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:


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
location; or

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

In calculating whether a development contains a total of 35 or more dwelling units for the purposes of this Chapter, the development includes all land at one location in 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. 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 apply for a preliminary plan of subdivision, site or development plan, record plat or building permit for [[less]] fewer than 35 dwelling units at any time; but the applicant must agree in writing that the applicant will comply with this Chapter when the total number of dwelling units at one location reaches 35 or more.

[(a)] [(b) * * *]

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

(1) is covered by a plan of subdivision, [or]

(2) is covered by a plan of development or a site plan, or

(3) requires a building permit to be issued for construction,

the required number of moderately priced dwelling units is a variable percentage that is not less than 12.5 percent of the total number of dwelling units at that location. The required number of MPDUs must
vary according to the amount by which the approved 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. The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPDUs, as follows:

* * *

[(c) Reserved.]

[(d) Reserved.]

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

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

(B) would significantly reduce neighborhood compatibility.

(2) If the Planning Board approves a density bonus of at least 20
percent for a development which consists of more than 34 but
[less] fewer than 50 units at one location, the number of
MPDU’s required must be governed by subsection (c) unless the
formula in subsection (c) would not allow the development to
have one bonus market rate unit. In that case, the Board must
reduce the required number of MPDU’s by one unit and approve
an additional market rate unit.

* * *

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

(a) Sale or rental to general public.

* * *

(6) Moderately priced dwelling units, 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 must not exceed the
proportion of market rate rental units to all market rate
units.

(B) In a subdivision containing both single-family and
multiple-family dwellings, the proportion of rental single-
family MPDUs to all one-family MPDUs must not exceed
the proportion of market rate rental single-family units to
all market rate single-family units; and the proportion of
rental multiple-family MPDUs to all multiple-family
MPDUs must not exceed the proportion of market rate
rental multiple-family units to all market rate multiple-family units.

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

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

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

* * *

Sec. 2. Applicability.

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

Approved:

/S/ October 3, 2002

Steven A. Silverman, President, County Council

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<td>Douglas M. Duncan, County Executive</td>
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