

Bill No. 18-02  
Concerning: Moderately Priced  
Dwelling Units - Requirements  
Revised: 9-27-02 Draft No. 3  
Introduced: May 23, 2002  
Enacted: October 1, 2002  
Executive: October 10, 2002  
Effective: January 9, 2003  
Sunset Date: None  
Ch. 27, Laws of Mont. Co. 2002

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmembers Berlage, Silverman and Denis

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**AN ACT** to:

- (1) revise the requirements for building moderately priced dwelling units in certain zones;
- (2) revise certain provisions of law regulating the initial sale and rental of moderately priced dwelling units; and
- (3) generally amend the law governing moderately priced dwelling units.

By amending

Montgomery County Code  
Chapter 25A, Housing, Moderately Priced  
Sections 25A-3, 25A-5, and 25A-8

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

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

**Sec. 1. Sections 25A-3, 25A-5, and 25A-8 are amended as follows:**

**25A-3. Definitions.**

The following words and phrases, as used in this Chapter, have the following meanings:

(a) *Applicant* means any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities, and any transferee of all or part of the land at one location[, who:].

(1) Submits for approval or extension of approval a preliminary plan of subdivision under Chapter 50, which plan provides for the development of a total of 50 or more dwelling units at one location in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of development, regardless of whether any part of the land has been transferred to another party; or

(2) Submits to the Planning Board or to the Director of Permitting Services a plan of housing development for any type of site review or development approval required by law, which plan includes construction or development of 50 or more dwelling units at one location; or

(3) With respect to all land in zones not subject to subdivision approval or site plan review, applies for a building permit or permits under Chapter 8, which permit is or permits are for the construction of a total of 50 or more dwelling units at one location.

In determining whether a development contains a total of 50 or more dwelling units for the purpose of applying this Chapter, all land at one location within the County available for building development under common ownership or control by an applicant, including land owned or

controlled by separate corporations in which any stockholder or family of the stockholder owns 10 percent or more of the stock, must be included. An applicant must not avoid this Chapter by submitting piecemeal applications or approval requests for subdivision plats, site or development plans or building permits. Any applicant may submit a preliminary plan of subdivision for approval, site or development plans for approval, record plat or request for building permits for less than 50 dwelling units at any time; but the applicant must agree in writing that upon the next such application or request the applicant will comply with this Chapter when the total number of dwelling units at one location has reached 50 or more. All applicants, with respect to land to which this Chapter applies, have local official approval to participate in the federal rent supplement program.]

\* \* \*

**25A-5. Requirement to build MPDU's; agreements; alternatives.**

(a) The requirements of this Chapter to provide MPDU's apply to any applicant who:

(1) submits for approval or extension of approval a preliminary plan of subdivision under Chapter 50 which proposes the development of a total of 35 or more dwelling units at one location in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of development, regardless of whether any part of the land has been transferred to another party;

(2) submits to the Planning Board or to the Director of Permitting Services a plan of housing development for any type of site review or development approval required by law, which proposes construction or development of 35 or more dwelling units at one

55 location; or  
 56 (3) with respect to land in a zone not subject to subdivision approval  
 57 or site plan review, applies for a building permit to construct a  
 58 total of 35 or more dwelling units at one location.

59 In calculating whether a development contains a total of 35 or more  
 60 dwelling units for the purposes of this Chapter, the development  
 61 includes all land at one location in the County available for building  
 62 development under common ownership or control by an applicant,  
 63 including land owned or controlled by separate corporations in which  
 64 any stockholder or family of the stockholder owns 10 percent or more  
 65 of the stock. An applicant must not avoid this Chapter by submitting  
 66 piecemeal applications or approval requests for subdivision plats, site or  
 67 development plans, or building permits. Any applicant may apply for a  
 68 preliminary plan of subdivision, site or development plan, record plat or  
 69 building permit for ~~[[less]] fewer than 35 dwelling units at any time; but~~  
 70 the applicant must agree in writing that the applicant will comply with  
 71 this Chapter when the total number of dwelling units at one location  
 72 reaches 35 or more.

73 ~~[(a)] (b) \* \* \*~~

74 ~~[(b)] (c)~~ When the development at one location is in a zone where a density  
 75 bonus is allowed, and

- 76 (1) is covered by a plan of subdivision, [or]
- 77 (2) is covered by a plan of development or a site plan, or
- 78 (3) requires a building permit to be issued for construction,
- 79 the required number of moderately priced dwelling units is a variable
- 80 percentage that is not less than 12.5 percent of the total number of
- 81 dwelling units at that location. The required number of MPDUs must

82 vary according to the amount by which the approved development  
 83 exceeds the normal or standard density for the zone in which it is  
 84 located. Chapter 59 permits bonus densities over the presumed base  
 85 density where MPDUs are provided. If the use of the optional MPDU  
 86 development standards does not result in an increase over the base  
 87 density, the Director must conclude that the base density could not be  
 88 achieved under conventional development standards, in which case the  
 89 required number of MPDUs must not be less than 12.5 percent of the  
 90 total number of units in the subdivision. The amount of density bonus  
 91 achieved in the approved development determines the percentage of  
 92 total units that must be MPDUs, as follows:

93 \* \* \*

94 [(c) *Reserved.*]

95 (d) [*Reserved.*]

96 (1) Notwithstanding subsection (c), the requirements of this Chapter  
 97 do not apply to [[an applicant who proposes to build]] a  
 98 development with more than 34 but [[less]] fewer than 50 units at  
 99 one location if the Planning Board, in reviewing a subdivision or  
 100 site plan submitted by the applicant and based on the lot size,  
 101 product type, and other elements of the plan as submitted, finds  
 102 that achieving a bonus density of 20 percent or more at that  
 103 location:

104 (A) would not allow compliance with applicable  
 105 environmental standards and other regulatory  
 106 requirements, or

107 (B) would significantly reduce neighborhood compatibility.

108 (2) If the Planning Board approves a density bonus of at least 20

109                    percent for a development which consists of more than 34 but  
110                    [[less]] fewer than 50 units at one location, the number of  
111                    MPDU's required must be governed by subsection (c) unless the  
112                    formula in subsection (c) would not allow the development to  
113                    have one bonus market rate unit. In that case, the Board must  
114                    reduce the required number of MPDU's by one unit and approve  
115                    an additional market rate unit.

116                    \*       \*       \*

117    **25A-8.        Sale or rental of moderately priced dwelling units.**

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

119                    \*       \*       \*

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

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

129                (B)       In a subdivision containing both single-family and  
130                    multiple-family dwellings, the proportion of rental single-  
131                    family MPDUs to all one-family MPDUs must not exceed  
132                    the proportion of market rate rental single-family units to  
133                    all market rate single-family units; and the proportion of  
134                    rental multiple-family MPDUs to all multiple-family  
135                    MPDUs must not exceed the proportion of market rate

136 rental multiple-family units to all market rate multiple-  
137 family units.

138 (C) The Director may allow an applicant to offer a higher  
139 proportion of multiple-family MPDUs for rent in a  
140 subdivision if the Director find that:

141 (i) offering more rental MPDUs in that subdivision  
142 would advance the purposes of the County housing  
143 policy and the objectives of any applicable land use  
144 plan, be consistent with local housing market  
145 conditions, and avoid excessive mandatory  
146 condominium or homeowners' association fees or  
147 other costs that would reduce the affordability of  
148 sale MPDUs; and

149 (ii) the applicant is qualified to manage rental housing  
150 and has submitted an effective management plan for  
151 the rental units in that subdivision.

152 \* \* \*

153 **Sec. 2. Applicability.**

154 The requirements of Chapter 25A, as amended by Section 1 of this Act, do not  
155 apply to any subdivision with more than 34 but fewer than 50 units at one location if  
156 the applicant applied for a preliminary plan of subdivision before this Act took effect,  
157 unless the applicant agrees that the requirements of Chapter 25A as amended should  
158 apply to that subdivision.

159 *Approved:*

160 /S/

October 3, 2002

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Steven A. Silverman, President, County Council

Date

161 *Approved:*

162 /S/ October 10, 2002

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Douglas M. Duncan, County Executive Date

163 *This is a correct copy of Council action.*

164 /S/ October 14, 2002

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Mary A. Edgar, CMC, Clerk of the Council Date