Ordinance No.: 16-27
Subdivision Regulation Amend. No.: 08-02
Concerning: Alternative Review Committee - Functions
Draft No. & Date: 2 10/21/08
Introduced: April 29, 2008
Public Hearing: June 17, 2008
Adopted: October 21, 2008
Effective: November 16, 2008

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

By: District Council at the Request of the County Executive

AN AMENDMENT to the Subdivision Regulations to:

- remove the Alternative Review Committee from the preliminary plan approval process;
- allow certain preliminary plans to exceed density or building height limits to permit the construction of all MPDUs and bonus units on-site; and
- generally amend provisions relating to preliminary plans.

By amending the following section of County Code Chapter 50:

Sec. 50-35. "Preliminary subdivision plans – Approval procedure."

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.*

Opinion

Subdivision Regulation Amendment (SRA) 08-02 and ZTA 08-07, sponsored by the District Council at the request of the County Executive, were introduced on April 29, 2008. SRA 08-02 would remove any mention of the Alternative Review Committee (ARC) from Subdivision Regulations. Under SRA 08-02, certain preliminary plans that exceed the density or building height limits recommended in the applicable master plan could be approved if the additional density is to accommodate Moderately Price Dwelling Units (MPDUs). The recent master and sector plans recommend densities with and without MPDUs. Older master and sector plans have a single number for density. The height recommendations of master and sector plans do not indicate flexibility for MPDUs.

Before this SRA, the ARC has authority to allow certain preliminary plans to exceed the density or building height limits recommended by the applicable master plan. This authority exists when the ARC finds that providing the MPDUs within the height and density limits would make the project fiscally infeasible. The Hearing Examiner and the Montgomery Civic Federation found a problem with the ARC in zoning matters. The ARC's meetings were closed to the public when they dealt with proprietary financial data provided by the developers. All past ARC meetings dealt with proprietary financial data. The conclusions of the ARC cannot be challenged in the course of the Planning Board's public hearing on the preliminary plan.

Planning Staff recognized the problem of the ARC reaching its conclusions in a closed meeting; its conclusions were not refutable in an open session. Planning Staff further noted that the Planning Board still had discretion under SRA 08-03 because the Board must still make a finding of compatibility.

The Planning Board disagreed with part of Planning Staff's recommendation. Although it agreed to eliminate ARC for the Subdivision Regulations, the Planning Board did not support retaining code provisions to allow sector plan-recommended density and heights to be exceeded.

The Council held a public hearing on June 17, 2008. Testimony on behalf of the Montgomery Civic Association agreed with the Planning Board; the ZTA was characterized as a sector plan amendment in the form of an SRA. One attorney submitted testimony in support of SRA 08-02 but also in support of more flexibility from sector plan height and density limits in general. The Council referred SRA 08-02 to the Planning, Housing, and Economic Development Committee.

The Committee held a worksession on SRA 08-02 on October 6, 2008. The Committee (3-0) recommended approval of SRA 08-02 as introduced after careful review of all the material of record. The Committee believed that removing the Alternative Review Committee from the subdivision approval process would allow a more transparent subdivision approval process. SRA 08-02 would continue to allow flexibility to exceed master plan recommendations for the purpose of accommodating moderately priced dwelling units.

The District Council reviewed Subdivision Regulation Amendment No. 08-02 at a worksession held on October 14, 2008. The Council agreed with the Committee's recommendation. For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Subdivision Regulation Amendment No. 08-02 will be approved with editorial amendments.

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:

1 **Sec. 1. Section 50-35 is amended as follows:**

2 **50-35. Preliminary subdivision plan – Approval procedure.**

3 * * *

4 (l) *Relation to Master Plan.* In determining the acceptability of a
5 preliminary plan submitted under this Chapter, the Planning Board
6 must consider the applicable master plan, sector plan, or urban
7 renewal plan. A preliminary plan must substantially conform to the
8 applicable master plan, sector plan, or urban renewal plan, including
9 maps and text, unless the Planning Board finds that events have
10 occurred to render the relevant master plan, sector plan, or urban
11 renewal plan recommendation no longer appropriate.

12 [However, to permit the construction of all MPDUs required under
13 Chapter 25A, including any bonus density units, on-site, a preliminary
14 plan may exceed, in proportion to the MPDUs to be built on site,
15 including any bonus density units, any applicable residential density
16 or building height limit established in a master plan or sector plan if a
17 majority of an Alternative Review Committee composed of the
18 Director of the Department of Housing and Community Affairs, the
19 Executive Director of the Housing Opportunities Commission, and the
20 Director of Park and Planning, or their respective designees, find that
21 a development that includes all required MPDUs on site, including
22 any bonus density units, would not be financially feasible within the
23 constraints of any applicable density or height limit.

24 If the Committee finds that the development would not be financially
25 feasible, the Planning Board must decide which if any of the

26 following measures authorized by Chapter 59 or Chapter 50 should be
27 approved to assure the construction of all required MPDUs on site:

28 (1) exceeding an applicable height limit, lower than the maximum
29 height in the zone, that is recommended in a master plan or
30 sector plan,

31 (2) exceeding an applicable residential density limit, lower than the
32 maximum density in the zone, that is recommended in a master
33 plan or sector plan, or

34 (3) locating public use space off-site.]

35 However, to permit the construction of all MPDUs under Chapter
36 25A, including any bonus density units, on-site in zones with a
37 maximum permitted density more than 39 dwelling units per acre or a
38 residential floor area ratio (FAR) more than .9, a preliminary plan
39 may exceed:

40 (1) any dwelling unit per acre or FAR limit recommended in a
41 master plan or sector plan, but must not [[to]] exceed the
42 maximum density of the zone; and

43 (2) any building height limit recommended in a master plan or
44 sector plan, but must not [[to]] exceed the maximum height of
45 the zone.

46 The additional FAR and height allowed by this subsection is limited
47 to the FAR and height necessary to accommodate the number of
48 MPDUs built on site plus the number of bonus density units.

49 * * *

Sec. 2. Effective date. This ordinance takes effect 20 days after the date of [[Council adoption]] the County Executive's approval.

Approved:

Isiah Leggett, County Executive — Date: Oct 31, 2008

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council — Date: Nov 10, 2008