

M E M O R A N D U M

September 20, 2022

TO: PHED Committee

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 22-07, Residential Multi-Unit Low Density, R-30
– Optional Method Development

PURPOSE: Worksession #1

Expected Attendees

- Casey Anderson, Chair, Planning Board
- Jason Sartori, Chief, Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner III, Countywide Planning & Policy, Planning Department
- Lisa Govoni, Planner IV, Countywide Planning & Policy, Planning Department

Introduction

Zoning Text Amendment (ZTA) 22-07, Residential Multi-Unit Low Density, R-30 – Optional Method Development, lead sponsors Councilmembers Friedson, Navarro, and Katz, was introduced on June 14, 2022. Co-Sponsors are Councilmembers Jawando, Hucker, Riemer, Council President Albornoz, Council Vice-President Glass, and Councilmember Rice. ZTA 22-07 will amend the optional method development standards in the R-30 zone for apartment buildings that provide at least 30% MPDUs. It will also add standards for common open space under optional method development.

Public Hearing

A public hearing was held on July 26, 2022. Two speakers testified in support of ZTA 22-07. Planning Staff testified on behalf of the Planning Board in support of the ZTA with clarifying amendments. Jeff Dee of Habitat for Humanity Metro Maryland, Inc. testified that this ZTA would help create mixed-income housing and promote racial equity and social justice.

Summary of Impact Statements

Planning Board Recommendation

The Planning Board discussed ZTA 22-07 at its meeting on July 14, 2022, and unanimously recommended approval. The Planning Board proposed two amendments: 1) clarify the type of screening required for surface parking, and b) clarify the roof types appropriate for apartment buildings seeking additional height.

The Board also questioned whether the 30% MPDUs required by the ZTA would be calculated based only on new construction or whether it could retroactively apply to existing units.

RESJ Impact Statement

The Office of Legislative Oversight (OLO) provided Council with a Racial Equity and Social Justice (RESJ) Impact Statement on August 15, 2022. OLO found that ZTA 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. OLO found that while ZTA 22-07 could diminish disparities in housing insecurity, its impact is minimal given the few additional MPDUs likely to result. OLO also found it 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. However, OLO found that the benefits to Black and Latinx residents in need of affordable housing exceeded the benefits to predominantly white-owned construction businesses.

OLO recommended:

- 1) creating incentives for the building of MPDUs for lower-income households (below 65 – 70 percent AMI); and
- 2) creating incentives for the building of larger (3+ bedroom) MPDU units.

Discussion

Background

Under § 4.4.14.A of the Zoning Ordinance, the intent of the R-30 zone is “to provide designated areas of the County for higher-density, multi-unit residential uses. The predominant use is residential in an apartment building, although detached house, duplex, and townhouse building types are allowed.” But the existing standards for the apartment building-type make development in the R-30 zone difficult, in order to disincentivize redevelopment of existing naturally occurring affordable housing. For example, the maximum height for an apartment building-type in the R-30 zone is 35 feet, but the maximum height for a detached house, duplex, or townhouse is 40 feet. ZTA 22-07 aims to strike a balance between protecting existing market-rate affordable housing and allowing the creation of more affordable housing. First, for apartment building-types providing at least 30% MPDUs, ZTA 22-07 will allow increased site coverage, reduced parking setbacks, and additional height under optional method development. Second, ZTA 22-07 will create standards for common open space under optional method development.

Analysis of ZTA 22-07

This ZTA makes several changes to the optional method development standards in the R-30 zone if a developer is providing at least 30% MPDUs:¹

Site Coverage

- Current site coverage for an apartment building-type is 18%, which is low compared to the 30% site coverage for a townhouse. Under ZTA 22-07, in a development with the apartment building-type, the Planning Board will be allowed to increase the site coverage to 30% of a site's usable area if the Planning Board finds that the application is providing at least 30% MPDUs, the increased site coverage is necessary for the redevelopment, and there is still adequate open space for recreation and stormwater management.

Parking Setbacks for Surface Parking Lots (minimum)

- Currently, the minimum side or rear parking setback for surface parking lots, on the property line abutting property not included in the application, is "equal to required setback for a detached house building type in the abutting zone under standard method." This can result in a large setback; for example, if the abutting property is residential detached, the setback could be as large as 35 feet. ZTA 22-07 will change the setback to 10 feet, which is consistent with the current side street setback for the apartment building-type. Further, if the abutting property is a residential detached zone, the applicant will be required to install screening under Section 6.5.3.C.6. That section requires fencing, canopy trees, and shrubs, ensuring compatibility with neighboring homes despite the reduced setback.
- Currently, the parking setback for surface parking lots with the apartment building-type is a 30-foot front setback and a 10-foot side street setback. ZTA 22-07 will add a section titled "Specifications for Parking Setbacks for Surface Parking Lots" to the standards table that allows the Planning Board to reduce the front setback or side street setback for surface parking lots if the following conditions are met:
 - a minimum of 30% MPDUs is being provided;
 - the Board finds the reduced setback is necessary for development due to a unique site constraint; and
 - the Applicant provides either the perimeter planting or some other combination of landscaping and vegetated stormwater management facilities to meet the section's intent.

Height

- ZTA 22-07 would increase maximum building height from 35 feet to 45 feet for an apartment building-type if a minimum of 30% MPDUs are provided and the structure has a pitched roof. As background, a 35-foot building for apartments would usually result in three stories. But a 35-foot building could not have a pitched roof and still be three stories. ZTA 22-07 aims to allow three-story apartment buildings with a design that is consistent with neighboring homes, such as detached homes and townhouses.

¹ Thirty percent MPDUs is double the existing 15% MPDU requirement. Additional information about the development of MPDUs can be found on DHCA's website:

<https://www.montgomerycountymd.gov/DHCA/housing/singlefamily/mpdu/processdevbuild.html>

Open Space

- Previously, the common open space standards applied whether standard or optional method development. ZTA 22-07 makes the existing standards fall under standard method development and creates optional method standards. The optional method standards will provide Planning Board with some flexibility in the design of common open space, so long as it:
 - abuts a public sidewalk or other public pedestrian route that provides easy access to all planned dwellings;
 - includes space for pedestrian circulation, landscaping, seating, shade, or recreation; and
 - is in a contiguous space or spaces that abut other open space, adjacent or on-site natural features, or sidewalks or pedestrian routes, and are not so fragmented and disconnected by structures, parking, or stormwater management that they do not satisfy the intent of the open space section of the zoning ordinance.

Proposed Amendments

As noted above, Planning Board proposes two clarifying amendments:

1) Clarify the type of screening required for surface parking

Planning recommends clarifying which Section 6.2.9.C.3. perimeter planting subsection should apply. Subsection a. is the requirement for parking abutting residential zones, while subsection b. is the requirement for parking abutting non-residential zones. Planning recommends subsection b., the lesser requirement. This reduced setback standard is for “a property that abuts any other zoned property, right-of-way, or an Agricultural, Rural Residential, or Residential Detached zoned property that is improved with a civic and institutional, commercial, industrial, or miscellaneous use.”

Planning also recommends clarifying that the planting is required regardless of the abutting properties, not the underlying zone. This ensures that the screening required for reduced setbacks always follows subsection b.

Specifications for Parking Setbacks for Surface Parking Lots

- a. The Planning Board may reduce the front setback or side street setback for surface parking lots if:
- i. the associated development is providing a minimum 30% MPDUs;
 - ii. the Board finds the reduced setback is necessary for development due to a unique site constraint; and
 - iii. the Applicant provides either the perimeter planting under Section 6.2.9.C.3.b, regardless of the
[[underlying]] zone of the abutting properties, or some other combination of landscaping and
vegetated stormwater management facilities to meet the section’s intent.

2) Clarify the roof types appropriate for apartment buildings seeking additional height

Section 4.1.7.C. of the zoning ordinance has language regarding types of roofs. Unfortunately, no one roof type is clearly defined. However, the zoning ordinance does have illustrations for a pitched roof versus a flat roof, and lists gable, hip, mansard, and gambrel roofs. Planning Staff's report contains the following helpful illustration:



Figure 1a: *Top Left* - Gable Roof
Figure 1b: *Top Right* - Hip Roof
Figure 1c: *Bottom Left* - Mansard Roof
Figure 1d: *Bottom Right* - Gambrel Roof

Planning recommends amending ZTA 22-07 to state that the additional height is for gable or hip roofs, and not mansard and gambrel roofs. This will ensure that the additional height is for the design of the building, and not to add additional floors.

<u>Specification for Height</u>
a. <u>In a development with the apartment building type, building heights may be increased up to a maximum height of 45' if the application is providing a minimum of 30% MPDUs and the structure is built with a <u>[[pitched]] gable or hip roof.</u></u>

3) Clarify whether retroactive

The Planning Board also asked for clarification as to whether the 30% MPDUs required by the ZTA would be calculated based only on new construction or whether it could retroactively apply to existing units. In other words, if a development already has 15%

MPDUs and wants to add a new building, to take advantage of ZTA 22-07 would 30% of the new/additional units be required to be provided as MPDUs or would 30% of the total number of units on site (new/additional plus existing units) be required to be provided as MPDUs?

Council Staff recommends amending the “Specifications for Parking Setbacks for Surface Parking Lots” section to read “the application”, not “the associated development”, must provide 30% minimum MPDUs. This is consistent with the reference to “the application” in the “Specification for Site Coverage” and “Specification for Height” sections. It would mean that any existing units would not be counted towards the 30% requirement. There are two different scenarios that would be affected by this amendment:

- **An existing development with existing MPDUs** – If the development had an existing structure with 15% MPDUs, the new structure would still be required to have 30% MPDUs. However, that 30% would be based on the new/additional units, not the new/additional plus existing units. For example, if the existing structure has 100 units with 15 MPDUs, and a new structure with 100 units is added, 30 MPDUs would be required in the new structure.
- **An existing development with no existing MPDUs** – If the development had an existing structure with no MPDUs, the new structure would be required to have 30% MPDUs. Using the example of 100 units, if the existing structure has 100 units with 0 MPDUs, and a new structure with 100 units is added, 30 MPDUs would be required in the new structure. The alternative—counting the entire development—would require adding 60 MPDUs out of the 100 new units. While incentivizing MPDUs is important, requiring 60% of a new building to have MPDUs would be a high burden.

Specifications for Parking Setbacks for Surface Parking Lots

- a. The Planning Board may reduce the front setback or side street setback for surface parking lots if:
- i. the ~~associated development~~ application is providing a minimum 30% MPDUs;
 - ii. the Board finds the reduced setback is necessary for development due to a unique site constraint; and
 - iii. the Applicant provides either the perimeter planting under Section 6.2.9.C.3.b, regardless of the ~~underlying zone of the abutting properties~~, or some other combination of landscaping and vegetated stormwater management facilities to meet the section’s intent.

Specification for Site Coverage

- a. In a development with townhouse or apartment building types, site coverage is calculated based on the area of the site minus any area for detached house and duplex lots.
- b. In a development with the apartment building type, the Planning Board may increase the site coverage to 30% of a site’s usable area if the Planning Board finds that the application is providing at least 30% MPDUs,

the increased site coverage is necessary for the redevelopment, and that there is still adequate open space for recreation and stormwater management.

Specification for Height

a. In a development with the apartment building type, building heights may be increased up to a maximum height of 45' if the application is providing a minimum of 30% MPDUs and the structure is built with a [[pitched]] gable or hip roof.

Council Staff recommends approval of ZTA 22-07 with amendment.

This packet contains:

ZTA 22-07, with amendments	© 1
Planning Board Recommendation	© 8
Planning Staff Memorandum	© 10
RESJ Impact Statement	© 17
Map of R-30 Zones	© 23

Ordinance No.:
Zoning Text Amendment No.: 22-07
Concerning: Residential Multi-Unit
Low Density, R-30 –
Optional Method
Development
Draft No. & Date: 1 – 5/10/2022
Introduced: June 14, 2022
Public Hearing:
Adopted:
Effective:

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

Lead Sponsors: Councilmembers Friedson, Navarro, Katz
Co-Sponsors: Councilmembers Jawando, Hucker, Riemer, Council President Albornoz, Council
Vice-President Glass, Councilmember Rice

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the optional method development standards in the R-30 zone;
- amend the common open space requirements for optional method development;
and
- generally amend the provisions for R-30 zoned property.

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

Division 4.4.	“Residential Zones”
Section 4.4.14.	“Residential Multi-Unit Low Density - 30 Zone (R-30)”
Division 6.3	“Open Space and Recreation”
Section 6.3.5.	“Common Open Space”

EXPLANATION: **Boldface** indicates a Heading or a defined term.

Underlining indicates text that is added to existing law by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

* * * indicates existing law unaffected by the text amendment.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-4.4 is amended as follows:

Section 4.4.14. Residential Multi-Unit Low Density - 30 Zone (R-30)

A. Intent Statement

The intent of the R-30 zone is to provide designated areas of the County for higher-density, multi-unit residential uses. The predominant use is residential in an apartment building, although detached house, duplex, and townhouse building types are allowed.

* * *

C. R-30 Zone, Optional Method Development Standards

1. Site	MPDU Development			
	Detached House	Duplex	Townhouse	Apartment
Dimensions (min)				
Usable area	11,700 SF			
Density (max)				
Density (units/acre)	See Specification for Density			
Specification for Density				
The density allowed for any application that includes more than 12.5% MPDUs, qualified under Chapter 25A and rounded up to the nearest whole number of units, equals the density allowed under Sec. 4.4.14.B.2 plus an increase of: a. 0.88% for each 0.1% increase in MPDUs above 12.5%, up to and including 15%; b. 22% plus 0.16% for each 0.1% increase in MPDUs above 15%, up to and including 20%; or c. 30% plus 0.1% for each 0.1% increase in MPDUs above 20%.				
Open Space (min)				
Common open space (% of usable area) (See Section 6.3.5)	25%			
Site Coverage (max)				
Site coverage	n/a	n/a	30%	18%
Specification for Site Coverage				
a. In a development with townhouse or apartment building types, site coverage is calculated based on the area of the site minus any area for detached house and duplex lots. b. <u>In a development with the apartment building type, the Planning Board may increase the site coverage to 30% of a site’s usable area if the Planning Board finds that the application is providing at least 30% MPDUs, the increased site coverage is necessary for the redevelopment, and that there is</u>				

<u>still adequate open space for recreation and stormwater management.</u>				
2. Lot				
Dimensions (min)				
Lot area	1,500 SF	1,000 SF	800 SF	12,000 SF
Lot width at front building line	Determined at site plan			
Lot width at front lot line	15'	15'	14'	50'
Frontage on street or open space	Required			
Coverage (max)				
Lot	75%	75%	n/a	n/a
3. Placement				
Principal Building Setbacks (min)				
Front setback from public street	10'	10'	10'	Determined at site plan
Front setback from private street or open space	4'	4'	4'	Determined at site plan
Side street setback	10'	10'	5'	Determined at site plan
Side or rear setback	Determined at site plan			
Side or rear setback, abutting property not included in application	Equal to required setback for a detached house building type in the abutting zone under standard method			Equal to required setback for a detached house building type in the abutting zone under standard method and Section 4.1.8.A
Rear setback, alley	4'	4'	4'	n/a
Accessory Structure Setbacks (min)				
Front setback	5' behind front building line			n/a
Side street setback	Side street setback of principal building			n/a
Side or rear setback	Determined at site plan			n/a
Side or rear setback, abutting property not included in application	Equal to required setback for a detached house building type in the abutting zone under standard method			n/a
Rear setback, alley	4'	4'	4'	n/a
Parking Setbacks for Surface Parking Lots (min)				
Front setback	n/a	n/a	n/a	30'

Side street setback	n/a	n/a	n/a	10'
Side or rear setback	n/a	n/a	n/a	0'
Side or rear setback, abutting property not included in application	n/a	n/a	n/a	[Equal to required setback for a detached house building type in the abutting zone under standard method and Section 4.1.8.A] 10' <u>If the abutting property is a residential detached zone, the applicant must install the screening required under Section 6.5.3.C.6 options A or B.</u>
<u>Specifications for Parking Setbacks for Surface Parking Lots</u>				
a. The Planning Board may reduce the front setback or side street setback for surface parking lots if: <ul style="list-style-type: none"> i. <u>the associated development is providing a minimum 30% MPDUs;</u> ii. <u>the Board finds the reduced setback is necessary for development due to a unique site constraint; and</u> iii. <u>the Applicant provides either the perimeter planting under Section 6.2.9.C.3.b, regardless of the [[underlying]]zone of the abutting properties, or some other combination of landscaping and vegetated stormwater management facilities to meet the section's intent.</u> 				
4. Height				
Height (max)				
Principal building	40'	40'	40'	35'
Accessory structure	25'	25'	25'	25'
<u>Specification for Height</u>				
a. In a development with the apartment building type, building heights may be increased up to a maximum height of 45' if the application is providing a minimum of 30% MPDUs and the structure is built with a [[pitched]] gable or hip roof.				

* * *

Sec. 2. DIVISION 59-6.3 is amended as follows:**Division 6.3.5. Common Open Space**

* * *

B. Design Requirements

1. Standard Method Development

- [1]a. Common open space must be located in a central position or central positions in the neighborhood bordered by streets or building lots. It may be public or private. Common open space may also be placed in a location taking advantage of an important adjacent natural feature or open space.
- [2]b. The minimum width for any required common open space is 50 feet unless the deciding body grants an exception for items such as a trail easement, a mid-block crossing, or a linear park, by finding that its purpose meets the intent of Division 6.3.
- [3]c. A minimum of 50% of the required common open space must be in one contiguous area or only separated by a residential street. Any other areas must be a minimum of 2,000 square feet each and connected by sidewalks, paths, or trails.

2. Optional Method Development

Common open space must:

- a. abut a public sidewalk or other public pedestrian route that provides easy access to all planned dwellings;
- b. include space for pedestrian circulation, landscaping, seating, shade, or recreation; and
- c. be in a contiguous space or spaces that abut other open space, adjacent or on-site natural features, or sidewalks or pedestrian routes, and are not so fragmented and disconnected by structures, parking, or stormwater management that they do not satisfy Section 6.3.1.

* * *

41 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
42 date of Council adoption.



July 22, 2022

To: The Honorable Gabe Albornoz
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Zoning Text Amendment No. 22-07

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on July 14, 2022 and by a vote of 5:0 supported Zoning Text Amendment (ZTA) 22-07, with modifications to clarify the type of screening required for surface parking and the roof types appropriate for apartment buildings seeking additional height. Additionally, the Board raised a concern about whether the 30% MPDUs required by the ZTA would be calculated based only on new construction or whether it could retroactively apply to existing units (but did not have a suggested text modification to accompany that concern).

This ZTA provides flexibility in some development standards under the R-30 Zone, Optional Method of development, for applicants proposing the apartment building type and providing 30% or more MPDUs. The existing development standards for the apartment building type are limiting in the ability to develop or redevelop R-30 zoned sites with apartments. These standards intend to disincentivize the redevelopment of existing naturally occurring affordable housing. The changes with this ZTA would provide more flexibility in exchange for providing well above the minimum required number of protected affordable units through the MPDU program.

The R-30 Optional Method standards that are amended by this ZTA include the Specification for Site Coverage; the Parking Setbacks – Side or Rear Setback, Abutting property not included in the application; the Specifications for Parking Setbacks for Surface Parking Lots; and Specifications for Height.

- Site Coverage is currently limited to 18% for the apartment building type, but this ZTA would increase it up to 30% with Planning Board Approval, which is on par with the Townhouse building type.
- Both modified parking standards allow for reducing the required setbacks in exchange for providing landscape screening. The Board recommends modifying the ZTA to specify that the

required screening for surface parking lots seeking relief from setbacks be from subsection b. in the referenced section.

- The height specification allows building heights for apartment building types to increase from 35 feet to 45 feet. The Board recommends clarification here that the extra height is needed because an applicant is constructing a hip or gable roof, rather than generally referencing pitched roofs.

The Board appreciates Council staff's action on this ZTA, including the two modifications offered by the Board. This ZTA strikes a balance between protecting the county's existing market rate affordable housing which is protected by the existing development standards while providing some opportunity for redevelopment or new development on projects committed to at least 30% MPDUs which can help diversity unit types and provides guaranteed affordable housing protections.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, July 14, 2022.



Casey Anderson

Chair

Attachment A: Revised ZTA 22-07

Attachment B: Planning Staff Report Package

CA:BB:aj



ZTA 22-07 – RESIDENTIAL MULTI-UNIT LOW DENSITY (R-30) –
OPTIONAL METHOD DEVELOPMENT

Description

ZTA 22-07 amends the optional method of development standards in the R-30 zone, specifically for apartment buildings in projects that provide at least 30% MPDUs. It also adjusts standards for Common Open Space for projects approved under the optional method.

ZTA 22-07

COMPLETED: 7-7-2022

MCPB

Item No. 10
7-14-2022

2425 Reedie Drive
Floor 14

Wheaton, MD 20902



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Summary

- This ZTA modifies the development standards for apartment buildings under the optional method of development for projects that provide at least 30% MPDUs in the R-30 zone.
- Modified standards include increased lot coverage, increased building height, and reduced setbacks, all subject to Planning Board approval.
- This ZTA also adds new standards to Common Open Space for optional method developments, similar to those allowed for Public Open Space.
- A Council Public Hearing is scheduled for July 26, 2022.

LEAD SPONSORS

Councilmembers Friedson, Navarro, and Katz

Co-Sponsored by Councilmembers
Jawando, Hucker, Reimer, Vice-President
Glass, and President Albornoz

INTRODUCTION DATE:

June 14, 2022

REVIEW BASIS:

Chapter 59

SECTION ONE

BACKGROUND

Rationale for ZTA 22-07

ZTA 22-07 was introduced by Councilmember sponsors Friedson, Navarro, and Katz, and co-sponsored by Councilmembers Jawando, Hucker, Reimer, President Albornoz, and Vice President Glass on June 14, 2022. This ZTA amends the optional method of development standards under the R-30 zone for the Apartment Building type, and amends the common open space design standards for optional method developments. The current R-30 development standards for Apartment Buildings under optional method are restrictive for development with the apartment building type with limiting lot coverage, setback and building height requirements. These standards were designed this way in part to discourage the redevelopment of naturally occurring affordable housing units, often located in the R-30 zone. This ZTA allows more flexible standards for projects that provide a minimum 30% MPDUs as part of a development or redevelopment project. This higher percentage of MPDUs provides a guarantee that a much higher than typical number of units will be kept affordable in exchange for the ability to construct or re-construct apartments in this zone. The ZTA also creates new provisions for reviewing Common Open Space under optional method developments that allow flexibility in design through the site plan process so long as the open space meets the intent of the section.

SECTION TWO

ANALYSIS

ZTA 22-07 as introduced

ZTA 22-07 modifies the code in two distinct sections, the R-30 optional method development standards under Section 4.4.14.C, and the Common Open Space design requirements under Section 6.3.5.B.

R-30 Optional Method Development Standards

Within the R-30 Zone Optional Method Development Standards table, the changes made by this ZTA take place under the following standards:

- Specification for Site Coverage
- Parking Setbacks - Side or Rear Setback, Abutting property not included in the application
- Specifications for Parking Setbacks for Surface Parking Lots
- Specifications for Height.

Specification for Site Coverage

The new Specification for Site Coverage added by the ZTA would allow up to a 30% lot coverage for the apartment building type if an application provides at least 30% MPDUs. The current coverage for apartments is only 18% which is low when looking at other building types such as townhouses which has a coverage allotment of 30%. This change would place coverage allowances between townhouses and apartments at parity, which is common when looking at other development standard tables for other zones that allow both townhouse and apartment building types.

Parking Setbacks – Side or Rear Setback, Abutting property not included in the application

The parking setbacks for surface parking, side or rear setback, abutting property not in the application currently requires the parking setback to equal the setback for a detached house in the abutting zone. Depending on the abutting zone, this can create a very large setback, especially if the property is abutting the rear yard of a residential detached property. The intent of these setbacks is to create compatibility between uses. This ZTA proposes setting a standard 10' setback for surface parking, plus requiring enhanced screening requirements under Section 6.5.3.C.6. The screening under this section not only requires a fence or wall and canopy trees that are already required by the perimeter parking plantings in Section 6.2.9, but also requires a mix of evergreen or understory trees, and requires shrubs, creating a denser planting edge. This enhanced landscaping would do a better job of screening the parking, allowing the potentially reduced setbacks to still be compatible. If circumstances exist warranting additional screening or space, that can be enforced through the site plan.

Specification for Parking Setbacks

The Specifications for Parking Setbacks for Surface Parking Lots is a new standard type that would be added to the standards table. These specifications would permit the Planning Board to reduce the front or side street parking setbacks on applications providing 30% or more MPDUs if the Board finds the reduced setback is necessary due to site constraints and the applicant provides landscaping not currently required for parking adjacent to a street. The required landscaping is either the perimeter landscape screening typically required for parking adjacent to residential zones, or at the Board's discretion some other combination of landscaping and vegetated stormwater that serves a similar purpose. Typically, surface parking for the R-30 optional method requires a 30' minimum setback from the front and 10' from a side street without screening. The front setback in particular is substantial, especially if a property has multiple frontages or is not sufficiently large. The flexibility to reduce these setbacks in exchange for providing screening is a fair compromise for constrained sites. Allowing the option to request alternative screening, including vegetated stormwater management facilities, acknowledges the reality that the perimeter of parking lots contains necessary stormwater facilities which can be designed to a width and planting intensity similar to the requirements of the perimeter plantings.

Planning staff does have a recommendation to this section to tighten the language. The current ZTA under section a. iii. references the perimeter planting of Section 6.2.9.C.3. This section, however,

contains two subsections a. and b. Planting scheme a. is the typical requirement for parking abutting residential zones and scheme b. is the typical requirement for parking abutting non-residential zones. Planning staff recommends the above reference be refined to read Section 6.2.9.C.3.b. since this reduced setback standard is for parking adjacent to a road right-of-way. The required screening under b. is a planting width minimum of 6 feet, a hedge row or wall of 3 feet, and canopy trees 30 feet on center. The text of the standard should also be refined to state that the planting under 6.2.9.3.b would be required regardless of the ~~underlying zone~~ of the abutting properties. This clarifies the intent that the necessary screening required for allowing reduced setbacks from the street always follows planting scheme b.

Specification for Building Height

The final proposed change to the R-30 optional method standards is a new specification for building height. This specification, like the others in this ZTA, would only apply to apartment building type applications that provide at least 30% MPDUs. The provision would allow maximum building heights of apartments to increase from 35' to 45' if the structure is built with a pitched roof. Building height measurement is defined in Section 4.1.7.C of the code, and states that building height is measured from the average grade either to the mean height level between the eaves and ridge of a gable, hip, mansard, or gambrel roof or to the highest point of the roof surface, regardless of roof type. Collectively, the four listed roof types are all types of pitched roof. Examples of the four roof types are provided in figure 1a – 1d.

Generally, the wider a building, the higher the structure becomes since the size of the pitched portion of roof increases. The effect of a 35' building height for apartments, as the code currently requires, is to limit these buildings to three stories tall. That height, however, is not adequate to accommodate a three-story apartment with a pitched roofline, only one with a flat roof design. The ZTA language would provide the additional height needed to fully accommodate the pitched roof while still maintaining three primary floors.

In this section, Planning staff also recommends a minor clarification to the types of pitched roof. The term “pitched roof” is not defined by code, however the code does refer to the four roof types that have eaves and ridges described and pictured above. Gable and hip roof types are the two simplest and most commonly seen roof types and have a constant angle from eave to ridge. The mansard roof type has a very steep pitch at the building perimeter and a flat roof segment in the center. The gambrel roof type is the type often seen in barns, and has a steep pitch at the edge, then a shallower pitch in the middle meeting at a ridge. Staff recommends the text be revised to clarify that the additional height is for structures built with a gable or hip roof. This specifically does not include mansard or gambrel roofs. Generally, the mansard and gambrel roofs make structures appear taller, and can create an additional floor worth of building space within the created attic space, undermining some of the intent of this language to not offer a means to add additional floors.



Figure 1a: *Top Left* Gable Roof
 Figure 1b: *Top Right* Hip Roof
 Figure 1c: *Bottom Left* Mansard Roof
 Figure 1d: *Bottom Right* Gambrel Roof

Common Open Space Design Requirements

The final changes proposed by this ZTA add new design standards to the Common Open Space design standards in Section 6.3.5.B. Currently, there is only one set of design standards for common open space that apply for both standard and optional methods of development. This ZTA would create separate standards for standard and optional methods of development, mirroring how the Public Open Space standards under Section 6.3.6. are handled. The idea is that the more prescriptive standards should apply to standard method development because these developments are typically not site plan reviewed, thus clear measurable parameters are necessary for review agencies to determine if an open space meets code. The optional method standards instead set minimal intent and allow the Planning Board flexibility to approve open spaces that still meet the intent and are designed and integrated into the community. This change is appropriate because the types of developments in residential zones that require common open space and are built under the optional

method of development tend to be larger projects that do not differ substantially from some optional method commercial/residential zoned projects where public open space is required.

Specifically, the new optional method standards would require common open space to:

- abut a sidewalk or other public pedestrian route,
- include space for pedestrian circulation, landscape, seating, shade or recreation, and
- be contiguous to other open space, on-site natural features, pedestrian routes, and that are otherwise not overly fragmented by structures, parking or stormwater.

These are reasonable standards to follow that provide applicants with some flexibility and provide the Planning Board ways to ensure the open space meets the intent of this section of the code.

SECTION THREE

CONCLUSION

Planning staff supports the changes as introduced for ZTA 22-07 with the two above discussed modifications and recommends the Planning Board transmit comments in support of the ZTA to the District Council. The code changes provide additional flexibility to applications in the R-30 zone to develop or redevelop apartment properties that provide a substantial increase in the required number of MPDUs.

Attachment A – ZTA 22-07 introduction packet

Attachment B – Recommended modifications to ZTA 22-07

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.

CONTRIBUTIONS

OLO staffers Elsabett Tesfaye, Performance Management and Data Analyst, and Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this RESJ impact statement.

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.racialequitytools.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

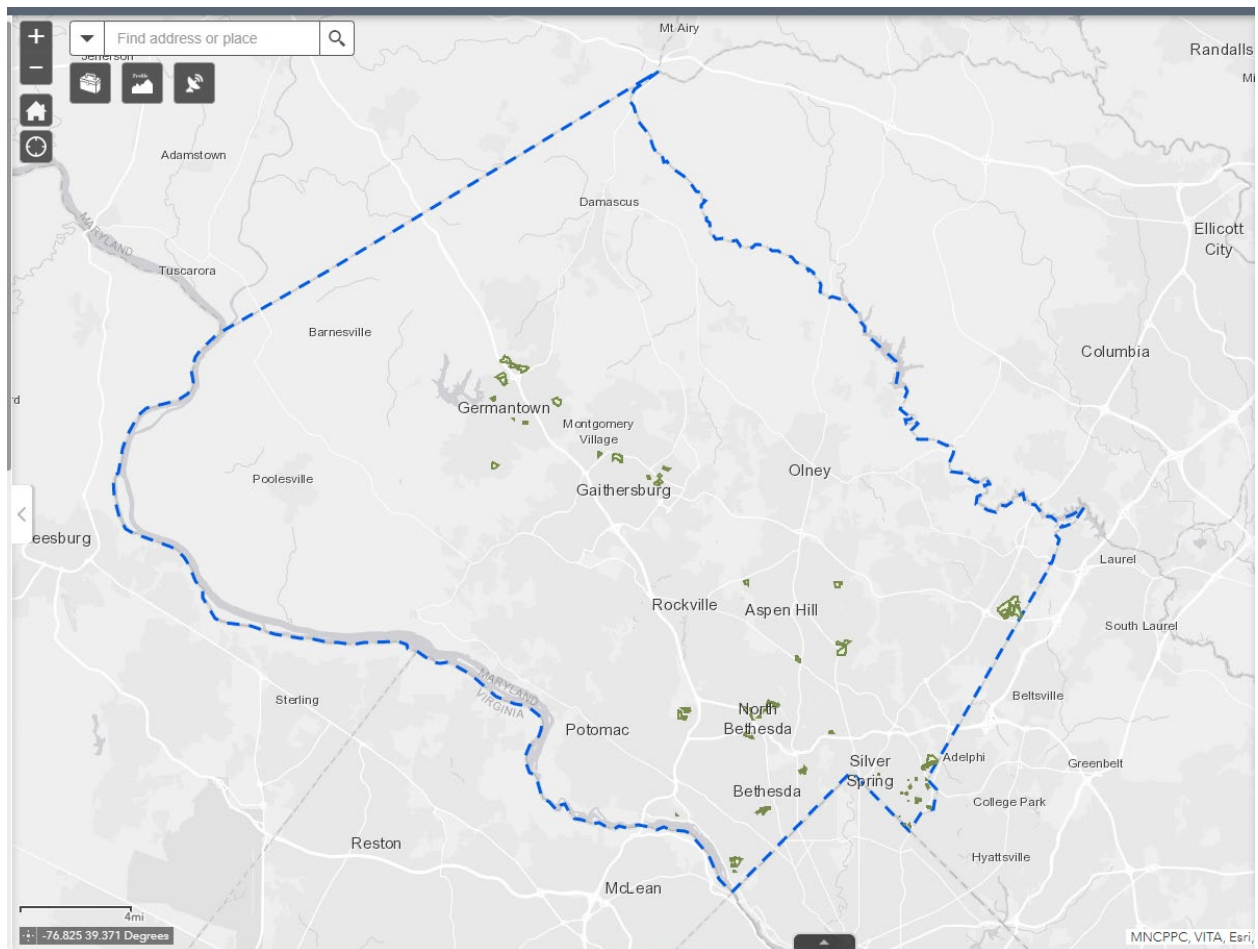
²⁸ Blumenthal, Pamela, Ethan Handelman, Alexandra Tilsley. 2016. How affordable housing gets built. Urban Institute. July 26.

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



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