which are not sold or rented under any other federal, state, or
578 local program. Each MPDU bought or leased by the
579 Department, the Commission, or a designated housing agency
580 or nonprofit corporation must be occupied by an eligible
581 household. The Department or Commission may buy or lease
582 up to [[33]] 33.3 percent of the MPDUs not sold or rented under
583 any other federal, state, or local program. Any other designated
584 agency or corporation may buy or lease:
585 (A) any MPDU in the first [[33]] 33.3 percent that HOC has
586 not bought or leased, and
587 (B) the remainder of the 40 percent.

588 This option may be assigned to persons of low or moderate
589 income who are eligible for assistance under any federal, state,
590 or local program identified in regulations [adopted by the
591 Executive]. The Executive must, by regulation, adopt standards
592 and priorities for designating nonprofit corporations under this
593 subsection. These standards must require [[the]] each
594 corporation to demonstrate its ability to operate and maintain
595 MPDUs satisfactorily on a long-term basis.
596 * * *
597 **25A-9. Control of rents and resale prices; foreclosures.**
598 (a) *Resale price and terms.* Except for foreclosure proceedings, any
599 MPDU constructed or offered for sale or rent under this Chapter must
600 not be resold or refinanced during the control period for a price
601 greater than the original [selling] purchase price plus:
602 (1) A percentage of the unit's original [selling] purchase price equal
603 to the increase in the cost of living since the unit was first sold,
604 as determined by the Consumer Price Index;
605 (2) The [fair market value] documented cost of improvements
606 made to the unit between the date of original [sale] purchase
607 and the date of resale;
608 (3) An allowance for closing costs which were not paid by the
609 initial seller, but which will be paid by the initial buyer for the
610 benefit of the later buyer; and
611 (4) A reasonable sales commission if [the unit is not sold during the
612 priority marketing period to an eligible person from the
613 Department's eligibility list] a third-party licensed real estate
614 agent is used.

615 The resale price of an MPDU may be reduced if the physical
616 condition of the unit reflects abnormal wear and tear because of
617 neglect, abuse, or insufficient maintenance. Any personal property
618 transferred in connection with the resale of an MPDU must be sold at
619 its fair market value. In calculating the allowable resale price of an
620 MPDU which was originally offered for rent, the Department must
621 [estimate the price for which the unit would have been sold if the unit
622 had been offered for sale when it was first rented] calculate the current
623 affordable sales price as defined under Section 25A-7(a).

624 (b) *Resale requirements during the control period.*

625 (1) Any MPDU offered for resale during the control period must
626 first be offered exclusively for up to 60 days to the Department
627 and the Commission, in that order. The Department or the
628 Commission may buy a unit when funds are available. The
629 Department may buy a unit when the Director finds that the
630 Department's or a designated agency or corporation's buying
631 and reselling the unit will increase opportunities for eligible
632 [persons] buyers to buy the unit. If the Department or the
633 Commission does not buy the unit, the Department must [notify
634 eligible persons of the availability of a resale MPDU] post a
635 notice for eligible buyers of the availability of a resale MPDU.
636 The unit may be sold through either of the following methods:

637 (A) The Department may by [lottery] random selection
638 drawing establish a priority order under which eligible
639 [persons] buyers who express interest in buying the unit
640 may buy it at the approved resale price.

641 (B) The Department may notify the MPDU owner that the
642 owner may sell the unit directly to any eligible [person]
643 buyer under the resale provisions of this Chapter.
644 (2) A resale MPDU may be offered for sale to the general public
645 only after:
646 * * *
647 (B) all eligible [persons] buyers who express an interest in
648 buying it have been given an opportunity to do so.
649 (3) The Executive by regulation may adopt requirements for
650 reselling MPDUs. The regulations may require a seller to
651 submit to the Department for approval:
652 * * *
653 (B) a signed copy of the settlement sheet; [and]
654 (C) an affidavit signed by the seller and buyer attesting to the
655 accuracy of all documents and conditions of the sale[.];
656 and
657 (D) an affidavit signed by the buyer agreeing to comply with
658 all requirements of this Chapter.
659 * * *
660 (c) *First sale after control period ends.*
661 (1) If an MPDU originally offered for sale or rent after March 21,
662 1989, is sold or resold after its control period ends, upon the
663 first sale of the unit the seller must pay to the Housing Initiative
664 Fund one-half of the excess of the total [resale] fair market
665 sales price over the sum of the following:
666 (A) The original [selling] purchase price;

667 (B) A percentage of the unit's original [selling] purchase
668 price equal to the increase in the cost of living since the
669 unit was first sold, as determined by the Consumer Price
670 Index; [[and]]
671 (C) The [fair market value] documented cost of capital
672 improvements made to the unit between the date of
673 original [sale] purchase and the date of resale; and
674 (D) A reasonable sales commission if a third-party licensed
675 real estate agent was used.
676 (2) The Director must adjust the amount paid into the fund in each
677 case so that the seller retains at least $10,000 of the excess of
678 the resale price over the sum of the items in subsection
679 (c)(1)(A)-(D).
680 [(2)] (3) The Director must find that the price and terms of a sale
681 covered by subsection (c)(1) are bona fide and accurately
682 reflect the entire transaction between the parties so that the full
683 amount required under subsection (c)(1) is paid to the fund.
684 When the Director finds that the amount due the fund is
685 accurate and the Department of Finance receives the amount
686 due, the Department must terminate the MPDU controls and
687 execute a release of the restrictive covenants.
688 [(3)] (4) The Department and the Commission, in that order, may buy
689 an MPDU at any time during the control period, and may resell
690 the unit to an eligible [person] buyer. A resale by the
691 Department or Commission starts a new control period.
692 [(4)] (5) The Commission and any partnership in which the
693 Commission is a general partner need not pay into the Housing

694 Initiative Fund any portion of the resale price of any MPDU
695 that it sells.
696 (d) *Initial and later rent controls.* Unless previously sold under
697 subsection (c)(1), [MPDUs] any MPDU built or offered for rent under
698 this Chapter must not be rented for 99 years after the original rental at
699 a rent greater than that established by [Executive regulations]
700 regulation. Any MPDU (other than those built, sold, or rented under
701 any federal, state, or local program offered by the Commission)
702 offered for rent during the control period must be offered exclusively
703 for 60 days to one or more eligible [persons] renters, as determined by
704 the Department, for use as that [[person's]] household's residence,
705 and to the Commission. The Commission may assign its right to rent
706 such units to persons of low or moderate income who are eligible for
707 assistance under any federal, state, or local program identified [in
708 Executive regulations] by regulation.
709 (e) *Foreclosure or other court-ordered sales.* If an MPDU is sold
710 through a foreclosure or other court-ordered sale, a payment must be
711 made to the Housing Initiative Fund as follows:
712 * * *
713 (5) If the foreclosing lienholder either sells the MPDU to the
714 MPDU owner at the foreclosure sale or sells it to the MPDU
715 owner after the foreclosure sale has been ratified, the covenants
716 recorded against the MPDU must not be released and must
717 remain in effect for the remaining term of the covenants. A
718 payment to the Housing Initiative Fund must be required when
719 the first sale occurs after the control period ends, under

720 subsection (c) and the MPDU covenants or, if a later
721 foreclosure sale occurs, under this subsection.
722 [[All MPDU covenants]] Subject to paragraph (5), each MPDU
723 covenant must be released after the [[required]] payment required
724 under this Section is made [[into]] to the Housing Initiative Fund.
725 [[* * *]]
726 (f) *Waivers*. The Director may waive the restrictions on the resale and
727 re-rental prices for MPDUs if the Director finds that the restrictions
728 conflict with regulations of federal or state housing programs and thus
729 prevent eligible [persons] buyers or renters from buying or renting
730 units under the MPDU program.
731 (g) *Bulk transfers*. This section does not prohibit the bulk transfer or sale
732 of all or some of the sale or rental MPDUs in a subdivision within 30
733 years after the original rental or offering for sale if the buyer is bound
734 by all covenants and controls on the MPDUs.
735 * * *
736 **25A-10. [Executive regulations] Regulations; enforcement.**
737 (a) The Department must maintain a list of all moderately priced dwelling
738 units constructed, sold or rented under this Chapter. [; and the] The
739 County Executive may, from time to time, adopt regulations under
740 method [(1) necessary] (2) to administer this Chapter.
741 * * *
742 (e) In addition to or instead of any other available remedy, the Director
743 may take legal action to:
744 * * *

745 (2) require an owner to sell an MPDU owned or occupied in
746 violation of this Chapter to the County, the Commission, or an
747 eligible [person] buyer.

748 **25A-12. Annual report.**

749 Each year by [[March 15]] October 1 the Director must report to the
750 Executive and Council, for the previous [[calendar]] fiscal year:

751 (a) the number of MPDUs approved and built; and

752 (b) each [alternative payment agreement approved under Section 25A-5A
753 or] alternative payment agreement approved under Section 25A-5A or
754 alternative location agreement approved under [Section 25A-5B,]
755 [[Section 25A-5A]] Section 25A-5B, and the location and number of
756 MPDUs that were involved in each agreement[;].

757 [(c) each approval of a different rent for a high-rise rental unit under
758 Section 25A-7(b)(1); and

759 (d) the use of all funds in the Housing Initiative Fund that were received
760 as a payment under Section 25A-5A.]

761 **Sec. 2. Effective Date.** Any regulation which implements County Code
762 Section 25A-7(a), as amended by Section 1 of this Act, must not apply to those
763 moderately priced dwelling units for which the Department of Housing and
764 Community Affairs approved an MPDU offering agreement before this Act took
765 effect.

766 *Approved:*

767

Philip M. Andrews, President, County Council Date

768 *Approved:*

769

Isiah Leggett, County Executive Date

LINOWES AND BLOCHER LLP
ATTORNEYS AT LAW

February 20, 2009

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By Hand Delivery

Hon. Michael Knapp, Chair
and Members of the Planning, Housing and
Economic Development Committee
Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, Maryland 20850

Re: Bill No. 13/38-07 Moderately Priced Housing Amendments

Dear Mr. Knapp and Members of the PHED Committee:

On behalf of the developer of the Clarksburg Town Center project, this letter requests the addition of language to proposed Bill No. 13/38-07 to grandfather expressly the Town Center project from the effect of the legislation.

As the Council is aware, the initial Town Center project approvals were granted many years ago, beginning with the original project plan approval in 1995. The project has been partially completed and contains 72 MPDUs. At its meeting on December 11, 2008, the Montgomery County Planning Board approved amendments to the project plan and preliminary plan, and also approved a new overall site plan for the project. These approvals were granted to implement the Program of Compliance for the Town Center approved in 2006. The new approvals require construction of an additional approximate 81 MPDUs.

The project is subject to an Interim Agreement to Build MPDUs dated November 29, 2006. The Interim Agreement provides that the parties will enter into a Final Amended and Restated Agreement for the entirety of the Town Center once the Planning Board grants the final project approvals. As indicated above, the Planning Board approved the overall Town Center plan amendments and site plan at its meeting on December 11, 2008. The approved final plans contain an extensive redesign of the Town Center and significant amenity enhancements for the community.

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The developer of the Town Center has two major concerns with Bill 13/38-07. First, it would be inequitable to impose new MPDU maximum sales pricing requirements on this project considering its approved status and its unique and troubled history. Furthermore, when the developer entered into the mediated settlement agreement with community representatives in 2006, it considered MPDU lot values in its financial planning. These lot values have already been reduced significantly below their fair market value to accommodate the MPDU program. Failing to consider builder costs when calculating MPDU maximum sales prices as contemplated by the Bill could further negatively impact the value of the MPDU lots, developer and builder financial modeling, and, most importantly, the ability to implement the approved plans. After all that has occurred concerning this project, respectfully, it would be unjust to impose additional regulatory changes having the anticipated economic impact of Bill 13/38-07. This is particularly evident considering the substantial development costs resulting from the redesign effort and its associated nearly 4-year delay and the additional costs already being incurred to implement the revised design.

Second, as noted above, the project is subject to an approved MPDU Agreement. The Agreement served first as a stop-gap measure to allow development of the project to continue while revised plans were being prepared and reviewed and also as a place-holder for the final agreement. Now that the Planning Board has approved the final plans for the Town Center, the parties can enter into the final MPDU agreement as contemplated. However, imposing new maximum sales pricing requirements on the project would unquestionably constitute another obstacle to completing the Town Center. In this regard, the developer has advised us that the prospective sale of market and up to 22 MPDU lots has already been impacted by the mere *potential* maximum sales pricing change proposed by Bill 13/38-07.

Based on the foregoing, we request that the legislation and any regulation implementing the maximum sales price provisions of Bill 13/38-07 not apply to projects having a preliminary subdivision plan approved prior to the effective date of the legislation and that MPDU maximum sales prices for such projects continue to be based on builder cost calculations.

Thank you for your consideration.

Very truly yours,

LINOWES AND BLOCHER LLP

Stephen Z. Kaufman

Todd D. Brown

cc: Montgomery County Councilmembers
Mr. Douglas Delano
Mr. Robert Ditthardt
Mr. Jeffrey Zyontz

Faden, Michael

From: Schwartz, Lisa
Sent: Friday, January 30, 2009 6:15 PM
To: Faden, Michael; McMillan, Linda
Cc: Nelson, Rick; Giloley, Joseph; Anderson, Christopher
Subject: RE: Bill 38-07: One More Technical Amendment

Mike/Linda,

I have a couple of substantive comments, and a few technical comments:

Substantive:

- In Section 25A-5A, Alternative payment agreement (starting at Line 291): What happens if a developer obtains an alternative payment agreement from DHCA based on the developer's assertion that the building will be a condominium, and then decides to offer the building as a rental? What recourse would we have? The developer would have already built the units at a market rate size. I see a few possible solutions:

  1. Require the developer at that time to offer the required number of market rate units as MPDUs (or provide the MPDUs elsewhere through an alternative location agreement);
  2. Allow buy-outs for rental buildings as well as condominiums (which would require us to determine a method of pricing the alternative payment, since it would not be based on market sales); or
  3. State in the bill that the procedure for dealing with this situation will be included in the Executive regulations.

  I'm sure there are other solutions as well, but I think I prefer #2, although it is not what we originally discussed with the PHED, and it requires us to come up with an additional methodology. (At the moment I don't have any suggestions for what this methodology could be.) Rick/Joe/Chris: your thoughts?

- Also in Section 25A-5A, Lines 297-301: I think this section needs some clarification (see my comments in red below):

(b) Any payment to the Housing Initiative Fund under this Section must be based, for each unbuilt MPDU, on a percentage, which must not exceed 100%, of the difference between the average actual sale price charged for each market price unit with the same number of bedrooms as would have been required in the MPDU, if the MPDU had been built on site, and the price that would be charged for the same unit type if it were an MPDU. The Executive by regulation must further specify the methodology to compute this payment, including the percentage of the price.

  I'm sure you can come up with better language, but as written I think it's not clear which market price we are using for the formula.

Technical:

- First page, (1), under An Act To: make language consistent with Lines 140-145 (should say "require" rather than "allow"?)

- Line 22: take out period after "and"