PHED Item 3
March 5, 2018
Worksession

MEMORANDUM

March 1, 2018

TO: Planning, Housing and Economic Development Committee

FROM: Josh Hamlin, Legislative Attorney

SUBJECT: **Worksession:** Bill 34-17, Housing – Moderately Priced Dwelling Units (MPDUs) – Amendments

PURPOSE: **Overview** of the Bill's provisions.

Bill 34-17, Housing – Moderately Priced Dwelling Units (MPDUs) - Amendments, sponsored by Lead Sponsor Councilmember Floreen and Co-Sponsor Councilmember Rice, was introduced on October 31. A public hearing was held on December 5, 2017. At this worksession, staff will present an overview of the provisions of Bill 34-17, but Committee action is not anticipated. Expected guests at the worksession include:

- Clarence Snuggs, Director, Department of Housing and Community Affairs (DHCA)
- Jalal "Jay" Greene, Chief, Division of Housing, DHCA
- Stephanie Killian, Affordable Housing Programs Manager, DHCA
- Casey Anderson, Chair, Montgomery County Planning Board
- Gwen Wright, Director, Montgomery County Planning Department
- Carol Rubin, Acting Deputy Director, Montgomery County Planning Department
- Pamela Dunn, Chief, Functional Planning and Policy, Montgomery County Planning Department
- Lisa Govoni, Housing Planner, Montgomery County Planning Department

Bill 34-17 would:

- clarify certain provisions of law related to moderately priced dwelling units (MPDUs);
- amend certain provisions of law related to the satisfaction of MPDU requirements; and
- amend certain provisions of law related to the sale and rental of MPDUs

Background

The Council enacted the County's Moderately Priced Dwelling Unit (MPDU) law in 1973 with several objectives. The law was aimed at furthering the objective of providing a full range of housing choices for all incomes, ages and household sizes. In particular, the law imposed requirements on the construction of affordable housing to meet the existing and anticipated needs for low and moderate-income housing, and ensure that moderately priced housing was dispersed throughout the County. It provided incentives to encourage the construction of moderately priced housing by allowing optional increases in density including the MPDU density bonus to offset the cost of construction.

The most recent substantial amendments to the MPDU law were made in 2004.[1] The 2004 amendments extended the control period for for-sale MPDUs from 10 to 30 years, and for rental MPDUs from 20 years to 99 years. The amendments also allowed different income eligibility standards in recognition of the higher cost of construction of certain types of housing, and increased the number of developments required to provide MPDUs by lowering the base requirement from any development with 35 or more units to 20 or more units. Additional requirements and structure on the approval alternative payments made to the Housing Initiative Fund in lieu of constructing MPDUs were also added. In 2007, the Office of Legislative Oversight issued Report No. 2007-9, A Study of Moderately Priced Dwelling Unit Program Implementation.[2]

Key components of Bill 34-17 include: clarification of existing provisions of the law; requiring developments of less than 20 homes to make a payment to the Housing Initiative Fund; broadening the authority of the Director of the Department of Housing and Community Affairs to accept payments into the Housing Initiative Fund in lieu of including MPDUs in a development, when it serves the goal of increasing the availability of affordable housing; and increasing the flexibility of the Director in determining MPDU obligations to better serve the demands for affordable units. A table showing the specific changes to existing law included in the Bill is at ©49-50.

Public Hearing Testimony

There were 16 speakers at the public hearing on December 5, 2017.[3] Stacy Spann, Executive Director of the Housing Opportunities Commission (HOC), offered general support for the Bill's goals, but raised concerns about the Bill's proposed changes resulting in the concentration of affordable units in "lower opportunities of the County." Mr. Spann also conveyed HOC's concern about the Bill's proposal to give DHCA a right of first refusal on MPDU's resold by housing organizations or non-profits within five years of the original purchase (©58-61). Fran Rothstein of the Woman's Democratic Club spoke in support of the Bill because it would make the MPDU program more responsive to the needs of County residents (©62-64). Pete Tomao of the Coalition for Smarter Growth supported several aspects of the Bill, but requested amendments to the Bill's alternative payments provisions to ensure economic diversity throughout the County (©65-66). Jennifer Russel of the Greater Bethesda Chamber of Commerce welcomed the effort to

---

[1] http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/bill/2003/24-04-25-04-27-03.pdf
[2] https://www.montgomerycountymd.gov/olo/resources/files/2007-9-mpdu.pdf
[3] The public hearings for Bills 34-17 and 38-17 were combined, with several speakers addressing both Bills.

update Chapter 25A, and indicated that several amendments to the Bill would be desirable (©67-68).

Robert Goldman of the Montgomery Housing Partnership expressed support for much of the Bill, and suggested some amendments to ensure that adequate production of MPDUs is maintained (©69-70). Dave Sears, of the Montgomery County Sierra Club group offered support, but cautioned that alternative agreements should not result in a lack of affordable housing near transit (©71). James Olson, representing Action in Montgomery (AIM), said AIM supports much of the Bill, but suggested a 15% MPDU requirement Countywide and reiterated the need for affordable housing near transit (©72-73). Diana Wilson spoke in support of the MPDU program generally, and urged the Council to increase the base MPDU requirement from 12.5% to 15% (©74). Liz Purcell said the Bill provides important improvements to the MPDU program, and noted the importance of transit-oriented affordable housing (©75).

Sylke Knuppel of the Maryland Building Industry Association supported the additional flexibility that provisions of the Bill would provide, but expressed concern over certain provisions, including the Bill's requirement that a payment to the Housing Initiative Fund (HIF) be made for developments of fewer than 20 units (©76-77). Laurence Cafritz of the Custom Builders of Montgomery County told of the distinct circumstances of small-volume builders in expressing concern about the imposition of a HIF payment on projects of under 20 houses (©78). Deborah Photiadis, Director of Coalition Homes, Inc., spoke in support of the Bill but indicated that it does not address the need for housing for those of very low income, and expressed concern about the Bill's provision allowing assignment of priority purchase/rental options to clients of the Department of Health and Human Services (©79-80). Jasper Young, a tenant in a Coalition Homes MPDU, told the Council of the positive impact of the MPDU program in his life (©81-82). Blaise Rastello spoke in support of the Bill, and recommended a focus on housing for extremely low-income households (©83-84). Renato Mendoza of CASA, indicated support for the Bill, but recommended a requirement that MPDUs built off-site be built in the same planning area as the subject development (©85-86).

Issues for Committee Discussion

The purpose of this worksession is to give the Committee an overview of Bill 34-17's proposed changes to the existing MPDU law. The overview will be organized by discussing the broader purposes of the Bill and the specific changes proposed to effectuate each purpose. Representatives from DHCA and the Montgomery County Planning Department will be present to discuss their agencies' perspectives on the Bill's provisions.

1. Increase flexibility to maximize delivery of desirable MPDUs.

- *MPDU agreements generally.* The Bill would increase the DHCA Director's discretion to approve MPDU agreements in recognition of the specific needs for units of certain sizes.

The law currently provides that in multi-family dwelling unit subdivisions, ratio of efficiency and one-bedroom MPDUs to the total number of MPDUs must not be greater than the ratio of market rate efficiencies and one-bedroom units to the total number of market rate units.

The intent behind this provision is to prevent the overproduction of smaller MPDUs relative to their market rate counterparts. Bill 34-17 would retain the requirement for efficiencies, but delete the requirement for one-bedroom units. This change would give the DHCA Director the discretion to approve an MPDU agreement with a higher ratio of one bedroom MPDUs (see lines 348-352).

The Bill would also change the existing law's prohibition on the approval of an agreement that reduces the number of bedrooms required in any MPDU, and would instead permit the Director to approve an agreement that is based on the floor area or square footage of required units, *but alters the bedroom mix of units or number of units* (lines 354-357).

- *Alternative payment agreements.* The Bill would increase flexibility in the use of HIF payments, and allow developers receiving density bonuses to enter into alternative payment agreements.

Current law provides that a payment to the HIF "may be used only to buy or build more MPDUs in the same planning policy area as the development for which the payment was made." Bill 34-17 would amend this provision to permit a HIF payment to be used outside the Policy Area for which the payment was made only, but only after: (A) notice is provided to the Council; and (B) the Council is given at least 30 days to comment (lines 596-609).

The existing law also provides that any subdivision for which an alternative payment is made is not eligible for any density bonus under Chapter 59. Bill 34-17 would delete this provision entirely (lines 607-609).

- *Alternative location agreements.* The Bill would require the DHCA Director to make a finding that an alternative location agreement will result in an increase in the number of MPDUs provided.

Under the existing law, the Director may approve an alternative location agreement only if the Director finds that:

(1) the public benefit of locating MPDUs at the proposed alternative location outweighs the value of locating MPDUs in each subdivision throughout the County; and

(2) building the MPDUs at the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the County.

Bill 34-17 would add to these a required finding that "the alternative location agreement will increase the number of MPDUs provided as a result of the development" (lines 614-623).

2. Increase funding of the Housing Initiative Fund (HIF).

Under current law, only developments of 20 or more units are subject to MPDU requirements. Bill 34-17 would not require MPDU construction for smaller developments, but would require a payment to the HIF for housing developments with fewer than 20 units (lines 320-323).

Under existing Subsection 25A-5(d), the DHCA Director may allow fewer or no MPDUs to be built in a development with more than 20 but fewer than 50 units at one location if the Planning Board finds that a achieving a bonus density of 20 percent or more at that location would not be possible or feasible. Bill 34-17 would require, in such instances, that the applicant make a payment to the HIF, as provided by regulation, based on the square footage of MPDU units that would otherwise have been required (lines 401-404).

An applicant meeting certain criteria may be granted a complete waiver of the MPDU requirements under existing §25A-6. Bill 34-17 would delete provisions for granting a waiver of MPDU requirements entirely. The deletion of these provisions would have the effect or requiring that alternative payment or location agreements must be used in all circumstances when otherwise-required MPDUs are not constructed (lines 636-667).

3. Simplify certain administrative processes.

- *Alternative payments.*

Current law provides that the DHCA Director may enter an alternative payment agreement only after a finding by an "Alternative Review Committee," composed of the DHCA Director, the Executive Director of HOC, and the Director of Park and Planning, that:

(1) either:
   (A) an indivisible package of services and facilities available to all residents of the proposed subdivision would cost MPDU buyers so much that it is likely to make the MPDUs effectively unaffordable by eligible buyers; or
   (B) environmental constraints at a particular site would render the building of all required MPDUs at that site economically infeasible; and
(2) the public benefit of additional affordable housing outweighs the value of locating MPDUs in each subdivision throughout the County, and accepting the payment will further the objective of providing a broad range of housing opportunities throughout the County.

Bill 34-17 would delete reference to Alternative Review Committee and instead provide that the Director may enter an alternative payment agreement upon [the Director] making certain findings (lines 567-586).

Under current law, alternative payments to the HIF must be calculated based on imputed cost of land. Bill 34-17 would delete this basis specified in the Code, and instead provide that the payments must be calculated as provided in method (1) regulation (lines 587-595).

- *Land transfers.*

Current law provides for a complicated process for an applicant to satisfy MPDU requirements by transferring land to the County. Bill 34-17 would allow the DHCA Director to accept a land transfer in satisfaction of MPDU requirements if its value is at least equal to the value of the MPDU that are not constructed (lines 420-472), and would require the Executive to establish procedures for land transfers by method (1) regulation (lines 465-467).

The Bill would also add a provision that the annual report required under §25A-12 must identify each land transfer completed in the previous calendar year (lines 1165-1166).

- *MPDU sale price and rent regulations.*

Existing law provides that maximum sale prices of MPDUs must be set by method (1) regulation. The law is very prescriptive as to what the Executive must consider in setting the sale prices and the circumstances under which the prices may be adjusted. Bill 34-17 would retain method (1) regulation as the manner in which sale prices are set, but would simplify criteria for MPDU sale price regulations (lines 676-732). The specific requirements of sale price regulations under the Bill are at lines 689-701.

Bill 34-17 would simplify criteria for MPDU rent regulations required under current law in a similar fashion (lines 733-758).

4. Improve delivery of MPDUs to qualified residents.

- *Age-restricted units.*

Bill 34-17 would eliminate the current law's prohibition on residential property ownership for the prior five years for age-restricted units only (line 298). The Bill would also phase out the construction of age-restricted for-sale MPDUs by requiring every MPDU agreement to provide for any requirement of age-restricted units to be offered for sale to be satisfied by a payment to the Housing Initiative Fund under Section 25A-5A(b) (lines 507-509).

- *Condo and HOA provisions.*

Bill 34-17 would prohibit an applicant from establishing a condominium or homeowners' association consisting solely of MPDUs (lines 526-527).

- *DHHS clients.*

Current law allows up to 40 percent of all MPDUs which are not sold or rented under any other federal, state, or local program to be purchased or leased by DHCA, HOC, or other housing development agency or nonprofit corporation designated by the County Executive. Bill 34-17 would allow this purchase/rental option to be assigned to clients of the Department of Health and Human Services. Currently, non-profits make use of the purchase provision but rarely the rental provision because it would require them to sublet to their clients. The amendment would allow a client to directly hold the lease (lines 775-778).

- *Resale of units.*

Bill 34-17 would give DHCA a right of first refusal on the resale of certain MPDUs. The Bill would add a provision requiring that any unit purchased by HOC or other designated housing development agency or nonprofit corporation that is offered for resale within five years after initial purchase first be offered for sale to the Department in accordance with Executive regulation (lines 822-825).

5. **Clarify existing provisions of the law.** Bill 34-17 would make several changes to the law which clarify existing provisions and better reflect current practices. Specifically, the Bill would:

- amend §25A-3 to:
  (1) add definitions of "age-restricted unit" (lines 180-181) and "area median income (lines 182-184);"
  (2) amend "eligible person" to be "eligible household" (lines 236-240); and
  (3) provide that County "moderate income" must not be less than HUD "low income" (lines 251-253).

- expressly tie MPDU eligibility to household income (lines 270-287).

- expressly provide that a tenant may remain in MPDU for lease term notwithstanding change in eligibility (lines 292-294).

- expressly provide that an MPDU purchaser may retain ownership notwithstanding change in eligibility (lines 295-297).

- delete requirement that written MPDU agreement be submitted *with the application for a permit* (the application is still required to be submitted, just not at the time of permit application) (line 340).

- add language to clarify that the Council may adjust the base requirement for MPDUs from 12.5% to 15% as part of a master plan approval. County-wide base requirement will remain at 12.5% (lines 364-371, 380-381, table on ©16-17).[4]

[4] Bill 38-17, Housing – Moderately Priced Dwelling Units (MPDUs) – Requirement to Build, sponsored by Lead Sponsor then-Council Vice-President Riemer and Co-Sponsor Councilmember Katz, is scheduled for discussion, along with this Bill, at the PHED Committee worksession on March 12. Bill 38-17 would expressly provide that the minimum MPDU requirement Countywide is 12.5 percent, with 15 percent required in any development in an MCPS High School Service Area with an eligibility rate for free and reduced meals of 15 percent or less at the time the applicant submits a preliminary plan of subdivision. This provision of Bill 38-17 and Bill 34-17's provision that the Council may set a requirement of up to 15% in the master plan approval process are not mutually exclusive.

- add an express requirement that to receive a density bonus, applicant must provide at least one more MPDU than would have been required if there was no density bonus (lines 381-384).

- clarify section references to §25A-5A (alternative payment agreement) and §25A-5B (alternative location agreement) (lines 416, 418-19).

- reorganize subsections 25A-6(a) and (b), dealing with the sale and rental of MPDUs to clarify that the offering for sale or rent of up to 40% of the MPDUs to DHCA, HOC, and other housing development agencies or nonprofits occurs before the public offering (lines 770-825, 830, 956-1012). This change is purely a reference to reordering the two subsections without substantive change; substantive changes to these subsections have been discussed earlier.

- eliminate references to lottery, which is not used, as a method of administering MPDU offerings (lines 852-859, 1054).

- for resale of an MPDU within the control period, change permitted increase over original sale price for improvements made to unit from "fair market value of improvements made" to an allowance, excluding the value of improvements determined to be unnecessary for the maintenance and upkeep of the unit (lines 1021, 1029-1032).

6. **Update provisions of the law.** Finally, Bill 34-17 would update the following provisions of the law:

- Legislative Findings in §25A-1 (lines 62-125).

- Declaration of Public Policy in §25A-2 (lines 155-176).

- References to County Growth Policy (lines 599-601), are changed as follows:
    - "County Growth Policy" is changed to "Subdivision Staging Policy."
    - "Planning policy area" is changed to "Policy Area."

This packet contains:	Circle #
Bill 34-17	1
Legislative Request Report	48
Table of proposed changes to existing law	49
Fiscal and economic impact statement	51
Public hearing testimony	
Stacy L. Spann	58
Fran Rothstein	62
Pete Tomao	65
Jennifer Russel	67
Robert Goldman	69
Dave Sears	71

James Olson	72
Diana Wilson	74
Liz Purcell	75
Sylke Knuppel	76
Laurence Cafritz	78
Deborah Photiadis	79
Jasper Young	81
Blaise Rastello	83
Renato Mendoza	85
MPDU Program Report 2013-2016-Summary	87
MPDU Program Report 2013-2016	88

F:\LAW\BILLS\1734 MPDU\PHED Memo 03.05.18.Docx

Bill No. 34-17
Concerning: Housing – Moderately Priced Dwelling Units (MPDUs) - Amendments
Revised: 10/31/2017 Draft No. 6
Introduced: October 31, 2017
Expires: May 1, 2019
Enacted: ______
Executive: ______
Effective: ______
Sunset Date: None
Ch. _____, Laws of Mont. Co. ______

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Floreen
Co-Sponsor: Councilmember Rice

AN ACT to:
(1) clarify certain provisions of law related to moderately priced dwelling units (MPDUs);
(2) amend certain provisions of law related to the satisfaction of MPDU requirements;
(3) amend certain provisions of law related to the sale and rental of MPDUs; and
(4) generally amend the laws governing moderately priced housing

By amending
Montgomery County Code
Chapter 25A, Housing – Moderately Priced
Sections 25A-1, 25A-2, 25A-3, 25A-4, 25A-5, 25A-5A, 25A-5B, 25A-6, 25A-7, 25A-8, 25A-9, and 25A-12

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-1, 25A-2, 25A-3, 25A-4, 25A-5, 25A-5A, 25A-5B, 25A-6, 25A-7, 25A-8, 25A-9, and 25A-12 are amended as follows:

25A-1. Legislative findings.

[The County Council hereby finds that a severe housing problem exists within the County with respect to the supply of housing relative to the need for housing for residents with low and moderate incomes. Specifically, the County Council finds that:

(1) The County is experiencing a rapid increase in residents of or approaching retirement age, with consequent fixed or reduced incomes; young adults of modest means forming new households; government employees in moderate income ranges; and mercantile and service personnel needed to serve the expanding industrial base and population growth of the County;

(2) A rising influx of residents into higher priced housing in the County with resultant demands for public utilities, governmental services, and retail and service businesses has created an increased need for housing for persons of low and moderate income who are employed in the stated capacities;

(3) The supply of moderately priced housing was inadequate in the mid-1960's and has grown since then at a radically slower pace than the demand for such housing;

(4) The inadequate supply of housing in the County for persons of low and moderate income results in large-scale commuting from outside the County to places of employment within the County, thereby overtaxing existing roads and transportation facilities, significantly contributing to air and noise pollution, and engendering greater than normal personnel turnover in the businesses, industry and public agencies of the County,

all adversely affecting the health, safety and welfare of and resulting in an added financial burden on the citizens of the County;

(5) A careful study of market demands shows that approximately one-third of the new labor force in the County for the foreseeable future will require moderately priced dwelling units;

(6) Demographic analyses indicate that public policies which permit exclusively high-priced housing development discriminate against young families, retired and elderly persons, single adults, female heads of households, and minority households; and such policies produce the undesirable and unacceptable effects of exclusionary zoning, thus failing to implement the Montgomery County housing policy and the housing goal of the general plan for the County;

(7) Experience indicates that the continuing high level of demand for more luxurious housing, with a higher profit potential, discourages developers from offering a more diversified range of housing; and the production of moderately priced housing is further deterred by the high cost of land, materials, and labor;

(8) Actual production experience in the County indicates that if land costs can be reduced, houses of more modest size and fewer amenities can be built to be sold at a profit in view of the existing ready market for such housing;

(9) Every indication is that, given the proper incentive, the private sector is best equipped and possesses the necessary resources and expertise required to provide the type of moderately priced housing needed in the County;

(10) Rapid regional growth and a strong housing demand have combined to make land and construction costs very high and to have an effect on the used housing market by causing a rise in the prices of those units;

(11) In past years efforts have been made to encourage moderately priced housing construction through zoning incentives permitting greater density and through relaxation of some building and subdivision regulations. Very little moderately priced housing had resulted; and

(12) In some instances existing housing for persons of low and moderate income is substandard and overcrowded.]

(a) The County enacted the Moderately Priced Dwelling Unit (MPDU) law in 1973 to:

(1) help meet the goal of providing a full range of housing choices for all incomes, ages and household sizes;

(2) meet the existing and anticipated need for low and moderate-income housing;

(3) ensure that that moderately priced housing is dispersed throughout the County consistent with the General Plan and area master plans; and

(4) encourage the construction of moderately priced housing by allowing optional increases in density including the MPDU density bonus to offset the cost of construction.

(b) In 2004, the County Council amended the MPDU program to:

(1) Reduce the loss of MPDUs by extending the control period for for-sale MPDUs from 10 years to 30 years and for rental MPDUs from 20 years to 99 years;

(2) Allow different income eligibility standards in recognition of the higher cost of construction of certain types of housing;

(3) Increase the number of developments required to provide MPDUs by lowering the base requirement from any development with 35 or more units to 20 or more units; and

(4) Place additional requirements and structure on the approval of an alternative payment made to the Housing Initiative Fund in place of providing MPDUs.

(c) In 2017, the County Council finds that:

(1) The availability of affordable housing continues to be a problem for low and moderate income households.

(2) The 2015 report "The Greater Washington Region's Housing Needs 2023" projects that Montgomery County will need 14,960 new housing units for households earning less than 80% of area median income.

(3) The 2017 Montgomery County Rental Housing Study reports that 68% of households with incomes between 50% and 80% of area median income report paying more than 30% of income for rent and 15% report being extremely rent burdened, paying more than 50% of income for rent.

(4) The creation of income-restricted affordable housing through construction and preservation is critical as market rents continue to increase. The American Community Survey reports that there were 9,189 fewer rental units with rents between $750 and $1,499 from 2010 to 2014.

(5) MPDUs are one important element for providing income-restricted affordable housing. There were 681 new MPDUs offered for sale or rent in 2015 and 2016. As of 2017 there are about 5,300 MPDUs county-wide.

(6) Additional density can offset the cost of constructing MPDUs. It is appropriate to consider different base requirements for MPDUs in conjunction with the approval of different densities and heights in master plans and sector plans.

(7) There is unmet demand for MPDUs with two, three, and four bedrooms. Providing flexibility that allows MPDU agreements based on floor area or square footage, rather than requirements based on the number of bedrooms in market rate units, can help to address this need.

(8) Appropriate alternative payments to the Housing Initiative Fund can, in certain circumstances, be used to create more MPDUs in the same Policy Area than providing the MPDUs on site.

(9) Montgomery County is committed to its policy of providing affordable housing in all areas of the County to provide opportunity to households of all incomes in each Policy Area.

(10) MPDUs can be used in partnership with other housing supports to provide affordable housing to households with very low incomes such as those with incomes below 50% or 30% of area median income.

25A-2. Declaration of public policy.

The County Council hereby declares it to be the public policy of the County 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 sizes;

(2) Provide for low- and moderate-income housing to meet existing and anticipated future employment needs in the County;

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

(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;

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

(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 or public benefit provisions of Chapter 59 and, in certain zones, the optional development standards; and

(7) Allow developers of residential units in qualified projects more flexibility to meet the broad objective of building housing that low- and moderate-income households can afford by letting a developer, under specified circumstances, comply with this Chapter by contributing to a County Housing Initiative Fund.]

(1) encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes ages, lifestyles, and physical capabilities at appropriate locations and densities and to implement policies to bridge housing affordability gaps;

(2) make housing that is affordable to low, moderate, and middle income households a priority in all parts of the County;

(3) ensure that all master plan and sector plan amendments address the need for housing for low, moderate, and middle income households and promote specific strategies to meet that need including height and density incentives and flexibility;

(4) implement policies that increase the long-term supply of rental housing affordable to low and moderate income households, particularly in areas that are easily accessible to transit;

(5) require all subdivisions of 20 or more dwelling units include a minimum number of moderately priced units on-site, or under certain specified circumstances, provide appropriate units off-site or make a payment to the Housing Initiative Fund; and

(6) allow the Department of Housing and Community Affairs and developers flexibility to enter into affordable housing agreements that address the needs for housing units of different sizes and bedroom counts to better meet the needs of low and moderate income households.

25A-3. Definitions.

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

Age-restricted unit means a dwelling unit, the occupancy of which is conditioned on at least one resident being a certain age or older.

Area median income means the median household income for Montgomery County as estimated by the U.S. Department of Housing and Urban Development.

[(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.

[(b)] *At one location* means all adjacent land of the applicant if:

(1) The property lines are contiguous or nearly contiguous at any point; or

(2) The property lines are separated only by a public or private street, road, highway or utility right-of-way, or other public or private right-of-way at any point; or

(3) The property lines are separated only by other land of the applicant which is not subject to this Chapter at the time of any permit, site plan, development or subdivision application by the applicant.

[(c)] *Available for building development* means all land:

(1) Owned by, or under contract to, the applicant;

(2) Zoned for any type of residential development to which an optional density bonus provision applies;

(3) Which will use public water and sewerage; and

(4) Which is already subdivided or is ready to be subdivided for construction or development.

[(d)] *Closing costs* means statutory charges for transferring title, fees for obtaining necessary financing, title examination fees, title insurance premiums, house location survey charges and fees for preparation of loan documents and deed of conveyance.

[(e)] *Commission* means the Housing Opportunities Commission of Montgomery County.

[(f)] *Consumer Price Index* means the latest published version of the Consumer Price Index for All Urban Consumers (CPI-U) of the U.S. Department of Labor for the Washington metropolitan area, or any similar index selected by the County Executive.

[(g)] *Control period* means the time an MPDU is subject to either resale price controls and owner occupancy requirements or maximum rental limits, as provided in Section 25A-9. The control period is 30 years for sale units and 99 years for rental units, and begins on the date of initial sale or rental. If a sale MPDU is sold to an eligible [person] household within 30 years after its initial sale, and if (in the case of a sale MPDU that is not bought and resold by a government agency) the unit was originally offered for sale after March 1, 2002, the unit must be treated as a new sale MPDU and a new control period must begin on the date of the sale.

[(h)] *Date of original sale* means the date of settlement for purchase of a moderately priced dwelling unit.

[(i)] *Date of original rental* means the date the first lease agreement for a moderately priced dwelling unit takes effect.

[(j)] *Department* means the Department of Housing and Community Affairs.

[(k)] *Director*, except as otherwise indicated, means the head of the Department of Housing and Community Affairs, or the Director's designee.

[(l)] *Dwelling unit* means a building or part of a building that provides complete living facilities for one family, including at a minimum, facilities for cooking, sanitation and sleeping.

[(m)] *Eligible* [*person*] *household* means a [person or] household whose income qualifies the [person or] household to participate in the MPDU program, and who [holds a valid certificate of eligibility from the Department which entitles the person or household] is eligible to buy [or rent] an MPDU during the priority marketing period.

[(n)] *Housing Initiative Fund* means a fund established by the County Executive to achieve the purposes of Section 25B-9.

[(o)] *Low income* means levels of income within the income range for "very-low income families" established from time to time by the U.S. Department of Housing and Urban Development for the Washington metropolitan area, under federal law, or as defined by executive regulations.

[(p)] *Moderate income* means those levels of income, established in executive regulations, which prohibit or severely limit the financial ability of persons to buy or rent housing in Montgomery County. *Moderate income* levels must not exceed the "low income" limits set by the U.S. Department of Housing and Urban Development to determine eligibility for assisted housing programs.

[(q)] *Moderately priced dwelling unit* or *MPDU* means a dwelling unit which is:

(1) offered for sale or rent to eligible [persons] households through the Department, and sold or rented under this Chapter; or

(2) sold or rented under a government program designed to assist the construction or occupancy of housing for families of low or moderate income, and designated by the Director as an MPDU.

[(r)] *Optional density bonus provision* means any increase in density under Chapter 59, in a zoning classification that allows residential development, above the amount permitted in the base or standard method of development, whether by exercise of the optional provisions of Chapter 59 or by any special exception or conditional use.

[(s)] *Planning Board* means the Montgomery County Planning Board.

[(t)] *Priority marketing period* is the period an MPDU must be offered exclusively for sale or rent to eligible [persons] <u>households</u>, as provided in Section 25A-8.

25A-4. [Income] <u>Household</u> <u>income</u> and eligibility standards.

(a) The County Executive must set and annually revise standards of eligibility for the MPDU program by regulation. These standards must specify moderate-income levels for varying sizes of households which will qualify a person or household to buy or rent an MPDU. The Executive must set different income eligibility standards for buyers and renters. The Executive may set different income eligibility standards for buyers and renters of higher-cost or age-restricted [housing] <u>units</u>, as defined by regulation.

(b) In establishing standards of eligibility and moderate-income levels, the Executive must consider:

(1) [the price established for the sale or rental of MPDUs under this Chapter,] <u>income levels relative to area median income; and</u>

(2) [the term and interest rate that applies to the financing of MPDUs,

(3) the estimated levels of income necessary to carry a mortgage on an MPDU, and

(4)] family size and number of dependents.

(c) A person who rents an MPDU and lawfully occupies it when the unit is offered for sale may buy the unit, regardless of the person's income at the time of sale, if the person met all eligibility standards when the person first rented the unit.

(d) A person who rents an MPDU after meeting all eligibility standards may continue to occupy the unit for the term of the lease even if the person ceases to meet the income eligibility standards.

(e) A person who buys an MPDU after meeting all eligibility standards may retain ownership of the MPDU even if the person ceases to meet income eligibility standards during the term.

(f) To be eligible to buy or rent an MPDU other than an age-restricted unit, a person and members of that person's household must not have owned any residential property during the previous [5] five years. The Director may waive this restriction for good cause.

25A-5. Requirement to build MPDUs; payment to Housing Initiative Fund; agreements

(a) The requirements of this Chapter to provide MPDUs 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 20 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 20 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 20 or more dwelling units at one location.

(b) An applicant for an approval or permit identified in subsection (a) who proposes development of fewer than 20 dwelling units is not required to provide MPDUs, but must make a payment to the Housing Initiative Fund, as provided by regulation.

(c) In calculating whether a development contains a total of 20 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, floating zone plans, or building permits. Any applicant may apply for a preliminary plan of subdivision, site or development plan, floating zone plan, record plat, or building permit for fewer than 20 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 20 or more.

[(b)](d) Any applicant subject to subsection (a), in order to obtain a building permit, must submit to the Department of Permitting Services[, with the application for a permit,] a written MPDU agreement approved by the Director and the County Attorney. Each agreement must require that:

(1) a specific number of MPDUs must be constructed on an approved time schedule;

(2) in subdivisions with single-family dwelling [unit subdivisions] units, including townhouses, each MPDU must have 3 or more bedrooms; and

(3) in subdivisions with multi-family dwelling [unit subdivisions] units, the [number] ratio of efficiency [and one- bedroom] MPDUs to total MPDUs [each] must not exceed the ratio [that] of market-rate efficiency [and one-bedroom] units [respectively] [bear] to [the] total [number of] market-rate units in the subdivision.

The Director [must not] may approve an MPDU agreement that [reduces the number of bedrooms required by this subsection in any MPDU] approximates the total floor area for the units required, but alters the bedroom mix of the units or the number of units.

[(c)](e) When [the] a development with more than 20 units at one location is in a zone where a density bonus is allowed; and

(1) is covered by a plan of subdivision;

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

(3) requires a building permit to be issued for construction, the required number of [moderately priced dwelling units] MPDUs is a variable percentage that is not less than a base requirement of 12.5% of the total number of dwelling units or equivalent floor area at that location, not counting any workforce housing units built under Chapter 25B. The Council may establish a higher base requirement, up to 15% of the total number of dwelling units

or equivalent floor area at a location, as part of a master plan approval. 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 may permit 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 the 12.5% or higher base requirement established by the Council, of the total number of units in the subdivision. To obtain a density bonus, an applicant must provide at least one more MPDU than would have been required if there was no density bonus. The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPDUs, as follows:

Achieved Density Bonus	***MPDUs Required***	***Achieved Density Bonus***	***MPDUs Required***
Zero	[12.5%] Base requirement	Up to 11%	[13.6%] Base plus 1.1%
Up to 1%	[12.6%] Base plus 0.1%	Up to 12%	[13.7%] Base plus 1.2%
Up to 2%	[12.7%] Base plus 0.2%	Up to 13%	[13.8%] Base plus 1.3%
Up to 3%	[12.8%]	Up to 14%	[13.9%]

	Base plus 0.3%			Base plus 1.4%
Up to 4%	[12.9%] Base plus 0.4%		Up to 15%	[14.0%] Base plus 1.5%
Up to 5%	[13.0%] Base plus 0.5%		Up to 16%	[14.1%] Base plus 1.6%
Up to 6%	[13.1%] Base plus 0.6%		Up to 17%	[14.2%] Base plus 1.7%
Up to 7%	[13.2%] Base plus 0.7%		Up to 18%	[14.3%] Base plus 1.8%
Up to 8%	[13.3%] Base plus 0.8%		Up to 19%	[14.4%] Base plus 1.9%
Up to 9%	[13.4%] Base plus 0.9%		Up to 20%	[14.5%] Base plus 2.0%
Up to 10%	[13.5%] Base plus 1.0%		Up to 22%	[15.0%] Base plus 2.5%

[(d)](f)(1) Notwithstanding subsection [(c)](e), the Director may allow fewer or no MPDUs to be built in a development with more than 20 but fewer than 50 units at one location if:

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

[(B)](ii) would significantly reduce neighborhood compatibility; and

(B) the applicant makes a payment to the Housing Initiative Fund, as provided by regulation, based on the square footage of MPDU units that would otherwise have been required.

(2) If the Planning Board approves a density bonus of at least 20 percent for a development which consists of 20 or more but fewer than 50 units at one location, the number of [MPDU's] MPDUs required must be governed by subsection [(c)](e) unless the formula in subsection [(c)](e) 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] MPDUs by one unit and approve an additional market rate unit.

[(e)](g) 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 for an alternative payment agreement; or

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

[(f)](h)(1) An applicant may satisfy this Section by obtaining approval from the Director to transfer land to the County before applying for a building permit. [The applicant must sign a written land transfer agreement approved by the Director and by the County Attorney. For the Director to consider the request and take timely action, a written notice of the applicant's intent to submit an agreement should be served upon the Director at least 90 days before the application for a building permit is filed. The land transfer agreement must covenant that so much of the land, designated in the approved preliminary plan or site plan as land to which the optional zoning provisions for MPDUs apply, as is necessary in order to construct the number of MPDUs required by subsection (a) will be transferred, as finished lots, to Montgomery County or to the County's designee before the building permit is issued, so that the County might cause MPDUs to be constructed on the transferred land. After the submission of supporting documentation and review and approval by the County for the transfer of finished lots, the County must reimburse the applicant for the costs the applicant actually incurred, which are directly attributable to the finishing of the MPDU lots so transferred. Reimbursable costs include but are not limited to engineering costs; clearing, grading, and paving streets, including any required bonds and permits; installation of curbs, gutters and sidewalks; sodding of public right-of-way; erection of barricades and signs; installation of storm sewers and street lighting; and park and other open space and recreational development directly benefiting the MPDU lots transferred. The County must not reimburse an applicant for the cost or value of the transferred lots.]

(2) [If an applicant transfers land to the County under this subsection and no funds have been appropriated to reimburse the applicant for his finishing costs, the County may accept from the applicant undeveloped land rather than finished lots, or the applicant may transfer the finished lots to the County without requiring payment for finishing the lots.] The Director may only approve a transfer of land under this subsection after a making a written determination that the value of the land transferred is at least equal to the value of the MPDUs not constructed by the applicant.

(3) [Notwithstanding any other provisions of the subsection, the County may reject an election by an applicant to transfer land to the County in whole or in part whenever the public interest would best be served thereby. Any rejection and the reasons for the rejection may be considered by the Planning Board or the Director of Permitting Services in deciding whether to grant the applicant a waiver of this Chapter under Section 25A-7(b).] The Executive must establish procedures for transferring land under this subsection by method (1) regulation.

[(4) Any transfer of land to the County hereunder is not subject to Section 11B-33, and any land so transferred is not property subject to Section 11B-31A regulating the disposal of surplus land. The Director may dispose of the lots in a manner that furthers the objectives of this Chapter.]

[(g)](i) The MPDU agreements must be signed by the applicant and all other parties whose signatures are required by law for the effective and binding execution of contracts conveying real property. The agreements must be executed in a manner that will enable them to be recorded in the land records of the County. If the applicant is a corporation, the agreements must be signed by the principal officers of the corporation individually and on behalf of the corporation. Partnerships, associations or corporations must not evade this Chapter through voluntary dissolution. The agreements may be assigned if the County approves, and if the assignees agree to fulfill the requirements of this Chapter.

[(h)](j) The Department of Permitting Services must not issue a building permit in any subdivision or housing development in which MPDUs are required until the applicant submits a valid MPDU agreement which applies to the entire subdivision or development. The applicant must also file with the first application for a building permit a statement of all land the applicant owns in the County that is available for building development. In later applications, the applicant need only show additions and deletions to the original landholdings available for building development.

[(i)](k) The MPDU agreement must include the number, type, location, and plan for staging construction of all dwelling units and such other information as the Department requires to determine the applicant's compliance with this Chapter. The MPDU staging plan must be consistent with any applicable land use plan, subdivision plan, or site plan. The staging plan included in the MPDU agreement for all dwelling units must be sequenced so that:

(1) MPDUs are built along with or before other dwelling units;

(2) no or few market rate dwelling units are built before any MPDUs are built;

(3) the pace of MPDU production must reasonably coincide with the construction of market rate units; and

(4) the last building built must not contain only MPDUs.

This subsection applies to all developments, including any development covered by multiple preliminary plans of subdivision.

[(j)](l) The MPDU agreement must provide for any requirement of age-restricted units to be offered for sale to be satisfied by a payment to the Housing Initiative Fund under Section 25A-5A(b).

(m) If an applicant does not build the MPDUs contained in the staging plan along with or before other dwelling units, the Director of Permitting Services must withhold any later building permit to that applicant until the MPDUs contained in the staging plan are built.

[(k)](n) The applicant must execute and record covenants assuring that:

(1) The restrictions of this Chapter run with the land for the entire period of control;

(2) The County may create a lien to collect:

(A) that portion of the sale price of an MPDU which exceeds the approved resale price; and

(B) that portion of the foreclosure sale price of an MPDU which exceeds the approved resale price; and

(3) The covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other parties that receive title to the property. These covenants must be senior to all instruments securing permanent financing.

[(l)](o) An applicant must not establish a condominium or homeowners' association consisting solely of MPDUs.

(p) (1) In any purchase and sale agreement and any deed or instrument conveying title to an MPDU, the grantor must clearly and conspicuously state, and the grantee must clearly and conspicuously acknowledge, that:

(A) the conveyed property is [a] an MPDU and is subject to the restrictions contained in the covenants required under this Chapter during the control period until the restrictions are released; and

(B) any MPDU owner, other than an applicant, must not sell the MPDU until:

(i) the owner has notified the Department under Section 25A-8 or 25A-9, as applicable, that the unit is for sale;

(ii) the Department and, where applicable, the Commission, have notified the owner that they do not intend to buy the unit; and

(iii) The Department has notified the owner of the unit's maximum resale price.

(2) Any deed or other instrument conveying title to an MPDU during the control period must be signed by both the grantor and grantee.

(3) When a deed or other instrument conveying title to an MPDU is recorded in the land records, the grantor must cause to be filed in the land records a notice of sale for the benefit of the County in the form provided by state law.

[(m)](q) Nothing in this Chapter prohibits an applicant from voluntarily building MPDUs, as calculated under subsection [(c)](e), in a development with fewer than 20 dwelling units at one location, and in so doing from qualifying for an optional method of development under

Chapter 59. A development with fewer than 20 dwelling units where an applicant voluntarily builds MPDUs must comply with any procedures and development standards that apply to a larger development under this Chapter and Chapter 59. Sections 25A-5A, 25A-5B, and 25A-6(b) do not apply to an applicant who voluntarily builds [MPDU's] MPDUs under this subsection and in so doing qualifies for an optional method of development.

25A-5A. Alternative payment agreement.

(a) The Director may approve an MPDU agreement that allows an applicant, instead of building some or all of the required number of MPDUs in the proposed subdivision, to pay to the Housing Initiative Fund an amount computed under subsection (b)[, only if an Alternative Review Committee composed of the Director, the Commission's Executive Director, and the Director of Park and Planning, or their respective designees, by majority vote finds] upon a finding that:

(1) either:

(A) an indivisible package of services and facilities available to all residents of the proposed subdivision would cost MPDU buyers so much that it is likely to make the MPDUs effectively unaffordable by eligible buyers; or

(B) [environmental constraints at a particular site would render the building of all required MPDUs at that site economically infeasible]

the public benefit of affordable housing throughout the County outweighs the value of locating MPDUs in each subdivision throughout the County; and

(2) [the public benefit of additional affordable housing outweighs the value of locating MPDUs in each subdivision throughout the County, and] accepting the payment will further the objective of providing a broad range of housing opportunities throughout the County.

(b) [Any payment to the Housing Initiative Fund under this Section must equal or exceed 125% of the imputed cost of land for each unbuilt MPDU. Except as further defined by Executive regulation, the imputed land cost must be calculated as 10% (for high-rise units) or up to 30% (for all other housing units) of the actual sale price charged for each substituted unit. If the substituted unit will be a rental unit, the Director must calculate an imputed sale price under applicable regulations, based on the rent actually charged.] A payment under this section must be calculated as provided in method (1) regulation.

(c) [Any] A payment to the Housing Initiative Fund under this Section

(1) must not be used to reduce the annual County payment to the Fund; and

(2) may be used [only] to buy or build more MPDUs in [the same planning policy area] a Policy Area (as defined in the County [Growth] Subdivision Staging Policy) [as] other than that of the development for which the payment was made only after:

(A) notice is provided to the Council; and

(B) the Council is given at least 30 days to comment.

[and must not be used to reduce the annual County payment to the Fund.]

[(d) Any subdivision for which a payment is made under this Section is not eligible for any density bonus for which it would otherwise be eligible under Chapter 59.]

25A-5B. Alternative location agreement.

(a) The Director may approve an MPDU agreement that allows an applicant for development of a high-rise residential building, instead of building some or all of the required number of MPDUs on-site, to provide [at least the same number of] MPDUs at another location in the same [planning policy area] Policy Area, only if the Director finds that:

(1) the public benefit of locating MPDUs at the proposed alternative location outweighs the value of locating MPDUs in each subdivision throughout the County; [and]

(2) building the MPDUs at the proposed alternative location will further the objective of providing a broad range of housing opportunities throughout the County; and

(3) the alternative location agreement will increase the number of MPDUs provided as a result of the development.

(b) To satisfy the requirements of this Section, an applicant may:

(1) build, or convert from non-residential use, the required number of new MPDUs at a site approved by the Director;

(2) buy, encumber, or transfer, and rehabilitate as necessary, existing market rate housing units that meet all standards for use as MPDUs; or

(3) return to MPDU use, and rehabilitate as necessary, existing MPDUs for which price or rent controls have expired.

(c) Each agreement under this Section must include a schedule, binding on the applicant, for timely completion or acquisition of the required number of MPDUs.

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

[(a) *Optional zoning provisions.*] The County Council, sitting as a District Council for the Maryland-Washington Regional District within the County, to assist in providing moderately priced housing has enacted zoning standards in Chapter 59, establishing in certain zones optional density bonus provisions which increase the allowable residential density above the maximum base density of the zoning classification and permit alternative dwelling unit types other than those allowed under the standard method of development. Land upon which the applicant must build MPDUs may, at the applicant's election, be subject to optional zoning provisions. If the applicant elects the optional density provisions, permitting the construction of an increased number of dwelling units, the requisite percentage and number of MPDUs must apply to the total number of dwelling units as increased by application of the optional density provisions or by the approval of a special exception that increases the density above the otherwise permitted density of the zoning classification in which the property is situated.

[(b) *Waiver of requirements.* Any applicant who presents sufficient evidence to the Director of Permitting Services in applying for a building permit, or to the Planning Board in submitting a preliminary plan of subdivision for approval or requesting approval of a site or other development plan, may be granted a waiver from part or all of Section 25A-5. The waiver must relate only to the number of MPDUs to be built, and may be granted only if the Director of Permitting Services or the Board, after consulting with the Department of Housing and Community Development Affairs, finds that the applicant cannot attain the full density of the zone because of any requirements of the zoning ordinance or the administration of other laws or regulations. When any part of the land that dwelling units cannot be built on for physical reasons is used to compute permitted density, the applicant's inability to use the optional density bonus provisions is not in itself grounds for waiving the MPDU requirements. Any waiver must be strictly construed and limited.]

25A-7. Maximum prices and rents.

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

(a) *Sales.*

(1) The sale price of any MPDU, including closing costs and brokerage fees, must not exceed an applicable maximum sale price established from time to time by the County Executive in regulations adopted under method (1).

(2) [The County Executive in issuing MPDU sale price regulations must seek appropriate information, such as current general market and economic conditions and the current minimum sale prices of private market housing in the County, and must consult with the building industry, employers, and professional and citizen groups to obtain statistical information which may assist in setting a current maximum sale price. The County Executive must, from time to time, consider changes in the income levels of persons of low and moderate income and their ability to buy housing. The County Executive must also consider the extent to

which, consistent with code requirements, the cost of housing can be reduced by the elimination of amenities, the use of cost-reducing building techniques and materials, and the partial finishing of certain parts of the units.] The regulations adopted to implement this Section must allow the Director to:

(A) restrict those conditions of the design, construction, pricing, or amenity package of an MPDU project that will impose excessive mandatory homeowner or condominium fees or other costs that reduce the affordability of the MPDUs; and

(B) approve an increase of up to 10% over the base sale price of an MPDU upon a finding that the increase is justified to cover the cost of a modification of the external design of the MPDU necessary to reduce excessive marketing impact of the MPDU on the market rate units in the subdivision.

[(3) The County Executive must issue maximum sale prices for MPDUs which continue in effect until changed by later regulation. The maximum sale prices must be based on the necessary and reasonable costs required to build and market the various kinds of MPDUs by private industry. The sale prices for any succeeding year must be based on a new finding of cost by the County Executive, or on the prior year's maximum MPDU price adjusted by the percentage change in the relevant cost elements indicated in the Consumer Price Index.

(4) The County Executive may make interim adjustments in maximum MPDU sale prices when sufficient changes in costs

justify an adjustment. Any interim adjustment must be based on the maximum MPDU sale prices previously established, adjusted by the percentage change in the relevant cost elements indicated in the Consumer Price Index.

(5) If the Director finds that other conditions of the design, construction, pricing, or amenity package of an MPDU project will lessen the ability of eligible persons to afford the MPDUs, the Director, under executive regulations, may restrict those conditions that will impose excessive mandatory homeowner or condominium fees or other costs that reduce the affordability of the MPDUs.

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

(b) *Rents.*

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

[(2) The County Executive, in setting the maximum rent, must consider the current cost of building MPDUs, available interest rates and debt service for permanent financing, current market rates of return or investments in residential rental properties, operating costs, vacancy rates of comparable properties, the value of the MPDU at the end of the control period, and any other relevant information. The County Executive must consult with the rental industry, employers and professional and citizen groups to obtain statistical information and current general market and economic conditions which may assist in setting a current maximum rent. The County Executive must consider the extent to which, consistent with County codes and housing standards, the cost of rental housing can be reduced by the elimination of amenities. The County Executive must also consider from time to time changes in the income levels of persons of low and moderate income and their ability to rent housing.]

25A-8. Sale or rental of units.

(a) *Sale or rental to government agencies or nonprofit corporations.*

(1) The Department, the Commission, or any other housing development agency or nonprofit corporation designated by the County Executive may buy or lease, for its own programs or programs administered by it, up to 40 percent of all MPDUs which are not sold or rented under any other federal, state, or local program.

(2) The Department or Commission may buy or lease up to 33.3 percent of the MPDUs not sold or rented under any other federal, state, or local program.

(3) Any other designated agency or corporation may buy or lease:

(A) any MPDU in the first 33.3 percent that the Department or Commission has not bought or leased; and

(B) the remainder of the 40 percent specified in subsection (a)(1).

This option may be assigned to persons who are clients of the Department of Health and Human Services or to persons of low or moderate income who are eligible for assistance under any federal, state, or local program identified in Executive regulation.

(4) The Executive must, by regulation, adopt standards and priorities for designating nonprofit corporations under this subsection. These standards must require the corporation to demonstrate its ability to operate and maintain MPDUs satisfactorily on a long-term basis.

(5) The Department must notify the Commission or other designated agency or corporation promptly after receiving notice from the applicant under subsection (b) of the availability of MPDUs. If the Department, the Commission, or any other designated agency or corporation exercises its option, it must submit to the applicant, within 21 calendar days after the Department notifies the Commission under this subsection, a notice of intent to exercise its option for specific MPDUs covered by this option. Any MPDUs not bought or leased under this subsection must be sold or rented only to eligible households under subsection (b)

during the priority marketing period for eligible households to buy or lease.

(6) In exercising this option, the Department, the Commission, and any designated agency or corporation must designate the units by reference to number, type, size and amenities of the units selected if the designation does not result in any type of unit exceeding by more than 40 percent the total units of that type which are sold or rented under this Section, unless the applicant agrees otherwise. The notice required under subsection (a)(5) must state which MPDUs are to be offered for sale and which are to be offered for rent, and the Department, the Commission, and any designated agency or corporation may buy only units which are offered for sale and may lease only units which are offered for rent. The Department, the Commission, and any designated agency or corporation must decide whether it will exercise its option within 45 days after it receives the original notice.

(7) If more than one government agency or nonprofit corporation files a notice of intent under subsection (a)(5) with respect to a particular MPDU:

(A) the Department prevails over any other buyer or renter;

(B) The Commission prevails over any buyer or renter other than the Department;

(C) any other government agency prevails over any nonprofit corporation;

(D) the first government agency to file a notice prevails over any later agency; and

(E) the first nonprofit corporation to file a notice prevails over any later corporation.

(8) Any unit purchased under this subsection that is offered for sale within five years after initial purchase must first be offered for sale at the initial purchase price to the Department in accordance with Executive regulation.

(b) *Sale or rental to general public.*

(1) Every moderately priced dwelling unit required under this Chapter must be offered to the general public for sale or rental to a good-faith purchaser or renter to be used for his or her own residence, except units sold or rented under subsection (a) or offered for sale or rent with the assistance of, and subject to the conditions of, a subsidy under a federal, state or local government program, identified in regulations adopted [by the County Executive] under method (1), whose purpose is to provide housing for persons of low or moderate income.

(2) Before offering any moderately priced dwelling units, the applicant must notify the Department of the proposed offering and the date on which the applicant will be ready to begin the marketing to eligible [persons] households. The notice must set forth the number of units offered, the bedroom mix, the floor area for each unit type, a description of the amenities offered in each unit and a statement of the availability of each unit for sale or rent, including information regarding any mortgage financing available to buyers of the designated unit. The applicant must also give the Department a vicinity map of the offering, a copy of the approved development, subdivision or site plan, as

appropriate, and such other information or documents as the Director finds necessary. The Department must maintain a list of eligible households [persons of moderate income and], in accordance with procedures established by the County Executive, must notify eligible [persons] households of the offering.

(3) After receiving the complete offering notice, the Department must notify the Commission of the offering. [If the Department finds that the offering notice is complete, it must decide whether the offering of the units to eligible persons will be administered by lottery or by another method that will assure eligible persons an equitable opportunity to buy or rent a MPDU.] The Department must notify the applicant of the method by which the MPDUs will be offered and when the 90-day priority marketing period for the MPDUs may begin.

(4) The Executive may by regulation establish a buyer and renter selection system which considers household size, County residency, employment in the County, and length of time since the person was certified for the MPDU program. Each eligible [person] household must be notified of the availability of any MPDU which would meet that person'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 not less than 90 days after the initial offering date approved by the Department. The priority marketing period for resold or rerented units ends not less than 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] households are interested in buying or renting a unit.

(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 finds that:

(i) offering more rental MPDUs in that subdivision would advance the purpose 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 has demonstrated that it is qualified to manage rental housing [and has submitted an effective management plan for the rental units in that subdivision].

Applicants must make a good-faith effort to enter into contracts with eligible [persons] households during the priority marketing period and for an additional period necessary to negotiate with eligible [persons] households who indicate a desire to buy or rent an MPDU during that period.

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

(8) An owner of an MPDU, except the Commission or a housing agency or nonprofit corporation designated by the Director, must not rent the unit to another party unless the Director finds sufficient cause to allow temporary rental of the unit under applicable regulations, which may include maximum rental

levels. [Any MPDU owner who is allowed to rent a unit temporarily must agree to amend the applicable MPDU covenants to extend the control period for a time equal to the temporary rental period.]

(9) Any rent obtained for an MPDU that is rented without the Director's authorization must be paid into the Housing Initiative Fund by the owner within 90 days after the Director notifies the owner of the rental violation. Any amount unpaid after 90 days is grounds for a lien against the unit[,]. [and the] The Director may obtain a judgment and record the lien or may reduce the resale price of the MPDU or pursue other remedies provided by law.

(10) An applicant must not sell or lease any [unit] MPDU without first [obtaining a certificate of] verifying the eligibility [from] of the prospective buyer or lessee. A copy of each certificate must be furnished to the Department and maintained on file by the Department. Before the sale by an applicant or by the Commission or a designated housing agency or nonprofit corporation to any buyer of any MPDU who does not possess a certificate of eligibility, the applicant, the Commission, or the agency or corporation must ask the Department whether the certificates on file show that the proposed buyer had previously bought another MPDU. A person must not buy a second MPDU unless no first-time buyer is qualified to buy that unit. The Director may waive this restriction for good cause.

(11) If an MPDU owner dies, at least one heir, legatee, or other person taking title by will or by operation of law must occupy the

MPDU during the control period under this Section, or the owner of record must sell the MPDU as provided in Section 25A-9.

[(b) *Sale or rental to government agencies or nonprofit corporations.*

(1) In view of the critical, long-term public need for housing for families of low and moderate income, the Department, the Commission, or any other housing development agency or nonprofit corporation designated by the County Executive may buy or lease, for its own programs or programs administered by it, up to 40 percent of all MPDUs which are not sold or rented under any other federal, state, or local program. The Department or Commission may buy or lease up to 33 percent of the MPDUs not sold or rented under any other federal, state, or local program. Any other designated agency or corporation may buy or lease (A) any MPDU in the first 33 percent that HOC has not bought or leased, and (B) the remainder of the 40 percent. This option may be assigned to persons of low or moderate income who are eligible for assistance under any federal, state, or local program identified in regulations adopted by the Executive. The Executive must, by regulation, adopt standards and priorities for designating nonprofit corporations under this subsection. These standards must require the corporation to demonstrate its ability to operate and maintain MPDUs satisfactorily on a long-term basis.

(2) The Department must notify the Commission or other designated agency or corporation promptly after receiving notice from the applicant under subsection (a) of the availability of MPDUs. If the Department, the Commission, or any other designated agency or corporation exercises its option, it must submit to the

applicant, within 21 calendar days after the Department notifies the Commission under subsection (b), a notice of intent to exercise its option for specific MPDUs covered by this option. Any MPDUs not bought or leased under this subsection must be sold or rented only to eligible persons under subsection (b) during the priority marketing period for eligible persons to buy or lease.

(3) In exercising this option, the Department, the Commission, and any designated agency or corporation must designate the units by reference to number, type, size and amenities of the units selected if the designation does not result in any type of unit exceeding by more than 40 percent the total units of that type which are sold or rented under this Section, unless the applicant agrees otherwise. The notice required under subsection (b)(2) must state which MPDUs are to be offered for sale and which are to be offered for rent, and the Department, the Commission, and any designated agency or corporation may buy only units which are offered for sale and may lease only units which are offered for rent. The Department, the Commission, and any designated agency or corporation must decide whether it will exercise its option within 45 days after it receives the original notice.

(4) If more than one government agency or nonprofit corporation files a notice of intent under subsection (b)(2) with respect to a particular MPDU:

(A) the Department prevails over any other buyer or renter;

(B) The Commission prevails over any buyer or renter other than the Department;

(C) any other government agency prevails over any nonprofit corporation;

(D) the first government agency to file a notice prevails over any later agency; and

(E) the first nonprofit corporation to file a notice prevails over any later corporation.]

25A-9. Control of rents and resale prices; foreclosures.

(a) *Resale price and terms.* Except for foreclosure proceedings, any MPDU constructed or offered for sale or rent under this Chapter must not be resold or refinanced during the control period for a price greater than the original selling price plus:

(1) [A] a percentage of the unit's original selling price equal to the increase in the cost of living since the unit was first sold, as determined by the Consumer Price Index;

(2) [The fair market value of] an allowance for improvements made to the unit between the date of original sale and the date of resale;

(3) [An] an allowance for closing costs which were not paid by the initial seller, but which will be paid by the initial buyer for the benefit of the later buyer; and

(4) [A] a reasonable sales commission if the unit is not sold during the priority marketing period to an eligible [person] household from the Department's eligibility list.

In determining the amount of the allowance for improvements under paragraph (2), the Director may disallow the value of improvements determined to be unnecessary for the maintenance and upkeep of the unit. The resale price of an MPDU may be reduced if the physical condition of the unit reflects abnormal wear and tear because of neglect, abuse, or insufficient maintenance. Any personal property transferred in connection with the resale of an MPDU must be sold at its fair market value. [In calculating the allowable resale price of an MPDU which was originally offered for rent, the Department must estimate the price for which the unit would have been sold if the unit had been offered for sale when it was first rented.] The Executive must establish procedures for calculating the allowable resale price of an MPDU under this subsection by method (1) regulation.

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

(1) Any MPDU offered for resale during the control period must first be offered exclusively for 60 days to the Department and the Commission, in that order. The Department or the Commission may buy a unit when funds are available. The Department may buy a unit when the Director finds that the Department's or a designated agency or corporation's buying and reselling the unit will increase opportunities for eligible [persons] households to buy the unit. If the Department or the Commission does not buy the unit, the Department must notify eligible [persons] households of the availability of a resale MPDU. The unit may be sold through either of the following methods:

(A) The Department may [by lottery] establish a priority order under which eligible [persons] households who express interest in buying the unit may buy it at the approved resale price.

(B) The Department may notify the MPDU owner that the owner may sell the unit directly to any eligible [person] household under the resale provisions of this Chapter.

(2) A resale MPDU may be offered for sale to the general public only after:

(A) the priority marketing period expires; and

(B) all eligible [persons] households who express an interest in buying it have been given an opportunity to do so.

(3) The Executive by regulation may adopt requirements for reselling MPDUs. The regulations may require a seller to submit to the Department for approval:

(A) a copy of the proposed sales contract, including a list and the price of any personal property included in the sale;

(B) a signed copy of the settlement sheet; and

(C) an affidavit signed by the seller and buyer attesting to the accuracy of all documents and conditions of the sale.

(4) A transfer of an MPDU does not comply with this Chapter until all required documents and affidavits have been submitted to and approved by the Department.

(c) *First sale after control period ends.*

(1) If an MPDU originally offered for sale or rent after March 21, 1989, is sold or resold after its control period ends, upon the first sale of the unit the seller must pay to the Housing Initiative Fund one-half of the excess of the total resale price over the sum of the following:

(A) The original selling price;

(B) A percentage of the unit's original selling price equal to the increase in the cost of living since the unit was first sold, as determined by the Consumer Price Index;

(C) [The fair market value of] An allowance for capital improvements made to the unit between the date of original sale and the date of resale; and

(D) A reasonable sales commission.

The Director must adjust the amount paid into the fund in each case so that the seller retains at least $10,000 of the excess of the resale price over the sum of the items in (A)--(D).

(2) The Director must find that the price and terms of a sale covered by subsection (c)(1) are bona fide and accurately reflect the entire transaction between the parties so that the full amount required under subsection (c)(1) is paid to the fund. When the Director finds that the amount due the fund is accurate and the Department of Finance receives the amount due, the Department must terminate the MPDU controls and execute a release of the restrictive covenants.

(3) The Department and the Commission, in that order, may buy an MPDU at any time during the control period, and may resell the unit to an eligible [person] household. A resale by the Department or Commission starts a new control period.

[(4) The Commission and any partnership in which the Commission is a general partner need not pay into the Housing Initiative Fund any portion of the resale price of any MPDU that it sells.]

(d) *Initial and later rent controls.* Unless previously sold under subsection (c)(1), MPDUs built or offered for rent under this Chapter must not be rented for 99 years after the original rental at a rent greater than that established by Executive regulations. Any MPDU (other than those built, sold, or rented under any federal, state, or local program offered by the Commission) offered for rent during the control period must be offered exclusively for 60 days to one or more eligible [persons] households, as determined by the Department, for use as that person's residence, and to the Commission. The Commission may assign its right to rent such units to persons of low or moderate income who are eligible for assistance under any federal, state, or local program identified in Executive regulations.

(e) *Foreclosure or other court-ordered sales.* If an MPDU is sold through a foreclosure or other court-ordered sale, a payment must be made to the Housing Initiative Fund as follows:

(1) If the sale occurs during the control period, any amount of the foreclosure sale price which exceeds the total of the approved resale price under subsection (a), reasonable foreclosure costs, and liens filed under the Maryland Contract Lien Act, must be paid to the Housing Initiative Fund. If the remaining balance under the original first deed of trust or mortgage exceeds the resale price under subsection (a), then the difference between the foreclosure sales price and the balance of the original first deed of trust (plus reasonable foreclosure costs) must be paid to the Fund.

(2) If the sale occurs after the control period, and the unit was originally offered for sale or rent after March 20, 1989, the payment to the Fund must be calculated under subsection (c).

(3) If the MPDU is a rental unit, the resale price under subsections (a) and (c) must be calculated [using the maximum sales price in effect when the unit was originally offered for rent] as provided in regulation.

(4) If the MPDU is sold subject to senior liens, the lien balances must be included in calculating the sale price.

All MPDU covenants must be released after the required payment is made into the Housing Initiative Fund.

(f) *Waivers.* The Director may waive the restrictions on the resale and re-rental prices for MPDUs if the Director finds that the restrictions conflict with regulations of federal or state housing programs and thus prevent eligible [persons] households from buying or renting units under the MPDU program.

(g) *Bulk transfers.* This section does not prohibit the bulk transfer or sale of all or some of the sale or rental MPDUs in a subdivision within 30 years after the original rental or offering for sale if the buyer is bound by all covenants and controls on the MPDUs.

(h) *Compliance.* The County Executive must adopt regulations to promote compliance with this section and prevent practices that evade controls on rents and sales of MPDUs.

* * *

25A-12. Annual report.

Each year by March 15 the Director must report to the Executive and Council, for the previous calendar year:

(a) the number of MPDUs approved and built;

(b) each alternative payment agreement approved under Section 25A-5A or alternative location agreement approved under Section 25A-5B, and the location and number of MPDUs that were involved in each agreement;

(c) [each approval of a different rent for a high-rise rental unit under Section 25A-7(b)(1)] each land transfer completed under Section 25A-5(h); and

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

*   *   *

LEGISLATIVE REQUEST REPORT

Bill 34-17
Housing – Moderately Priced Dwelling Units (MPDUs) – Amendments

DESCRIPTION: The Bill would: clarify existing provisions of the law; require developments of less than 20 homes to make a payment to the Housing Initiative Fund; broaden the authority of the Director of the Department of Housing and Community Affairs to accept payments into the Housing Initiative Fund in lieu of including MPDUs in a development, when it serves the goal of increasing the availability of affordable housing; and increase the flexibility of the Director in determining MPDU obligations to better serve the demands for affordable units.

PROBLEM: Despite the County having a longstanding law requiring the construction of affordable housing with new residential development, the County's supply of affordable housing continues to lag demand.

GOALS AND OBJECTIVES: Increase the efficiency of the existing MPDU program to increase the availability of affordable housing and improve the process of making it available to families who need it.

COORDINATION: Department of Housing and Community Development

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Josh Hamlin, Legislative Attorney, 240-777-7892

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: N/A

F:\LAW\BILLS\1734 MPDU\LRR.Docx

Bill 34-17: substantive revisions to Chapter 25A, Housing – Moderately Priced

Lines	Description of Changes
62-125	Revise Legislative Findings
155-176	Revise Declaration of Public Policy
180-184, 236-240, 251-253	Definitions: Add "age-restricted unit" and "area median income;" amend "eligible person" to be "eligible household;" provide that County "moderate income" must not be less than HUD "low income"
270-287	Expressly tie MPDU eligibility to household income
292-294	Expressly provide that tenant may remain in MPDU for lease term notwithstanding change in eligibility
295-297	Expressly provide that MPDU purchaser may retain ownership notwithstanding change in eligibility
298	Eliminate the prohibition on residential property ownership for the prior five years ***for age-restricted units***
320-323	Require a payment to the HIF for housing developments with less than 20 units
340	Delete requirement that written MPDU agreement be submitted *with the application for a permit* (it is still required, just not at the time of permit application)
348-352	Delete MPDU agreement requirement that one-bedroom MPDUs not exceed the ratio of one-bedroom market rate units
354-357	Permit the Director to approve an MPDU agreement that is based on the floor area or square footage of required units, but alters the bedroom mix of units or number of units
364-371, 380-381, Table on pp. 16-17	Add language to clarify that the Council may adjust the base requirement for MPDUs from 12.5% to 15% as part of a master plan approval. County-wide base requirement will remain at 12.5%
381-384	Add requirement that to receive density bonus, applicant must provide at least one more MPDU than would have been required if there was no density bonus
401-404	Require that, when the Director allows fewer or no MPDUs to be built in a development with more than 20 but fewer than 50 units at one location, the applicant must make a payment to the Housing Initiative Fund, as provided by regulation, based on the square footage of MPDU units that would otherwise have been required
416, 418-419	Clarify references to §25A-5A and §25A-5B
420-472	Modify language to allow DHCA Director to accept a land transfer if its value is equal to the value of the MPDU that are not constructed
507-509	Require MPDU agreement provide for any requirement of age-restricted units to be offered for sale to be satisfied by a payment to the Housing Initiative Fund under Section 25A-5A(b)
526-527	Prohibit an applicant from establishing a condominium or homeowners' association consisting solely of MPDUs

567-586	Delete reference to Alternative Review Committee and provide that the Director may enter an alternative payment agreement upon making certain findings
587-595	Delete Code requirements for calculating alternative payments and provide that the payments must be calculated as provided in method (1) regulation
596-609	Update references to County Growth Policy and provide that payments to the HIF may be used outside the Policy Area for which the payment was made only after: (A) notice is provided to the Council; and (B) the Council is given at least 30 days to comment
607-609	Delete prohibition on alternative payment agreements for developments where the applicant receives a density bonus
614-623	Add requirement that acceptance of alternative location agreement will increase the number of MPDUs provided as a result of the development
635-667	Delete provisions for granting a waiver of MPDU requirements – alternative payment agreements must be used when not constructing otherwise-required MPDUs
676-732	Simplify criteria for MPDU sale price regulations
733-758	Simplify criteria for MPDU rent regulations
769-825, 830, 956-1012	Flip subsections on priority offering for HOC and non-profits and public offering to clarify that priority offering is first
775-778	Allow assignment of the purchase/rental option, held by certain government agencies or nonprofit corporations, to clients of the Department of Health and Human Services
822-825	Require that any unit purchased under §25A-8(a) that is offered for sale within five years after initial purchase first be offered for sale to the Department in accordance with Executive regulation
852-859, 1054	Eliminate references to lottery as a method of administering MPDU offerings
1021, 1029-1032	Resale within control period: change permitted increase over original sale price for improvements made to unit from "fair market value of improvements made" to an allowance, excluding the value of improvements determined to be unnecessary for the maintenance and upkeep of the unit
1165-1166	Annual Report: require report to include each land transfer complete in the subject year

ROCKVILLE, MARYLAND

MEMORANDUM

December 4, 2017

TO: Roger Berliner, President, County Council

FROM: for Jennifer A. Hughes, Director, Office of Management and Budget
FOR Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Bill 34-17, Housing - Moderately Priced Dwelling Units

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Clarence Snuggs, Director, Department of Housing and Community Affairs
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Pofen Salem, Office of Management and Budget
Felicia Zhang, Office of Management and Budget

Fiscal Impact Statement
Bill 34-17
Housing - Moderately Priced Dwelling Units - Amendments

1. **Legislative Summary**

   Bill 34-17 would clarify certain provisions of law related to moderately priced dwelling units (MPDUs), amend certain provisions of law related to the satisfaction of MPDU requirements, and amend certain provisions of law related to the sale and rental of MPDUs.

   This Bill would clarify existing provisions of the law, require developments of less than 20 homes to make a payment to the Housing Initiative Fund, broaden the authority of the Director of the Department of Housing and Community Affairs to accept payments into the Housing Initiative Fund in lieu of including MPDUs in a development, when it serves the goal of increasing the availability of affordable housing, and increase the flexibility of the Director in determining MPDU obligations to better serve the demands for affordable units.

2. **An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.**

   The proposed amendments on Bill 34-17 would require developments with fewer than 20 units to make a payment to the Housing Initiative Fund (HIF), and it would increase the number of MPDUs in master plan areas with increased MPDU requirements around the County if the required MPDUs are calculated on floor area ration or square footage basis, rather than as a proportion of the market-rate units that is the current practice. The proposed methodology would significantly impact existing MPDU operations and practices as MPDU staff currently has very little involvement in the design of a building, and they would now be presumed to do more in-depth analysis of amended MPDU requirements that would occur much earlier in the land use and subdivision process. It is estimated that Bill 34-17 would require approximately $345,090 in new expenditures based on a need of up to 3.5 new FTEs to administer and implement the amended requirements. However, DHCA cannot provide any estimated changes in revenues at this time. Research is needed to determine the applicable rate used as appropriate alternative payments to the HIF. Details are provided below.

   Section 25A-5(b): Payment to the Housing Initiative Fund for development of fewer than 20 units

   - **Result**: Requires developments with fewer than 20 units to make a payment to the HIF.
   - **Revenue**: To be determined. To determine the amount of new revenue, information from the Department of Permitting Services has been requested to better ascertain the number of developments of fewer than 20 units in prior years. Additionally, the Bill does not define the payment amount to the HIF, more research is needed to determine the applicable rate.
   - **Expenditures**: The Bill would have an impact on DHCA's personnel costs with an increase of $37,160 annually. This amount represents a need of 0.5 FTE for administrative services to assist with new administrative tasks, including tracking

projects with fewer than 20 units, tracking funds, and providing technical assistance. The cost estimate is based on an Office Services Coordinator position (Grade 16).

Section 25A-5(e): Council may establish through the master plan process a higher base requirement up to 15%; Required MPDUs to be calculated on floor area ration (FAR) or square footage basis, not as a proportion of the market-rate units

- **Result:** Bill 34-17 proposes to amend MPDU agreements to be based on floor area or square footage, rather than the number of bedrooms in market rate units as previously stated. This amendment would increase the number of MPDUs in various master plan areas with increased MPDU requirements around Montgomery County. It would also significantly impact current MPDU operations and practices as MPDU staff currently has very little involvement in the design of a building. If the implementation of MPDU agreements is based on a floor area ratio or square footage, MPDU development reviews will become substantially more complex. Additionally, it will need to occur earlier in the subdivision process to negotiate with the developer and work closely with the Planning Department to determine the number and type of MPDUs to be included in the layout and design of the building.

  Using the past three years as guidance, between 14 to 18 projects each year may have to be evaluated on an FAR basis. It is estimated that the proposed amendment may double the review work of MPDU staff currently undertaken.
- **Revenue**: Not applicable.
- **Expenditures**: The amended Section 25-A-5(e) may have an impact on DHCA's personnel costs up to $307,930 annually if the Bill is implemented to calculate MPDUs based on an FAR basis. The estimate is based on the following:
  - $210,720 for two Planning Specialists (2.0 FTEs) to negotiate and review projects early in the land use process, calculate number of units and unit types, evaluate Alternative Proposal requests (see below), and analyze MPDU proposals; and
  - $97,210 for one Program Manager I (1.0 FTE) to enhance the Program's ability to monitor and enforce MPDU requirements on developers and on MPDU households.

Section 25A-5A. Alternative Payment Agreements: The bill would allow Alternative Payments on sites receiving a density bonus, and require Alternative Payments on senior housing projects.

- **Result**: Additional Alternative Payments for senior housing projects, and it may allow DHCA to approve Alternative Payments for condominium developments (such as Piggy-Back townhouse developments with higher condominium fees.)
- **Revenue**: To be determined. The amount would fluctuate year to year based on real estate market trends.
- **Expenditures**: Not applicable.

3. **Revenue and expenditure estimates covering at least the next 6 fiscal years.**

The total expenditures for the next six fiscal years are estimated at approximately $2.07M if the Bill is implemented to calculate MPDUs based on an FAR basis and require developments with fewer than 20 units to make a payment to the HIF. However, the estimated revenue changes are not available at this time due to limited information to determine an applicable rate.

	Expenditures*	Revenue
Year 1	$345,090	TBD
Year 2	$345,090	TBD
Year 3	$345,090	TBD
Year 4	$345,090	TBD
Year 5	$345,090	TBD
Year 6	$345,090	TBD
Total	**$2,070,540**	TBD

4. **An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.**

   Not Applicable.

5. **An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.**

   Not Applicable.

6. **Later actions that may affect future revenue and expenditures if the bill authorizes future spending.**

   Not applicable. The bill does not authorize future spending.

7. **An estimate of the staff time needed to implement the bill.**

   As indicated in #2, Bill 34-17 may require up to 3.5 new FTEs in staff time to administer the proposed amendments based on the assumption of 14 to 18 development projects to be evaluated on an FAR basis per year. The cost estimate is based on the following:
   - 2.0 FTEs for two Planning Specialists (estimated at $210,720)
   - 1.0 FTEs for a Program Manager I ($97,210)
   - 0.5 FTEs for a part-time Office Services Coordinator ($37,160)

   Note: Staffing needs could be adjusted based on the actual number of development projects and housing units to be evaluated.

8. **An explanation of how the addition of new staff responsibilities would affect other duties.**

   This bill would significantly impact current MPDU program operations and practices if the calculation of MPDUs is based on an FAR basis, not as a proportion of the market-rate units. MPDU development reviews would be substantially more complex and would need to occur earlier in the subdivision process. Additionally, DHCA would need to more closely monitor and enforce MPDU requirements on developers and on MPDU households. These new responsibilities cannot be absorbed by existing staff.

9. An estimate of costs when an additional appropriation is needed.

It is estimated that $345,100 would be needed in the first full year of implementation.

10. A description of any variable that could affect revenue and cost estimates.

Several variables could affect revenue estimates, including:

- Number of developments with fewer than 20 units,
- Per-unit payment amount for developments with fewer than 20 units,
- General real estate market conditions, and
- Number of alternative payments accepted.

11. Ranges of revenue or expenditures that are uncertain or difficult to project.

Revenue generated by developments with fewer than 20 units and the total amount of alternative payments are difficult to project at this time.

12. If a bill is likely to have no fiscal impact, why that is the case.

Not Applicable.

13. Other fiscal impacts or comments.

Not Applicable.

14. The following contributed to and concurred with this analysis:
Clarence Snuggs, Director, Department of Housing and Community Affairs (DHCA)
Jay Greene, DHCA
Stephanie Killian, DHCA
Tim Goetzinger, DHCA
Pofen Salem, Office of Management and Budget

J Hughes
Jennifer A. Hughes, Director
Office of Management and Budget

12/4/17
Date

Economic Impact Statement
Bill 34-17, Housing – Moderately Priced Dwelling Units

Background:

This legislation would clarify certain provisions of law related to moderately priced dwelling units (MPDUs), amend certain provisions of law related to the satisfaction of MPDU requirements, and amend certain provisions of law related to the sale and rental of MPDUs. Bill 34-17 has thirty-two substantive revisions for Chapter 25A, Housing – Moderately Priced. Some of the revisions include:

- The addition of the definition of "area median income" as estimated by the U.S. Department of Housing and Urban Development for Montgomery County. Currently the area median income (AMI) is $110,300 for a family of four effective June 15, 2017;
- The addition of language that clarifies that the County Council may adjust the base requirement for MDPUs from 12.5 percent to 15.0 percent as part of a master plan. However, the County-wide base requirement will remain at 12.5 percent;
- The addition of a requirement that acceptance of alternative payment will increase the number of MPDUs provided as a result of the development;
- Require a payment to the Housing Initiative Fund (HIF) for housing developments with less than 20 units and require that, when the Director of the Department of Housing and Community Affairs (DHCA), allows fewer or no MPDUs to be built in a development with more than 20 units but fewer than 50 units at one location, the applicant must make a payment to the HIF based on the square footage of MPDU units that would otherwise be required.

1. The sources of information, assumptions, and methodologies used.

Sources of information include the American Community Survey (ACS), U.S. Census Bureau; McGraw-Hill Dodge Analytics (Dodge Analytics); and DHCA. According to ACS, of the total number of occupied housing units in Montgomery County an average of 67.7 percent from CY2005 to CY2016 were owner-occupied, and 32.3 percent were renter-occupied. This share of the number occupied housing units in the County contrasts to the share of the number of MPDUs produced for sale or rent. From CY2005 to CY2016, the average number of MPDUs for sale was 50.9 percent while the average number of rental units was 49.1 percent. Therefore, compared to the distribution of countywide occupied units, the distribution of MPDUs produced was greater for rental units than units for sale. That is, in CY2016, the share of MPDUs produced for sale represented 0.03 percent of the total owner-occupied housing units and the share of MPDUs produced as rental units represented 0.19 percent of total renter-occupied units.

Finally, comparing the construction starts for new residential units from Dodge Analytics with the number of MPDUs produced, the Department of Finance (Finance) estimates that the average of MPDUs for sale from CY2005 to CY2016 was 14.2 percent and 10.6 percent for multi-family units for a combined average of 9.7 percent. Therefore, these percentages provide a better comparison because they compare new residential construction for all types

56

of housing units (Dodge Analytics) with the production of MPDUs (DHCA). While the averages over the twelve-year period may suggest the production of MPDUs are close to meeting the policy target, there is great variability from year to year.

2. **A description of any variable that could affect the economic impact estimates.**

   The variable that could affect the economic impact estimates are the number of new construction starts for residential properties and the production of MPDUs as a share of the new construction starts. Since an economic impact of Bill 34-17 is based on the target percentage on new construction allotted to MPDUs, the economic impact is driven by the growth in new construction of residential property and the share of MPDUs of those properties. The second variable that could affect the economic impact is the definition of area median income (AMI).

3. **The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

   Bill 34-17 would have a positive effect on the number of MPDUs for sale and rent for those families seeking affordable housing. This conclusion is based on the substantive revisions to Chapter 25A. While it would be difficult to analyze the economic impact of each substantive revision, the objective of Bill 34-17 is to increase the efficiency of the current MPDU program and, therefore, increase the availability of affordable housing. Such an increase in efficiency would have an economic benefit to those families who are eligible for affordable housing.

4. **If a Bill is likely to have no economic impact, why is that the case?**

   Please see item #3.

5. **The following contributed to or concurred with this analysis:** David Platt and Robert Hagedoorn, Finance.

Alex Espinosa

Alexandre A. Espinosa, Director
Department of Finance

12/1/2017
Date

MONTGOMERY COUNTY COUNCIL

PUBLIC HEARING – BILL 34-17, HOUSING – MPDUS - AMENDMENTS

TUESDAY, DECEMBER 5, 2017

TESTIMONY OF STACY L. SPANN, EXECUTIVE DIRECTOR

HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY

Good evening, members of the County Council. My name is Stacy Spann, and I am the Executive Director of the Housing Opportunities Commission of Montgomery County. Thank you for the opportunity to participate in this evening's hearing on proposed changes to the County's MPDU program.

HOC applauds Councilmembers Floreen and Rice, as well as the work of their staffs, to update the County's Moderately Priced Developed Units law. As your affordable housing partner, HOC believes this law and its implementing regulations are vitally important to ensuring that Montgomery County continues to be the nation's greatest example of inclusionary zoning best practices. The County's law is the country's oldest and provides the longest history of practice for how best to create economically integrated communities that extend opportunities for all county residents.

HOC fully supports the Council's efforts to ensure the MPDU law keeps pace with the changing development landscape. The Council's commitment is honorably reflected by the fact that we have two proposals before us. Bill 34 – 17 as well as 38-17 submitted by Councilmembers Riemer and Katz. These proposals provide different updates and improvements and I want to be on record with the fact that HOC supports both proposals.

I want to focus on Bill 34-17, which provides a number of changes to current law. As I understand it, important goals of the bill are to address challenges that make it difficult to provide homeownership options for moderate-income households as well as to increase the overall number of MPDU units.

In pursuing these goals, however, HOC believes a number of changes risk undermining the central premise of the law, which is to provide for economically inclusive development. Anything that weakens this requirement could exacerbate – or worse - create concentrations of poverty within the county. This would be a most unfortunate outcome for the nation's first inclusionary zoning law.

Specifically, we are concerned that proposed changes to alternative payment agreements create the potential for MPDUs and affordable units to be concentrated in lower opportunity areas of the county. Bill 34-17 would allow developers to build luxury units in high-cost areas, while using alternative payments to develop more affordable units in lower-cost areas.

Current law requires using alternative payments to the Housing Initiative Fund (HIF) in the same Policy Area as the development for which the payment is made.

Developers already have access to an alternative location option in the policy area in current law. Moving units outside the policy area may fail to achieve desired outcome of providing access to opportunity.

In fact, creating concentrations could place added burden on schools as well as other county services. It is worth pointing out here that Bill 38-17, put forth by Councilmembers Riemer and Katz, intentionally seeks to crack open these very doors of educational access by increasing the MPDU requirements within non-impacted school districts. HOC strongly favors this proposal and ur only comment is that we'd love to see that requirement go even higher than 15%. As a county we should absolutely be moving in a direction that supports greater access to equity.

HOC recommends that this revision be stricken from the bill. The MPDU law promotes development in high-opportunity areas and should be preserved.

Further, we are deeply concerned that Bill 34-17 effectively eliminates HOC's Homeownership program with a new requirement that provides DHCA with a first right of refusal on any MPDU purchased and sold within the first five years.

Since 1987, HOC has successfully administered its Homeownership Program helping more than 347 eligible customers invest in this county and purchase their home.

Because of our relationship with many of these buyers, HOC is uniquely positioned to work closely with these families who may be transitioning out of our affordable housing programs including families served through our Family Self-Sufficiency program.

HOC works closely buyers, preparing them for the responsibility of homeownership by evaluating home buying readiness, offering credit counseling, homeownership education, and support throughout the mortgage application and purchase process.

We know that DHCA has raised questions about HOC's Homeownership program and we welcome the opportunity to work through their issues. However, this is a really important and valuable tool that ultimately helps move our customers to greater self-sufficiency. It supports the homeownership goals of the law and is a tool that should not be eliminated from HOC's toolbox.

We feel very strongly about this issue and look forward to working closely with the council during the work sessions as well as through the regulatory process to address their concerns.

Another reason we feel strongly is that we understand the challenges the county and the MPDU program has faced in its efforts to extend homeownership through condominiums sales given the cost of condo fees and assessments. There could be options to improve on this aspect of the bill by adding condo assessments and fees as factors that are considered in the purchase price – as just one example. Whatever the challenge, we should not reduce options for residents to invest in a community that has invested so much in them.

Again, HOC appreciates the Council's resolve to improve the MPDU program and expand affordable housing in the County. We look forward to working with the Council and PHED Committee during the upcoming work sessions on the bill. Thank you for the opportunity to testify this evening.

WOMAN'S DEMOCRATIC CLUB
OF MONTGOMERY COUNTY, MARYLAND

Testimony in Favor of County Bill 34-17
Housing – Moderately Priced Dwelling Units (MPDU) – Amendments
December 5, 2017

The Board of Directors of the Woman's Democratic Club of Montgomery County strongly supports revisions to the moderately priced dwelling units (MPDU) program (enacted in 1973), as proposed by Bill 34-17. We urge you to vote in favor of this bill. We want to ensure that all Montgomery County families and individuals can secure affordable and adequate housing.

We support this bill because it would make the MPDU program more responsive to the needs of County residents, provide new housing opportunities, produce more homes for families and support a growing workforce. This bill would authorize the County Council to adjust the base requirement for MPDUs from 12.5% to 15% as part of a Master Plan approval for housing developments with 20 or more units at one location. This bill would require housing developments with less than 20 units to make a payment into the Housing Initiative Fund (HIF), which we support because proceeds from HIF add to the County's ability to create affordable rental homes that are large enough for families and located where they are needed. This bill would also authorize the Director of the Department of Housing and Community Affairs (DHCA) to calculate the MPDU obligation by square feet, if the result is more or better sized homes for low- and moderate-income residents.

These changes are needed to provide more housing for at-risk families and to replace the loss of existing affordable housing in the County. Although we would prefer the MPDU's base requirement to be 15% throughout the County because the need is so great, this bill is an important step toward achieving this goal.

We support allowing certain developments to make a payment into the Housing Initiative Fund (HIF) instead of creating on-site MPDU's if condominium fees are unaffordable, while requiring that the off-site location remain in the vicinity of the original development. We also support the bill's provision that when the DHCA Director allows fewer or no MPDU's to be built in a development with more than 20 but fewer than 50 units in one location, the applicant must make a payment to the HIF based on the square footage of MPDU units that would have been required. We also support this bill's provisions that a tenant may remain in his/her MPDU for the lease term, notwithstanding a change in income eligibility, and that an MPDU purchaser may also retain ownership notwithstanding a change in income eligibility.

130 HILLTOP ROAD, SILVER SPRING MD 20910

This bill would provide a full range of housing choices in a suitable living environment for all incomes, ages and family sizes. MPDU's can be used in partnership with other housing supports to provide affordable housing to households with very-low incomes, below 50% or 30% of area median income (AMI).

Despite the County's long-standing MPDU law requiring construction of affordable housing with new residential development and other efforts to increase affordable housing stock and preserve its existing stock, the supply of affordable and low-income rental housing is in crisis, and the crisis is growing. The inadequate supply has grown tremendously and continuously. As a result, there has been large scale commuting of low- and moderate- income households from outside the County to employment within the County. Furthermore, a study of market demands shows that approximately one-third of the County's new labor force for the foreseeable future will require more MPDU's and many more low-cost rental housing units. There continues to be a rapid increase in residents of or near retirement age with fixed incomes, young adults of modest means, government employees of moderate income ranges, and service and mercantile personnel needed to serve the growing industrial base and population of the County.

WDC is very concerned that, while this bill helps address the need for affordable housing, it should more adequately address the critical need for more low-income rental housing. Encouraging MPDU's (for households at 60% to 70% AMI) to be used in partnership with other housing supports to provide rental housing to households below 50% or 30% of AMI is a positive step, but it is likely to produce only a small, inadequate amount of low income rental housing.

The lack of low-income and affordable rental housing in the County has reached a critical point for more than 20,000 low-income households (33,000 households are on the Housing Opportunities Commission's waiting list for low-income housing). Only 19% of rental units are currently affordable to households earning less than 50% of Area Median Income (AMI); the County's AMI is $98,000. By 2040 it is expected that 78,000 more affordable and low-income rental housing units will be needed. One-third of housing units in the County are rentals, and 50% of renter households spend more than the generally accepted maximum of 30% of their income on housing; many have to spend 50% (they are severely cost burdened and unable to sustain payments). The 2017 Montgomery County Rental Housing Study reports that 68% of households with income between 50% and 80% of AMI pay more than 30% of income for rent, and 15% are extremely rent burdened (they have to pay more than 50% of income for rent). Although the County's low-income (50%-80% AMI), very low-income (30%-50% AMI) and extremely low-income (0-30% AMI) families desperately need Housing Choice Voucher (formerly Section 8) housing assistance from HUD, which would provide housing stability for them and their children, federally subsidized housing continues to diminish. In the County, a family of four needs an annual income of $67,000 to $77,000 to afford stable rental housing.

We are particularly supportive of this bill and others that would increase low- and moderate-income rental housing in the County. Nearly six of every ten County residents living below the poverty line are women and girls (44,860), and female-headed households comprise 57.5% of families with children under 18 who live in poverty. These are the families who are rent-burdened or homeless. County homeless shelters recently showed a population of 894 homeless persons, 274 of whom were families with 172 children, and this doesn't include all the un-sheltered homeless families. It is remarkable that 50% of homeless families and individuals are employed. Employed or not, families that can't afford rental housing in the County often split up, move out of the County, or move around within the County. The lack of housing stability negatively affects the health and education of children as well as their parents' ability to obtain and maintain employment.

We hope that for all of these reasons, the Woman's Democratic Club can count on your vote in support of Bill 34-17.

Respectfully,

Fran Rothstein
Fran Rothstein, President

3

Coalition for Smarter Growth

DC • MD • VA

Testimony
December 5, 2017

I am Pete Tomao the Montgomery County Advocacy Manager at the Coalition for Smarter Growth. We are a 20 year old regional organization dedicated to making the case for walkable, inclusive and transit-accessible communities.

We want to thank the council for working to strengthen Montgomery's commitment to affordable housing. Recent master plans have placed an importance on increasing MPDU production in high cost neighborhoods, Bill 34-17 presents an opportunity to engage in a thorough discussion about the future of the MPDU program. Firstly, we believe Bill 34-17 does several things to update and improve the MPDU program including:

1. Establish the payment to the HIF for projects with under 20 units,
2. Tie eligibility standards to Montgomery's median income,
3. Clarify eligibility standards for age-restricted units and
4. Allow flexibility in floor area ratio to provide larger unit types.

However, we are concerned that as written the bill prioritizes too much offsite development of affordable units. Many of the 2004 reforms to the MPDU law originated over this exact issue. In fact, from 2002-2005 12 offsite payments were allowed, totaling 313 MPDU's or roughly 20% of total MPDU's built during that time period. A core function of the MPDU law is to ensure economic diversity throughout the county, not just increase total amount of affordable units. A 2010 study tracked the education performance of MCPS schoolchildren living in affordable housing and found those students in the higher income neighborhoods performed much better academically.

We ask the council amend the bill in the following way:

1. Require that offsite payments be used to build housing in the same policy area where the fees are collected
2. The council set a standard formula for how alternative payments are calculated
3. Require that alternative payments must be used to produce more MPDU's that would otherwise would have been provided onsite
4. Retain the ban on bonus densities for offsite development
5. Draft regulations to efficiently allocate and spend collected payments.

Bill 38-17 furthers county goals of expanding affordable housing to all parts of Montgomery. The recently released rental housing study illustrated the deep need for increasing housing units off all types, especially in our high cost areas. Bill 38-17 would mandate MPDUs where we need them most—exclusive and high opportunity neighborhoods. Additionally, it would lessen the increasing economic east-west divide in Montgomery.

In particular, this bill would have a significant impact for low-income children. A 2010 study by the Century Foundation evaluated the impact of the MPDU program on school performance for low-income children. During the course of elementary school, students living in affordable housing who went to low-poverty schools cut their initial achievement gap in half. The study noted, "Within education research, these are large effects since relatively few educational reforms demonstrate positive effects of this magnitude." These findings validate the intent of the MPDU program and the need for moving to 15% MPDUs in low-poverty school clusters.

A 2015 study from Harvard University found that neighborhoods have significant impacts on socio-economic outcomes. For every year a young child spent in a low-poverty neighborhood there were increases in future earnings. A young child moving from a high to low poverty neighborhood at age 8 will increase their lifetime earnings by about $300,000. Fostering mixed-income neighborhoods is key to erasing generational poverty and this bill can help do just that.

According to analysis at George Mason University, Montgomery will need to produce roughly 6,200 housing units every year to meet demand through 2040 and regionally 127,000 apartment units are needed to meet demand over the next 13 years. Solving our housing crisis will include both preserving and expanding housing options in the county. We urge the council to implement the land-use recommendations in the rental housing study concurrently with these MPDU bills. The recommendations include reducing parking minimums in exchange for more affordable units, expanding the use of publicly owned land to subsidize development of apartments for low-income residents and reviewing our bonus density program. Several options for financing more affordable housing production are also provided in the rental housing study.

Pairing reforms in the MPDU law with reforms in our zoning regulations will boost housing production and ensure that inclusionary units are dispersed evenly throughout the county. Taking a comprehensive approach to the housing crisis is the only way to solve it. We hope that the council can enhance the MPDU program and reform zoning practices to boost housing production in the county.

Thank you for the opportunity to testify.

THE GREATER BETHESDA
CHAMBER *of* COMMERCE
Smart Business, Bright Future

7910 Woodmont Avenue, Suite 1204
Bethesda, MD 20814
T (301) 652-4900 F (301) 657-1973
staff@bccchamber.org
www.bccchamber.org

4

Testimony Presented by Jennifer Russel on Behalf of
The Greater Bethesda Chamber of Commerce
Before the Montgomery County Council
December 5, 2017

Good evening. I am Jennifer Russel speaking on behalf of The Greater Bethesda Chamber of Commerce.

We welcome Councilmember Floreen's effort to update Chapter 25A, given the age of the original ordinance and the changes that have transpired since 1973, when as a young and growing County we sought to encourage developers to build affordable housing under the guise of a density bonus. That density incentive disappeared in 1998 and must be reinstated so that builders can actually afford to effectively participate in the program. The Chamber, along with like-minded organizations, has begun detailed conversations with various stakeholders in an effort to update Chapter 25A so that it becomes a genuine tool to assist in solving the affordable housing shortage in the County. While we are not yet at the point to bring in specific language (which we are working on), we are hoping to make some of the following suggestions to be included in a revised bill:

REINSTATE CORE PRINCIPLES

- Reinstate references to the ability of builders to make a reasonable profit with this program. For years the industry has been struggling with ways to offset the increasing cost of both MPDUs and the other layers of the development parfait. Since residential builders are the ones being asked to provide this public benefit, and may be the best suited in some circumstances to do so, they must not be unfairly burdened.
- Reinstate language that offers flexibility for a developer to comply with the law by contributing to the Housing Initiative Fund. Flexibility is fundamental to the ever-changing market.

WHERE TO USE MPDUs

- Remove the suggested language stating that master plans are the vehicle to be used to pick and choose the percentage of required MPDUs. This is far too unpredictable.
- While the idea of a consistent rate of MPDUs strewn uniformly throughout the county, with a resultant bonus density and height incentives to make it work, is (theoretically) preferred over the master plan tool, our initial examination of this approach indicates that in almost all cases, there is no ability to actually use, and therefore benefit from, this tool.
- Oft times the additional density, or even permitted density, especially in the case of townhouses or single family units, will not fit on the site and, as we are well aware, the community process to achieve extra height and density is certain to be a target in some communities, despite the altruistic goal of achieving more affordable housing.
- Instead, it might be more fruitful to introduce impact tax waivers in certain circumstances, with a special look at the orange and yellow policy areas, recently earmarked for higher impact taxes, in the SSP adopted in November 2016. I have always thought that including these areas in higher impact tax categories ran counter to the County's policy of encouraging market-rate housing that is affordable to the next level of new homeowners, despite lack of proximity to transit. Please remember that not everyone can afford to live proximate to Metro.

- We believe that in some high-rise rental projects, and likely in the CR zone, with sufficient density and height bonuses, it may be possible to achieve a 15% MPDU rate. The bonus would be "by-right" and would have to be accommodated as part of the regulatory process. It may be that the CR zone could be modified to indicate that MPDUs are the highest priority public benefit for new residential development, such as language adopted today for the Grosvenor-Strathmore minor master plan. This will "neaten" the process, so to speak, by extracting THs and single-family units from a bonus density situation that doesn't work on the ground.

RENTAL VS FOR SALE

- The existing program is plagued by the applicability of regulations across the board to rental vs sales units, as well as variations as to costs for single family and multi-family units, plus wide variability in land costs based upon location. Revisions in this bill must recognize the challenges that accrue to different product types, and offer remedies thereto.
- Consider different MPDU programs/regulations for rental vs. sale units. In that regard, automatic (rather than discretionary) alternative payments for single-family units should be strongly considered, because a greater density bonus would not be feasible for most single-family projects constrained by other limitations on development.
- Introduce automatic (not discretionary) alternative payments for sale condos (including high-rise); if the cost of monthly expenses are projected to exceed a certain percentage of income or a fixed amount, an alternative payment is permitted and/or encouraged; redirect and incentivize focus of the program to rental units, where it is more effective, as is seen by the zero vacancy rate in rental MPDUs.

HOUSING INITIATIVE FUND

- Small builders, who are in truth small businesses, must remain free of the MPDU requirement as is currently the case. Addition of a payment into the Housing Initiative Fund for projects under 20 dwelling units has the impact of a tax on small builders, particularly if the proposed payment amount is left to a future undetermined regulation.

WHAT PROBLEM ARE WE SOLVING?

- With respect to Bill 38-17, which requires 15% MPDUs in any development in a cluster which has 15% or less FARMS, we would submit that such a measure will prove difficult to use on an annual basis, since it is subject to change quickly, and development projects actually occur over a long-term period reliant on the market. It could also bring the school choice issue into the fold and, from my point of view, is more appropriately considered under the next evaluation of the SSP in 2020, given its suggested consideration at the time an applicant submits a preliminary plan of subdivision.
- If you want MPDUs in wealthier communities in the county, be brave and simply require it. Don't continue to support inequity in the quality of education.

We look forward to changes in the MPDU law and hope you will earnestly consider the specific language changes we will submit prior to PHED. Thank you for your consideration of my remarks this evening.

MHP
12200 Tech Road, Suite 250, Silver Spring, Maryland 20904-1983 Phone: 301-622-2400 Fax: 301-622-2800 www.MHPartners.org

G

December 5, 2017

The Honorable Hans Riemer
President, Montgomery County Council
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Dear Council President Riemer:

On behalf of Montgomery Housing Partnership (MHP), please allow me to take this opportunity to provide our thoughts on Bills 34-17 Housing – Moderately Priced Dwelling Units (MPDUs) – Amendments, and 38-17 Moderately Priced Dwelling Units (MPDUs) – Requirement to Build.

First off, thank you to Councilmembers Floreen and Riemer for their leadership in this area, and Councilmembers Katz and Rice for their co-sponsorship. Montgomery County was at the forefront of innovation when we first implemented an inclusionary zoning program in the 1970s. It is critical that we regularly examine our MPDU program to ensure it continues to meet the goal of providing integrated affordable housing throughout Montgomery County.

I'll first discuss our thoughts on Bill 34-17. We have already had a number of conversations with Councilmember Floreen's office, and are generally supportive of a number of aspects of the bill but do feel a few amendments would strengthen the bill. Overall, we appreciate the efforts to balance production with increasing revenue to the Housing Initiative Fund, specifically the proposal for projects under 20 units to provide a contribution to the HIF in lieu of developing units on site. Additionally, as recommended by the Rental Housing Study, we support that this bill allows for MPDU calculations to be based on square footage versus unit count, which can be utilized to generate more 2 bedroom or larger units for our families struggling to find affordable housing. We also commend the bill for addressing the challenges faced by common ownership communities that are solely composed of MPDU units, and fully support prohibiting these from being formed in the future.

While we recognize the strong need for enhancing revenue opportunities for the Housing Initiative Fund (HIF), we do not want it to come at the expense of production. We feel additional language can be added into the bill to better define the circumstances when buy-outs, alternative locations, or land donations could be employed in place of production. Additionally, while the exact calculations should be done in regulation, we request language in the code that clarifies a buy-out should cover the **full** production of the affordable unit elsewhere. As currently there is no cost to the County for each MPDU developed,

69

any buy-out should continue to provide the full cost, and not rely on additional funds from the HIF. Further, when land is provided in place of on-site production, that land should already be zoned to accommodate the density and number of MPDUs that it is replacing. For example, if a project should have provided 20 MPDUs, but is providing a parcel of land instead, that parcel must be able to accommodate 20 residential units by-right. We would not want any projects held up trying to get a zoning text amendment (see lines 455-458).

A couple of other minor tweaks to the code that we would recommend, while we have the chapter open for review:

- We believe the bill should call out that the expectation is for a proportional mix of all unit sizes, compared to the market rate units, are provided as MPDUs (see lines 348-353).
- When considering an alternative payment, and allocating that payment to build MPDU units outside of the policy area, the notice provided to the Council should provide a clear and very compelling reason to recommend moving these units (see lines 596-604).
- All purchasers/renters, even if receiving services through the Dept. of Health and Human Services should be required to complete the MPDU orientation process (see lines 775-778).
- The priority marketing period should last not less than 60 days from the day the unit availability was made public. Starting the clock when the approval is provided from the Department to the seller/renter short changes the next occupants (see lines 870-876).
- While we appreciate language that allows the Council to approve more than 12.5% as part of the master planning process, we don't think that 15% should be spelled out as the maximum.

In regards to Bill 38-17, we appreciate the efforts to clarify when it makes sense to go above the mandatory requirement and appreciate language to increase MPDU production to 15% in certain circumstances. However, given that there are 2 bills before the Council, we want to ensure the two bills work together. Currently, Bill 34-17 calls for the Council's discretion on when to increase the MPDU requirement as part of the master plan process, whereas Bill 38-17 only allows an increase when meeting specific FARM rate criteria. If Bill 38-17 could be amended to allow higher than 12.5% during the master plan/sector plan process in areas that are outside of the FARMs criteria, we think the 2 bills would work together. We also hope the Council will look at additional market conditions that would signify appropriateness for increasing the MPDU threshold. These may include proximity to transit, development opportunities, and proximity to jobs to name a few.

I welcome the opportunity to discuss these thoughts with you further. Please feel free to reach me at rgoldman@mhpartners.org or 301-812-4114.

Sincerely,

Robert A. Goldman, E

Robert A. Goldman, E
President

8

Sierra Club testimony for Dec 5, 2017 Council hearing

Good evening!

I'm Dave Sears, Chair of MoCo Sierra Club group.

Thank you Council member Floreen – for introducing Bill 34-17, which will update the MPDU legislation.

SC strongly supports two key provisions of Bill 34-17 –

- The bill requires that developers of projects of less than 20 units must contribute to the Housing Initiative Fund;
- The bill allows the Council, as it approves a new master plan, to establish an MPDU requirement of 15% within the plan boundaries.

Together, these two provisions will increase affordable housing in the county. That's an important move in the right direction.

SC would like to add a word of caution, however, regarding the location of new MPDUs.

Sierra Club is a strong advocate for addressing Greenhouse Gas emissions (GHG) at the local level. One key route for this is to encourage Smart Growth as the county builds over the coming years. In short, this means assuring that most new development in the county is located at transit stations – that is, within walking distance of Metro stations, Purple Line stations, and BRT stations.

An important piece of putting high density development at transit stations is assuring that low and moderate income folks have a share of the great walkable neighborhoods that are emerging in these locations. This is not only good social and economic policy – it is good environmental policy – folks with lower incomes living close to transit use their cars less and transit more than their higher income neighbors.

So we are worried that only the wealthy and upper middle income families will be able to live within walking distance of transit stations. By permitting the MPDUs to be located off-site (even if within the "policy area"), are we giving the MPDU residents a "second class" location? This will not be optimal for these families, and will not be best for addressing GHG emissions.

Regarding the companion bill 38-17, introduced by Council member Riemer –

SC has similar kudos and reservations.

We are pleased to see that the bill would raise the MPDU requirement from 12.5% to 15% in the parts of the county where more affordable housing is most needed.

We again urge that the location of such additional units be on-site. And we further urge, as the County approves new development, that most new development is located at transit stations in high density, mixed use, mixed income, attractive, walkable neighborhoods.

Testimony of James W. Olson for Action in Montgomery
on Bill 34-17, Housing-Moderately Priced Dwelling Units (MPDUs)
Before the Montgomery County Council
December 5, 2017

My name is James W. Olson and I am here tonight representing Action in Montgomery (AIM). AIM is a broad-based, non-partisan community organization with 32 member congregations and organizations.

Recently, AIM has held listening sessions with 3000 Montgomery County residents. Across the board, the issue raised more than any other was affordable housing. As the Council knows, the waiting list for affordable units with County housing agencies keeps increasing while the number of affordable units has substantially decreased in recent years. Also of concern is the location of affordable housing. An increasing body of economic research supports the commonsense notion that lower-income children whose families move to higher income neighborhoods have better lifetime outcomes. Thus, the County needs to grapple with both increasing the quantity of affordable housing units and ensuring their dispersal throughout the County.

At its inception in 1973 Montgomery County's Moderately Priced Dwelling Unit (MPDU) statute was a pioneer in the effort to make affordable housing available to all of its residents with 5,300 units currently in the program. We commend the effort to build on and strengthen that legacy.

There are many aspects of the current draft which AIM supports, such as the proposed requirement that developments of fewer than twenty units should be required to make a payment to the Housing Initiative Fund. AIM also supports the proposed amendment to allow MPDU agreements which allow flexibility in unit size, assuming the same floor area ratio as would be otherwise required. This might encourage the building of units with more bedrooms, an area of particular shortage. Given this intent, AIM would propose a tweak in the proposed language to allow usage of the floor area ratio only if the result would be the provision of more multiple bedroom units than would otherwise be the case.

There are other proposals which AIM supports but which should be strengthened, in particular the proposed amendment clarifying the Council's ability as part of a master plan approval to adjust the required number of MPDUs from 12.5% to 15%, as has been done in recent master plan approvals. AIM believes that 15% should be enacted as a new base for all covered developments, as recommended in the recent *Rental Housing Study.* Indeed, the Council should consider whether it should make provision for a possible higher than 15% MPDU requirement in suitable locations, as has been done in some cities.

AIM also has concerns about the provisions amending Section 25A-5A which would give the DHCA Director the ability to approve a payment to the Housing Initiative Fund in lieu of building MPDUs and would allow the use of those funds for building outside the Policy Area with notification to, but not approval of the Council. This has the potential to lead to more affordable housing being built far from transit and in areas that already have a large percentage of affordable housing.

In addition, at lines 594-595 of the draft, the payments to the HIF are described as to "be calculated as provided in method (1) regulation" but not otherwise specified. This provision must be spelled out with more clarity. If the intent is primarily to deal with situations regarding sale MPDUs, one step might be to limit it to such MPDUs.

Thank you for your time. AIM looks forward to working with the Council and staff as this important legislation moves forward.

Good evening. My name is Diana Wilson. I have been a Montgomery County resident for the past 37 years. I am a member at The People's Community Baptist Church, and help lead our ministries to address domestic violence, do outreach, and social justice.

I have worked for the Montgomery County School system for over 25 years. I've been everything from a Head Start instructional assistant to a special education educator to now the attendant secretary at Brooke Grove Elementary school. I love working with children, families and the community. I appreciate how the school staff and students have evolved to being more multi-cultural. I feel especially proud of the work I've done with families with children with special needs. I have a son with a learning disability, and in my role I can be particularly empathetic and help families to feel less alone. Recently a boy in our school with special needs was supposed to stay for after care, but accidentally went home on the bus. Even though I was no longer on the clock, I made sure his working mother was contacted so there was someone to meet him at home because you hear the stories of what can happen. Being able to help in situations like this is why I stay in my job.

The struggle I'm facing now is that I want to retire five years from now when I turn 62 and have done a lifetime of work. However, I am only a 10-month employee, and I have built in "no work, no pay" days, so the amount I receive in my paycheck varies depending on the month. It is certainly not enough to retire on in Montgomery County as a single person, primarily because housing prices are so high.

I can't imagine retiring anywhere else. I have lived in Montgomery County longer than anywhere else. It is where my community, my church, my children and my grandchild all are. It is where all of the fruits of my labor are.

For the past 37 years I have served this community in many ways. I never did it for a reward. I did it because it gives my life meaning. It is how I express my Christian values and have an impact on the world around me. But what does it say about our county if the people who have helped make it a great place to live and send our children to school cannot afford to retire here? I know for myself it makes me angry, and unvalued.

I also know I am someone who stands up for what's right, which is why I'm here tonight. This bill provides more flexibility for age-restricted MPDU units to be bought by county residents, which is good. It is also an opportunity for the County Council to increase the MPDU requirement to 15% across the board. I urge you to amend Bill 34-17 to increase the MPDU requirement from 12.5% to 15%, so that more people like me who have helped make this county a good place to live and work can afford to stay here for their whole lives.

Finally I must add that I was fortunate along with my ex-husband in 1988 to purchase our home through MPDU (still resides today) raised four children as single parent (after separation 1997, ages 2, 6, 8 & 11 and subsequent divorce 1999) without financial support from ex-husband. The MPDU program is the reason why I am am still living in MOCO.

\\

Liz Purcell, 5209 Westpath Way, Bethesda, MD 20816
Testifying: In favor, with amendments

I am testifying in favor of Bill 34-17, with amendments.

Good evening. My name is Liz Purcell, and I am a member of River Road Unitarian Universalist Congregation. My husband and I have lived in Bethesda for 33 years, and we have a 32-year-old daughter, Cassie, who has special needs.

Cassie volunteers 30 hours per week at two Sunrise Assisted Living locations, and was recognized last month for 11 years on the job. She uses MetroAccess to get to work. Since Cassie is a volunteer, her only source of income is Social Security Disability Income.

Finding independent housing for Cassie has been a major concern for her father and me for many years. Shortly after leaving school at age 21, Cassie "won" the Housing Opportunities Commission (HOC) lottery, but we had to throw her name back into the pool because she was not prepared to leave her home just then. We knew at the time it was a gamble, and that she might never get off the waiting list.

Last fall we received good news. Cassie's name was drawn again in the HOC lottery and she received a Housing Choice voucher for her to live in a two-bedroom apartment with a roommate. Fortunately, we were able to help her move and transition into her new home before being faced with our own medical and family-related crises.

One of the factors that is key to making Cassie's housing a success story is her proximity to family, work and support services. Even though Cassie lives in her own apartment, I am still involved in her care on a weekly basis. Her living arrangement would be untenable if she were located in a far corner of the county.

Bill 34-17, MPDU Housing provides some important improvements to the MPDU program. It allows for an influx of larger units for families or disabled people like my daughter who need to live with someone. The law may need to be clarified to ensure that developers have flexibility towards building these larger units, not towards microunits, because all too often, MPDUs are either studios or one-bedroom apartments.

Also, transit-oriented affordable housing is crucial. While Cassie relies on MetroAccess now, it is our hope that one day she will be travel trained to take the Metro to her work. With the development of the Purple Line and the refurbishment of the Red Line, there are many opportunities for construction of affordable housing near transit hubs.

Montgomery County has one of the strongest MPDU programs in the country. We need to make sure the legacy not only survives, but grows stronger over time.

MARYLAND
BUILDING
INDUSTRY
ASSOCIATION 11825 West Market Place | Fulton, MD 20759 | 301-776-6242 | marylandbuilders.org

12

Montgomery County Chapter of MBIA Comments on Bill 34-17, Housing—Moderately Priced Dwelling Units—Amendments

On behalf of the Montgomery County Chapter of the Maryland Building Industry Association I would first and foremost like to commend the County Council, specifically Councilmember Floreen for tackling such a critical, county wide priority. We agree that this public policy needs improvement to ensure the County achieves its goal of providing more affordable housing; particularly housing that meets the needs of the community. We agree there is a VERY real need in Montgomery for more affordable housing. To us, the pivotal challenge is the most efficient mechanisms to achieve this goal and maximizing all the tools in the Department of Housing and Community Affairs (DHCA)'s toolbox, while keeping Montgomery County economically competitive in the region. Moderately Priced Dwelling units are just one program among many that DHCA is utilizing to meet affordable housing needs.

Since its inception in 1976, the MPDU program has successfully produced 10,000 homeownership MPDU's and 5200 rental MPDUs. We all want to see more affordable units produced. However, parts of the program need to be revisited to better meet the needs of a changing county. According to the recent Rental Housing Study, 50 percent of all renter households in Montgomery County are cost-burdened. Also, there is a great demand for affordable family-sized units. The study shows us that we need quality affordable housing and flexibility is key in meeting residents' demands

In ways, this bill increases flexibility that would help developers build larger MPDU units to meet a real need in the County. Using floor area to calculate the MPDU requirement, is a creative way for builders to meet their obligations and that benefits the County. Further, we support the option of alternative payments in lieu of locating MPDU's in each subdivision. Ultimately, these funds will bolster the broader range of DHCA's tools that provide housing opportunities throughout the County.

The County's MPDU program and amendments to the program are an extremely complicated subject. It must be acknowledged that the MPDU requirements have different impacts based on product type--rental versus for sale product and multifamily versus single family. Therefore they need different solutions. There is not one-solution that equitably works for all. This is especially true for single family projects where even permitted density is often unachievable due to other site constraints. We realize this has not been the understanding in the past. Previously it may have been possible that single-family projects, through the use of smaller lots and townhouses, could recoup their density and costs. Not so in today's regulatory world. With more environmental, stormwater and design considerations, compounded with the reduced size of land available for single-family or townhouse development, a project cannot be redesigned to absorb the costs of MPDUs. Builders are very often building MPDU's at a significant financial loss.

While we support the bill's intent, there are several aspects that concern us.

1) Chief among these concerns is the fact that this bill abandons the original intent of this law, which was to provide an incentive to builders of new homes and communities to build

affordable housing, not to suffer a loss or put them at a market disadvantage. To help make the bill more business friendly, we request that the bill reinsert this important public policy which asserts that builders and developers are to incur no loss or penalty and should have a reasonable prospect of realizing a profit on the MPDU's. From the outset of the MPDU law, there were incentives for builders that built affordable housing. It is imperative that there be appropriate offsets for the additional costs incurred.

2) Second, since the origin of the MPDU law, it was deemed inappropriate for developers building less than 20 units to provide for MPDUs. This bill does not require small volume builders to create MPDUs, but they are required to provide for MPDUs via payment to the HIF. When it comes to a policy for the whole, a small disparate population cannot be expected to bear the responsibility for the whole of a County that includes over 1 million residents. This would be a burdensome tax, placed on a small group and is neither fair nor reasonable.

3) Also, it is important that the Council set a policy that is simple and streamlined with a consistent, application. The concept of setting the base MPDU requirement during master plan approval can lead to unintended market advantage for one project versus another.

The building industry looks forward to working with Council and Staff to find solutions to these concerns.

Thank you for your consideration. If you have any questions please feel free to contact Erin Bradley, Vice President of Government Affairs at ebradley@marylandbuilders.org or (301) 776-6207.

Sylke Knuppel
Chair, Montgomery County Chapter
Maryland Builders Industry Association

MARYLAND
BUILDING
INDUSTRY
ASSOCIATION 11825 West Market Place | Fulton, MD 20759 | 301-776-6242 | marylandbuilders.org

13

Custom Builders of Montgomery County Testimony in OPPOSITION to Bill 34-17 Housing—Moderately Priced Dwelling Units (MPDUs)
December 5, 2017

Thank you for the opportunity to express our concern over the way Bill 34-17 will impact our business and other small volume builders. We understand, and agree with, the bill's laudable intent to increase low and moderate income residents' access to quality affordable housing. However, the MPDU law was never intended for projects under 20 houses-- as proposed in this bill-- nor should it be. As small businesses building small projects, we have no ability to provide MPDUs or the funds to support them.

Our small, local business builds only three or four houses a year throughout the County. Even as a small business, we are responsible for employing hundreds of local craftsman and subcontractors each year. These working men and women are reliant on small businesses like ours, to provide well-paying jobs and consistent work. We simply cannot afford any more fees, especially to provide for affordable housing via payment into a fund for which our support was not originally intended. We do not take anything away from the stock of truly affordable housing when we take a risk on an expensive, close-in Bethesda infill property, nor do we have any ability to add to it.

This is an additional fee of an unknown amount, and could have a disastrous impact on the jobs we provide and on our ability to operate and remain a viable business. It is often believed that builders like us have tremendous revenues that can continuously be applied to new taxes and fees. That is simply not the case. Custom and infill builders in the County typically build large expensive homes, however, we are just small businesses, taking risks and trying to make a living as builders for those buyers who want to move into a new, well located home. We do not have endless resources, but are subject to the ever increasing cost of doing business in the County. I humbly ask that the Council take into account the dramatic impact this could have on an already high-risk industry and strike the provision which requires developments of fewer than 20 houses to pay into the Housing Initiative Fund.

Laurence M. Cafritz
Chair, Custom Builders of Montgomery County
Maryland Building Industry Association

14

Written Testimony from

Deborah Photiadis, Director, Coalition Homes, Inc.

in Support

of Bill 34-17, Housing - Moderately Priced Dwelling Units (MPDU) – Amendments

Good Evening. My name is Debbie Photiadis and I am the Director of Coalition Homes, Inc. I am here to testify in favor of Bill 34-17. I want to thank you for this opportunity.

Coalition Homes (CH) is a private non-profit organization that acquires, develops and manages permanent supportive housing for individuals and families exiting homelessness. We are an affiliate of Montgomery County Coalition for the Homeless (MCCH) that provides supportive services to most of our tenants. This combination of supportive services with affordable housing under specialized property management has been a proven solution to ending and preventing homelessness.

CH currently owns 127 units spread geographically across Montgomery County urban centers, in Silver Spring, Bethesda, Takoma Park, Germantown, and Clarksburg. The units range from scattered single family dwellings, duplexes and condominiums to small apartment/condominium assemblages comprising 32 PLQ's, 21 studios, 27 one-bedroom, 9 two-bedrooms, and 8 three-bedrooms. The locations are diverse and offer an array of amenities - public transportation, retail, restaurants, and business services - all instrumental in the successful transitioning from homelessness to permanent housing. CH provides 24/7 property management services for these scattered sites including quarterly inspections and emergency response. The majority of tenants receives supportive services and has extremely low income at affordability levels below 30% of AMI. Through integrated property and case management, most tenants exhibit good stewardship of their homes and tenancy is very stable with a vacancy rate of less than 4%.

Over a third of CH housing units are through MPDU purchase. MPDU's are scattered throughout new development—a seamless way to assure diversity. Expanding the housing options and providing flexibility to increase support services is very positive

– particularly in condominiums where the fees are often barriers to low- income tenants. Although the bill addresses those with income levels ranging from 50%-80% of Average Median Income, it does not directly support the creation of additional units that would cater to those with extremely low income at or below 30% AMI, many of whom have complex needs including mental illness, substance abuse disorders, physical disabilities, and chronic health problems. We would like to see some of the Alternative Payment be directed toward purchases of permanent supportive units for individuals and families with incomes less than 30% AMI.

We are also concerned that the bill provides for assignment of the purchase/rental option to clients of the Department of Health and Human Services. This provision could reduce the available public housing stock for those remaining clients/tenants with more acute needs. We would encourage the Council to consider limiting the assignment to rental only.

The impact of the legislation will produce more resources towards the expansion of the supply of permanent supportive housing helping the County build on its success of ending veteran and now chronic homelessness. We look forward to working with the Council on successful passage of the bill.

15

Written Testimony from
Jasper Young, Tenant in MPDU owned by Coalition Homes, Inc.,
and Client of the Montgomery County Coalition for the Homeless in Support of Bill 34-17, Housing - Moderately Priced Dwelling Units (MPDU) – Amendments

Good Evening,

Thank you for the opportunity to testify tonight about the need for more permanent housing through Montgomery County's Moderately Priced Dwelling Unit Program (MPDU) to help County residents exit homelessness.

My name is Jasper Young. I have lived in Montgomery County for over 50 years and have a permanent home at the Ashmore Condominiums in Germantown, Maryland where I have lived for nine years. My home is a MPDU owned by Coalition Homes (CH), an affiliate of Montgomery County Coalition for the Homeless (MCCH). If I did not have my own home, I would not be alive today.

I became homeless in 2006 due to several health problems, including multiple heart attacks. After two years of experiencing homelessness, I found MCCH's men's emergency shelter, Home Builder's Care Assessment Center (HBCAC). While at the shelter, I continued to attend church and became a deacon. I also worked with my case manager at the shelter who helped me move into my own home in Germantown.

There's nothing like having your own home. I have somewhere to lay my head. I have my own space. I have food on the table. Since I must take care of myself and control my diet, I love to cook cabbage and brussels sprouts which are my favorite foods

I take pride in being a good tenant and stick to my lease. I do everything I am supposed to because I am grateful for what people have given me.

And I don't sit at home a lot because I like to go out and connect with people. While I have many friends in the condominium community because I use the rec room, gym and pool a lot, I love coming back to my home because I need quite time for myself.

I also continue my mission to help others and received an award from my church in devotion and dedication of my service and commitment. Having gone through my experience of homelessness, I am able to support other people in need in my home or at church and help them stay focused on healing.

If I have a problem with my apartment, such as a water leak, I contact my property manager with Coalition Homes who comes out immediately to fix my unit. I am also grateful that it is inspected periodically by Coalition Homes and HOC since they can identify problems that I don't know about that need to be fixed. Also, my MCCH case manager Tawanda provides support and connects me to resources that has enabled me to stay stably housed for nine years.

Many people like my self need the MPDU program to be able to live in the County and recover from their experience of homelessness. I could be sleeping outside. Without this program, I think I would be."

17

Blaise Rastello
5902 Spaatz Pl
Rockville, MD 20851

Support for Montgomery County Council Bill 34-17
Housing – Moderately Priced Dwelling Units (MPDUs)

The Need

- There is a great need for affordable, accessible housing for people with intellectual/ developmental disabilities (ID/DD) in Montgomery County. The Montgomery County Inter-Agency Committee on Developmental Disabilities (Inter ACC/DD) estimates that the total number of people with disabilities in the County is 107,808.
- The affordability needs of this population are also great. Currently, monthly income from Supplemental Security Income (SSI), the most frequent income source for this population, is $735 which is approximately 11.4% of the Washington Metropolitan Region's 2017 area median income for an individual ($77,300 for 1 person HH).
- Affordable housing units created with specialized federal and state financing programs are developed to meet the needs of households with income between 30% and 60% of area median. Thus, people with intellectual/developmental disabilities are also priced out of the affordable housing market.
- Existing rent subsidy programs, such as the Housing Choice Voucher (HCV) program, are an important resource for making housing affordable to people with developmental disabilities. Unfortunately, these programs also fall far short of meeting the need. The waitlist for a voucher in Montgomery County is lengthy (31,859 as of March 2017), and a person may need to wait up to 10 years for this rent subsidy opportunity.
- Specialized rent subsidy programs for people with disabilities, such as the HUD 811 Project Rental Assistance program, are also an important resource. However, Maryland's HUD 811 PRA program is funded to assist approximately 300 households statewide and must address the housing needs of diverse disability populations.

Challenges with proposed MPDU Bill 34-17

- The bill's declaration of public policy states public policy of the County: ***"encourage and maintain a wide choice of housing types and neighborhoods for people of all incomes, ages, lifestyles, and physical capabilities at appropriate locations and densities and to implement policies to bridge housing affordability gaps."*** (p7).
- While the bill modifies the existing MPDU program to create more flexibility to both developers and Montgomery County to create much needed affordable housing at income levels ranging from 50% to 80% of AMI, it fails to incentivize the creation of "extremely low-income" units at affordability levels below 30% of AMI.
- The bill's County Council's findings in 2017 does state ***"that MPDUs can be used in partnership with other housing supports to provide affordable housing to households with very low incomes such as those with incomes below 50% or 30% of area median income,"*** however, it doesn't identify what those housing supports are.

- Assuming that this statement is primarily speaking to Section 8 housing voucher, those resources are extremely limited and oversubscribed with a waiting list of more than 31,000.

Proposed modifications to MPDU Bill 34-17

- The County could easily create an additional schedule that provided density bonus to developers who achieve units set aside for "extremely low income" households and provided deeply affordable units.
- By creating an alternative option, just like the proposed bill is doing by creating an "alternative payment agreement" into the Housing Initiative Fund, the bill would provide a revenue neutral option to the County and incentivize developers to create deeply affordable units, if they chose to do so.
- There is no good reason that the proposed 34-17 bill shouldn't at least provide the mechanism and option for developers to create units that could serve extremely low-income households, such as those with ID/DD living on fixed income.
- Developers would not have to choose to provide MPDUs to "extremely low income" households, but having an additional density bonus schedule would provide the mechanism for developers that would like to create such housing to do so.

Submitted to Montgomery County Council
December 5, 2017

5

December 5, 2017
President Hans Riemer
100 Maryland Ave,
Rockville MD. 20850

RE: Bill 34-17, Moderately Priced Dwelling Units (MPDUs) - Amendments and Bill 38-17, MPDUs Requirement to Build.

Council President Riemer and the Montgomery County Council:

CASA is the region's largest immigrant rights, services, and advocacy organization counting with over 100,000 lifetime members and more than 30,000 in Montgomery County alone. Our vision is a future with diverse and thriving communities living free from discrimination and fear, working together with mutual respect to achieve full human rights for all. Affordable Housing is a key pillar to the success we envision for all communities. CASA is here today to offer friendly recommendations for Bill 34-17 and to support the intent of Bill 38-17.

CASA has been an active tenant rights advocate in the county for many years and recently participated in the Montgomery County Rental Housing study that was approve by the council. We thank the sponsors and co-sponsors of these bills for their leadership in supporting and expanding affordable housing options for all Montgomery County residents.

Bill 34-17 clarifies and updates several aspects of the MPDU Program for the County. CASA agrees with the recommendation that allow for flexibility in floor area ratio to provide for the much needed larger MPDUs. We also agree with the recommendations to tie eligibility standards to Montgomery's median income and to establish a payment to the HIF for projects under 20 units. These reforms will make the program more effective and give housing developers greater creativity to achieve the goal of the MPDUs.

We do, however recommend, that MPDUs built off-site be constructed within the same planning area to ensure all of our neighborhoods have a diverse housing stock. Total flexibility in off-site MPDU production can unintentionally aggravate the concentration of affordable housing in certain sectors of the county and inadvertently undermine the MPDU program goals. We also recommend that payments made to HIF in lieu of MPDUs be prioritized to build more affordable housing and preserve existing market rate affordable housing along transit corridors such as the Purple Line Corridor, the Route 29 Corridor, and Viers Mill Corridor Master Plan. We fear the loss of several hundred market rate affordable units in these areas to areas without the same access to public transportation.

Bill 38-17 as written requires production levels of MPDUs at 15% for communities whose high school clusters FARM rates are 15% or less. Although we believe this bill can be stronger, we see it as a great step to promoting and ensuring economic diversity throughout the county. The goal of this bill, along with the Montgomery County Public School's Consortium system, and a greater focus on ensuring that all schools in the county have the funding levels they need will ensure that students in Montgomery County have greater access to quality education.

This bill will give us the best return on investment in the long run when the communities in neighborhoods with High School clusters rates serving 15% or less FARM eligible students are more economically diverse. We highly recommend that the higher production of MPDUs be tied to the Elementary School FARM student serving rates as opposed to the High School rates. Countless studies have shown that educational achievement disparities can be identified as early as Elementary School.

In Conclusion, production of MPDUs must be part of a holistic approach to solving social economic disparities in the county as that is the only way to ensure that we close the achievement gap and ensure that Montgomery County have adequate housing options..

Sincerely,

Renato Mendoza
Advocacy Specialist
CASA

Notes from DHCA MPDU Program Report 2013-2016
(summarized by Linda McMillan, Council staff)

From 2013-2016 (4 years):

53 agreements to build approved including 1,484 MPDUs (13.4% of total units)

461 in 2013
258 in 2014
491 in 2015
274 in 2016

103 MPDU offering agreements for 60 developments. Total MPDUs offered was 1,576; 544 for-sale and 1,032 rental.

1 Alternative Location Agreement was signed – 12 MPDUs were provided off-site in the same planning area (Bethesda) in place of 9 MPDUs on site.

2 Alternative Payment Agreements were signed:
One was for an age-restricted community (Courts at Clarksburg)
One was for a condominium with high fees (Octave)

As of January 2018:

- There are 1,644 MPDUs for-sale under price controls.
- There are 2,303 MPDUs under rent controls in 61 properties (73 are in 2 LIHTC properties).
- 321 of the 1,644 for-sale MPDUs are owned by non-profit organizations
- HOC owns 1,400 MPDUs not included in the 1,644. They are used as rental properties.
- There are 46 rental high-rise properties where the rent may be calculated at 70% of area median income (rather than 65%).

Use of Alternative Payments during 2013-2015:

Park Potomac (signed 2005) - $2,655,988 total or $85,677 per 31 MPDUs.

- $1,275,000 to preserve 20 expiring MPDUs at Morgan Apartments for 15 years ($4,250 per apartment per year or $63,750 per unit)
- $591,149 to make MPDUs at Stonehall condominiums affordable
- $1,250,000 to MCCH to purchase one small apartment building in Bethesda

Octave (signed 2014) - $856,675 total or $65,898 per 13 MPDUs.

- $716,164 used to fund a portion of The Bonifant to increase affordability

Quarry Springs Potomac (signed 2005) $1,700,000 total or $113,333 per 15 MPDUs.

- $900,000 was used as a portion of $1,555,000 provided to MCCH to buy a second small apartment building in Bethesda

DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Isiah Leggett
County Executive

Clarence J. Snuggs
Director

MEMORANDUM

January 25, 2018

TO: Hans Riemer, Council President

FROM: Clarence J. Snuggs, Director
Department of Housing and Community Affairs

SUBJECT: Annual Report on the Moderately Priced Dwelling Unit (MPDU) Program Covering Calendar Years 2013 to 2016

Section 25A-12 of Chapter 25A, Moderately Priced Housing Law, of the Montgomery County Code 2004, as amended, requires that the Director of DHCA submit to the Council President a report on the Montgomery County MPDU program for the previous calendar year. Due to a restructuring of the department's database system, the MPDU office was not able to provide annual reports for the past several years. I am pleased that DHCA is now able to renew providing these reports. Following is a report on the Montgomery County MPDU program for the period covering calendar years 2013, 2014, 2015, and 2016. Where possible, the information has been broken out by calendar year.

THE NUMBER OF MPDUS APPROVED

For the purposes of this report, the number of MPDUs approved is represented by the number of MPDUs agreed to be built through executed Agreements to Build Moderately Priced Dwelling Units ("Agreements to Build"). DHCA executed 53 new Agreements to Build during calendar years 2013 through 2016. The total number of dwelling units represented by these agreements are 11,057 with 1,484 required to be MPDUs. The MPDUs are 13.4% of the total units in the Agreements to Build. A list of the Agreements to Build can be found in Attachment A.

THE NUMBER OF MPDUS BUILT

For the purposes of this report, the number of MPDUs built is represented by the number of MPDUs offered for sale or rent to eligible MPDU households through executed Offering Agreements. DHCA approved 103 individual MPDU Offering Agreements during calendar years 2013 through 2016 for 60 different developments (there were multiple offering agreements for several developments during these years, especially for the Clarksburg Village, Cabin Branch, Norbeck Crossing and Poplar Run developments). These Offering Agreements represented 544 new for-sale MPDUs and 1,032 rental MPDUs. The total number of MPDUs offered during 2013 through 2016 was 1,576.

Please note that the numbers shown for a particular development may not represent the development's full MPDU requirement because in larger developments there may be more than one offering over time as the development builds-out. Also, the list of offerings is not necessarily related to the list of Agreements to Build since those agreements are executed before the first building permit for the development is obtained, and it can take several years for a development to build out. The specific Offering Agreements approved, by development and by calendar year, can be found in Attachment B.

THE NUMBER OF MPDUS UNDER CONTROLS

The number of for-sale MPDUs under resale price controls and active monitoring by DHCA are 1,644 (this number includes 321 MPDUs owned by nonprofit organizations). The number of MPDU rental units under subject to MPDU rents and active monitoring by DHCA are 2,230 in 59 rental properties. Another 73 MPDUs are located in 2 rental properties covered and monitored by the Low Income Housing Tax Credit Program. In addition to this, the Housing Opportunities Commission owns approximately 1,400 MPDUs that are used as rental housing.

ALTERNATIVE PAYMENT OR LOCATION AGREEMENTS

One Alternative Location Agreement and Two Alternative Payment Agreements were approved during calendar years 2013 through 2016. The Alternative Location agreement allowed 12 MPDUs to be provided off-site in the same planning area in lieu of 9 MPDUs. One Alternative Payment Agreement was signed for an age-restricted for-sale community. The other Alternative Payment Agreement was signed for a condominium project where the condominium fees made the cost of the MPDUs unaffordable. A complete list of all Alternative Agreements approved for the MPDU Program can be found in Attachment C. A detailed description of the three Alternative Agreements in 2014 and 2016 can be found in Attachment D.

RENTS IN HIGH-RISE DEVELOPMENTS

The Department is required to report on high-rise rental developments with MPDUs in which the MPDU rents were calculated based on 70 percent of the area median income. Currently, there are 46 rental projects with high-rise MPDU rents. The list of rental MPDU developments is shown in Attachment E.

THE USE OF FUNDS IN THE HOUSING INITIATIVE FUND

The Department is required to report on MPDU alternative payments received and the use of such payments. During the calendar years covered by this report, alternative payments were received from three projects:

- In 2013 and in 2015, two payments of $1,327,994 each were received for the Park Potomac development. The Alternative Agreement for this development was signed in 2005. The total received was $2,655,988. These funds were used for the following projects:
    - $1,275,000 for the preservation of 20 expiring MPDUs at the Morgan Apartments in North Bethesda for 15 years;
    - $591,149 to make MPDUs at the Stonehall Condominiums in Bethesda affordable to MPDU purchasers; and,
    - $1,250,000 to the Montgomery County Coalition for the Homeless (MCCH) to purchase one of two small apartment buildings in the Bethesda Planning Area for permanent supportive housing.
- In 2016, payments totaling $716,164.41 were received from the Octave Condominiums development in Silver Spring. The Alternative Payment Agreement for this development was signed in 2014. These funds were used for:
    - A portion of the $1,616,164.41 provided for the development of The Bonifant Apartments in Silver Spring (149 total units, 139 affordable including 81 units ≤60% AMI, 43 units ≤50% AMI, and 15 units ≤30% AMI).
- In 2016, a payment of $900,000.00 was received from the Quarry Springs Condominiums in Potomac. The Alternative Payment Agreement for this development was signed in 2005. These funds were used for:
    - A portion of the $1,555,000 provided to the Montgomery County Coalition for the Homeless (MCCH) to purchase the second of two small apartment buildings in the Bethesda Planning Area for permanent supportive housing.

MPDU "PIPELINE"

In previous years, the members of the Planning, Housing, and Economic Development (PHED) Committee have asked for a report on the development "pipeline" for MPDUs. As a member of the Development Review Committee (DRC) at the Maryland National Capital Park and Planning Commission (M-NCPPC), DHCA receives information on development applications that contain MPDUs. DHCA then tracks these projects in the MPDU database from planning approval through the Agreement to Build and Offering Agreement processes, and ultimately through the sale or rental to eligible households. Attached please find as Attachment F, a chart that shows pending Agreements to Build and "New Projects," which are those that are in some stage of the planning and development review process in M-NCPPC.

Under separate cover, this Report is also being sent to the County Executive as required by Chapter 25A.

CJS:sek

Attachments:

A. MPDUs Approved for Construction – Executed Agreements to Build MPDUs between 1/1/2013 and 12/31/2016
B. MPDUs Built and Offered to MPDU Certificate Holders (for Sale or Rent) between 1/1/2013 and 12/31/2016
C. Alternative Location and Alternative Payment Agreements 1989 - 2016
D. MPDU Alternative Agreements – CY 2013-2016
E. List of High-Rise MPDU Rental Developments
F. MPDU "Pipeline" (as of 1/15/2018)

cc: Nancy Navarro, Council Vice President
Roger Berliner, Councilmember
Marc Elrich, Councilmember
Nancy Floreen, Councilmember
Tom Hucker, Councilmember
Sidney Katz, Councilmember
George Leventhal, Councilmember
Craig Rice, Councilmember

S:\Files\recurring\Housing\MPDU\Council Annual Reports MPDU\2016 MPDU Report\2016 Annual Report to Council President.docx

MPDUs Approved: MPDU Agreements to Build Executed
2013 - 2016

Attachment A

Project Name	AKA	Site Plan Number	Total Units	MPDUs	Work-force Units	Rental or For-Sale	Agreement Date	Est. End Date	Developer Name
2013									
Fenwick	Fenwick Station	820120080	310	39		Rental	3/26/2013	1/31/2015	Fenwick Station Venture LLC
George, The	11141 Georgia Avenue	820120170	195	25		Rental	4/10/2013	10/31/2014	Lowe Enterprises
The Darcy	Parking Lot 31/Lot 31A	820070180	88	13	11	For-Sale	4/16/2013	4/30/2015	Stonebridge Associates
The Flats @ Bethesda Ave.	Parking Lot 31/Lot 31A	820070180	162	14	24	Rental	4/16/2013	4/30/2015	Stonebridge Associates
Norbeck Crossing	Greenbriar at Norbeck	820110040	261	40		For-Sale	5/17/2013	12/31/2017	CalAtlantic Homes (fka Ryland)
Little Falls Place	Hoyt Property	820120070	30	5		For-Sale	6/18/2013	9/30/2015	EYA
Towns of Tanglewood	Kushner Property	820080100	36	5		For-Sale	6/25/2013	9/30/2015	K. Hovnanian Homes
Cabin Branch Winchester Ph 1	Winchester Phase 1	82006029A	439	70		For-Sale	8/15/2013	8/31/2018	Winchester Homes
Germantown Park	Seneca Hill	820120090	104	13		For-Sale	8/15/2013	3/31/2016	Beazer Homes Corp.
7001 Arlington Road		820120140	140	21		Rental	9/18/2013	12/31/2014	Associated Estates Realty Corp.
Mallory Square	BNA	820120130	681	93		Rental	9/18/2013	3/31/2019	Woodfield Investments
Residences @ Shady Grove		820090070	149	19		For-Sale	10/24/2013	5/31/2019	Comstock Homes
Waterford Hills; Alta Liberty Mills		82011013A	470	59		Both	11/8/2013	5/31/2016	Buchanan Partners LLC
Flats 8300	8300, 8400 Wisconsin	82006036B	359	45		Rental	12/13/2013	12/31/2015	Stonebridge Associates
Total for 2013	**Number of Agreements to Build:**	**14**	**3,424**	**461**	**35**				
		MPDU & WFHU	**% of Total:**	**13.5%**	**1.0%**				

92

MPDUs Approved: MPDU Agreements to Build Executed
2013 - 2016

Project Name	AKA	Site Plan Number	Total Units	MPDUs	Work-force Units	Rental or For-Sale	Agreement Date	Est. End Date	Developer Name
2014									
7770 Norfolk Avenue	4900 Fairmont Avenue	820120120	200	30		Rental	1/10/2014	3/31/2016	JBG Companies
Chelsea Heights	Chelsea School Project	820130040	64	8		For-Sale	2/19/2014	2/29/2016	EYA
Solaire Bethesda	7100 Wisconsin Avenue	820130230	139	21		Rental	3/31/2014	7/1/2016	Washington Property Co.
Camden Shady Grove	DANAC Stiles; Decoverly Hall	820130110	457	58		Rental	6/11/2014	10/31/2017	Camden USA, Inc.
Hanover Shady Grove	Shady Grove Executive Center	820120190	366	50		Rental	8/1/2014	12/31/2016	Hanover Company, The
Bentley Park	Fairland Park	82005006A	247	31		For-Sale	8/12/2014	5/31/2018	NVR, Inc.
Central	8415 Fenton St.	820130050	243	31		Rental	9/5/2014	12/31/2016	Grosvenor Americas JV, LLC
Element 28	Bethesda Commerce	820130240	101	13		Rental	9/24/2014	1/31/2016	Kettler
The Lauren	4901 Hampden Lane	820070060	40	6		For-Sale	10/20/2014	10/31/2016	1788 Holdings
Bethesda Mews	Alta Vista - ACC	820130030	34	5		For-Sale	10/24/2014	3/31/2019	Streetscape Partners
Cloverly Forest	Anselmo Property	820110140	38	5		For-Sale	12/4/2014	2/28/2017	Richmond American Homes
Total for 2014	**Number of Agreements to Build:**	**11**	**1,929**	**258**	**0**				
		MPDU & WFHU	**% of Total:**	**13.4%**	**0.0%**				

93

MPDUs Approved: MPDU Agreements to Build Executed
2013 - 2016

Attachment A

Project Name	AKA	Site Plan Number	Total Units	MPDUs	Work-force Units	Rental or For-Sale	Agreement Date	Est. End Date	Developer Name
2015									
Trotters Glen	Trotters Run	820130060	69	10			1/29/2015	1/31/2019	Toll Brothers
Stonehall Bethesda	Stonehall; Woodmont View	82009001A	46	9		For-Sale	1/30/2015	5/31/2016	Duball, LLC
Henri, The	Pike and Rose Ph 2	820130120	569	72		Rental	2/13/2015	6/30/2020	Federal Realty Investmt Trust
Clarksburg Square	Garnkirk Farms	820120100	392	49		For-Sale	4/21/2015	7/31/2018	The Duffie Companies
Grosvenor Heights	American Forester's	820130130	152	23		For-Sale	5/4/2015	7/1/2018	EYA
Potomac Highlands	Burley Property	820130260	23	4		For-Sale	6/1/2015	12/31/2016	Winchester Homes
The Encore	Clarksburg Village, Phase 3	820100040	90	12		Rental	7/2/2015	8/31/2016	Elm Street Development
Westside @ Shady Grove,	Co. Service Park, Ph 1TH	820130220	148	16	9	For-Sale	7/22/2015	4/30/2019	EYA
Glenmont Metrocentre Ph 1.1	Glenmont Metrocenter	820130270	171	22		For-Sale	8/3/2015	1/31/2019	Winchester Homes
Core, The	8621 Georgia Avenue	82011006A	292	35	17	Rental	8/14/2015	5/31/2017	Foulger-Pratt Cos.
Daley, The	Westside at Shady Grove MF	82013022A	333	50	27	Rental	9/21/2015	7/31/2017	Bozzuto Group
The Pearl	The Blairs Phase 1	820140170	507	64		Rental	9/25/2015	4/30/2018	Tower Companies
Montgomery Row @ Rock Spring	Rock Spring Park	81989049I	168	21		For-Sale	10/6/2015	3/31/2020	EYA
AVA Wheaton	2425 Blueridge Avenue	820140190	319	41		Rental	11/25/2015	12/31/2017	Avalonbay Communities
Studio Plaza, Phase 1	Public Parking Lot 3	820130010	399	59	10	Rental	12/10/2015	9/30/2019	Fairfield Residential
Kensington Overlook	Kensington Heights	820130140	26	4		For-Sale	12/17/2015	11/30/2016	K. Hovnanian Homes
Total for 2015	**Number of Agreements to Build:**	**16**	**3,704**	**491**	**63**				
		MPDU & WFHU	**% of Total:**	**13.3%**	**1.7%**				

(94)

MPDUs Approved: MPDU Agreements to Build Executed

2013 - 2016

Attachment A

Project Name	AKA	Site Plan Number	Total Units	MPDUs	Work-force Units	Rental or For-Sale	Agreement Date	Est. End Date	Developer Name
2016									
Cheval Bethesda	4990 Fairmont Avenue	820140060	71	11		For-Sale	3/17/2016	9/30/2017	Duball, LLC
West Lane	4901 Montgomery Ln	82008003A	112	17		Rental	5/17/2016	5/31/2018	SJG Properties
Solaire 8250 Georgia Avenue	Ripley East	820150130	360	54		Rental	7/20/2016	3/1/2019	Washington Property Co.
Chevy Chase Lake Townhomes	Chevy Chase Lake Drive	820150050	62	10		For-Sale	8/10/2016	2/28/2018	EYA
Travilah Station	Travilah Grove	82013020A	131	17		For-Sale	8/18/2016	12/31/2018	Brookfield Residential
Cabin Branch - Toll 2	Toll 2 - Cabin Branch	820100030	168	10		For-Sale	9/22/2016	10/31/2020	NVR, Inc.
The Point at Cabin Branch		820070140	434	66		For-Sale	9/22/2016	3/31/2020	NVR, Inc.
Cabin Branch Winchester Ph 2	Winchester Phase 2	820110080	341	41		For-Sale	9/23/2016	11/30/2019	Winchester Homes
White Oak	Whitehall Square Phase 2	82005018C	22	4		For-Sale	11/16/2016	5/31/2018	Pleasants Development Inc.
Manor Oaks	Marian Fathers Property	820090130	54	8		For-Sale	11/30/2016	12/31/2018	Natelli Communities, Inc.
Mateny Hill	Mateny Hill Road Property	820160020	45	6		For-Sale	12/14/2016	10/31/2019	Elm Street Development
Chevy Chase Lake MF	Chevy Chase Lake Apts	820150040	200	30		Rental	12/22/2016	1/31/2019	HOC
Total for 2016	**Number of Agreements to Build:**	**12**	**2,000**	**274**	**0**				
		MPDU & WFHU	**% of Total:**	**13.7%**	**0.0%**				
Total for 2013 - 2016	**Number of Agreements to Build:**	**53**	**11,057**	**1,484**	**98**				
		MPDU & WFHU	**% of Total:**	**13.4%**	**0.9%**				

S:\Files\recurring\Housing\MPDU\Council Annual Reports MPDU\2016 MPDU Report\Report Attachments\[A - Agreements To Build 2013 - 2016.xlsx]Sheet

MPDUs Built: MPDU Offering Agreements Executed

2013 - 2016

Attachment B

Project Name	AKA	Site Plan Number	Total Units	MPDUs	MPDUs in Offering	Workforce Units	Rental or For-Sale	Offering Date	Developer Name
2013									
Citron Apartments	Ellsworth, The	81999002H	222	31	31		Rental	1/11/2013	Foulger-Pratt
The Elms at Clarksburg Village	Clarksburg Village, Phase 2	820050410	1,680	266	88		Rental	3/1/2013	Albemarle Group
Quince Trace		82007008A	45	6	2		For-Sale	3/1/2013	Pulte
Woodward Crossing	Mainhart Property	820070250	32	4	4		Rental	3/7/2013	Magruder Companies
Preserve at Rock Creek	Bowie Mill Estates	820060110	68	13	3		For-Sale	3/27/2013	Winchester Homes
Orchards of Sandy Spring	Danshes Property	820060160	40	6	6		For-Sale	4/4/2013	Stanley Martin Homes
Wootton Crossing	Darnestown at Travilah	820100070	39	5	5		For-Sale	4/8/2013	NVR
Quince Trace		82007008A	45	6	4		For-Sale	4/15/2013	Pulte
Olney Springs	Bowie Mill Property	820110050	114	34	34		For-Sale	4/15/2013	MHP/ Elm Street
Symphony Park		820080010	112	17	4		For-Sale	4/24/2013	Streetscape Partners
Olney Springs	Bowie Mill Property	820110050	114			34	For-Sale	5/22/2013	MHP/ Elm Street
Poplar Run	Indian Spring Property	820070020	773	116	6		For-Sale	5/24/2013	Winchester Homes
Heritage at Silver Spring	8021 Georgia Avenue	820060380	210	27	27		Rental	6/13/2013	Cypress Realty
Eleven55 Ripley	Ripley Street North	82006025A	379	48	48		Rental	6/26/2013	Home Properties
The Exchange @ Wheaton Stn	Wheaton Safeway	820110010	486	61	61		Rental	7/5/2013	Foulger-Pratt
Preserve at Rock Creek	Bowie Mill Estates	820060110	68	13	6		For-Sale	7/5/2013	Winchester Homes
Clarksburg Village, Phase 2	The Elms @ Clarksburg Village	820050410	1,680	266	28		For-Sale	7/23/2013	Albemarle Group
Gallery Park	Eastside	82005038A	256	32	6		For-Sale	8/1/2013	Miller & Smith
Gallery Park	Eastside	82005038A	256	32	3		For-Sale	8/1/2013	Miller & Smith
Batchellors Forest		820080190	37	6	6		For-Sale	9/11/2013	Pulte
Millstone at Kingsview	Kingsview Village, Section 8	81997007A	195	64	64		Rental	10/2/2013	Pleasants
Hallman Grove		82007024A	28	4	4		For-Sale	10/2/2013	Winchester Homes
Shady Grove Crossing	Piedmont Crossing	82006012A	62	8	2		For-Sale	10/17/2013	Toll Brothers
Preserve at Rock Creek	Bowie Mill Estates	820060110	118	15	9		For-Sale	11/6/2013	Stanley Martin Homes
Clarksburg Village, Phase 2	The Elms at Clarksburg Village	820050410	1,680	266	8		For-Sale	11/22/2013	Albemarle Group
Solaire Wheaton	10914 Georgia Avenue	820110100	232	32	32		Rental	11/26/2013	Washington Property Co.
Little Falls Place	Hoyt Property	820120070	30	5	5		For-Sale	11/26/2013	EYA
Gallery Bethesda	Woodmont Central Phases 1B & 2	820110020	453	68	36		Rental	12/6/2013	Donohoe
The Premier	8711 Georgia Avenue	82008023A	160	20	20		Rental	12/17/2013	Guardian Realty
The Elms @ Clarksburg Village	Clarksburg Village, Phase 2	820050410	1,680	266	24		Rental	12/18/2013	Albemarle Group
Total for 2013	**Number of Offering Agreements:**	**30**			**576**		**Rental MPDUs:**	**435**	
	Number of Developments	**23**					**For-Sale MPDUs:**	**141**	

96

Note: many for-sale projects have multiple offerings as units are ready; so only the MPDUs in Offering column should be totaled

1/25/2018

MPDUs Built: MPDU Offering Agreements Executed
2013 - 2016

Attachment B

2014									
Clarksburg Village, Phase 2	The Elms a@ Clarksburg Village	820050410	1,680	266	32		For-Sale	2/5/2014	Albemarle Group
Woodlake	Silver Spring Country Club	8-71011A	59	8	6		For-Sale	2/5/2014	Beazer Homes Corp.
Aurora @ North Bethesda Ctr	Westmoreland House	82008011A	341	43	43		Rental	2/28/2014	LCOR
Gallery Park	Eastside	82005038A	256	32	4		For-Sale	3/19/2014	Miller & Smith
Olney Estates	Brookeshire	820060190	42	6	6		For-Sale	3/25/2014	Toll
Towns of Tanglewood	Kushner Property	820080100	36	5	5		For-Sale	4/18/2014	K. Hovnanian Homes
Persei, Pallas Apartments	Pike and Rose Phase I	820120020	493	62	30		Rental	4/24/2014	Federal Realty Invest. Trust
Fenwick	Fenwick Station	820120080	310	39	39		Rental	4/24/2014	Fenwick Station Venture LLC
Bainbridge Bethesda	The Monty	820090110	200	30	30		Rental	5/12/2014	Bainbridge
Germantown Park	Seneca Hill	820120090	104	13	13		For-Sale	5/14/2014	Beazer Homes Corp.
Norbeck Crossing	Greenbriar @ Norbeck Crossing	820110040	261	40	9		For-Sale	5/21/2014	CalAtlantic Homes (fka Ryland)
Waterford Hills; Alta Liberty Mills	Village West @ Germantown TC	82011013A	470	59	12		For-Sale	5/21/2014	Buchanan Partners LLC
Poplar Run	Indian Spring Property	820070020	773	116	11		For-Sale	6/13/2014	Winchester Homes
George, The	11141 Georgia Avenue	820120170	195	25	25		Rental	7/29/2014	Lowe Enterprises
Clarksburg Village, Phase 2	The Elms at Clarksburg Village	820050410	1,680	266	8		For-Sale	8/6/2014	Albemarle Group
Poplar Run	Indian Spring Property	820070020	773	116	8		For-Sale	9/19/2014	Winchester Homes
Chelsea Heights	Chelsea School Project	820130040	64	8	4		For-Sale	9/23/2014	EYA
Chelsea Heights	Chelsea School Project	820130040	64	8	4		For-Sale	9/23/2014	EYA
Gallery Park	Eastside	82005038A	256	32	7		For-Sale	10/7/2014	Miller & Smith
Cabin Branch Phase 1	Winchester Phase 1	82006029A	439	70	8		For-Sale	10/13/2014	Winchester Homes
Bentley Park	Fairland Park	82005006A	247	31	11		For-Sale	10/29/2014	NVR, Inc.
Norbeck Crossing	Greenbriar at Norbeck Crossing	820110040	261	40	7		For-Sale	11/5/2014	CalAtlantic Homes (fka Ryland)
Preserve at Rock Creek	Bowie Mill Estates	820060110	118	15	6		For-Sale	11/6/2014	Stanley Martin Homes
Norbeck Crossing	Greenbriar at Norbeck Crossing	820110040	261	40	8		For-Sale	12/2/2014	CalAtlantic Homes (fka Ryland)
Total for 2014	**Number of Offering Agreements:**	24			336		**Rental MPDUs:**	167	
	Number of Developments	18					**For-Sale MPDUs:**	169	

97

Note: many for-sale projects have multiple offerings as units are ready; so only the MPDUs in Offering column should be totaled

MPDUs Built: MPDU Offering Agreements Executed
2013 - 2016

Attachment B

2015									
7001 Arlington Road		820120140	140	21	21		Rental	1/15/2015	Associated Estates Realty Corp.
Waterford Hills; Alta Liberty Mills	Village West @ Germantown TC	82011013A	470	59	11		Rental	1/15/2015	Buchanan Partners LLC
Waterford Hills; Alta Liberty Mills	Village West @ Germantown TC	82011013A	470	59	27		Rental	1/15/2015	Buchanan Partners LLC
Clarksburg Town Center		820070220	1,206	151	9		For-Sale	3/6/2015	Miller & Smith
Mallory Square	BNA	820120130	681	93	50		Rental	3/6/2015	Woodfield Investments
The Darcy	Lot 31/Lot 31A	820070180	88	13	13		For-Sale	4/7/2015	Stonebridge Associates
Persei; Pallas Apartments	Pike and Rose Phase I	820120020	493	62	32		Rental	4/13/2015	Federal Realty Invest. Trust
The Darcy	Lot 31/Lot 31A	820070180	88			11	For-Sale	4/14/2015	Stonebridge Associates
The Flats @ Bethesda Ave.	Parking Lot 31/Lot 31A	820070180	162	14	14		Rental	4/22/2015	Stonebridge Associates
The Flats @ Bethesda Ave.	Parking Lot 31/Lot 31A	820070180	162			24	Rental	5/11/2015	Stonebridge Associates
The Perry	Fortune Parc	82004015A	450	61	30		Rental	5/11/2015	Foulger-Pratt Companies, Inc.
Waterford Hills; Alta Liberty Mills	Village West @ Germantown TC	82011013A	470	59	9		For-Sale	5/18/2015	Buchanan Partners LLC
Poplar Run	Indian Spring Property	820070020	773	116	22		For-Sale	6/1/2015	Winchester Homes
Cabin Branch Winchester Ph 1	Winchester Phase 1	82006029A	439	70	2		For-Sale	6/4/2015	Winchester Homes
Preserve at Rock Creek	Bowie Mill Estates	820060110	68	13	4		For-Sale	6/10/2015	Winchester Homes
Residences at Shady Grove	Residences at Shady Grove	820090070	149	19	3		For-Sale	6/22/2015	Comstock Homes
Grosvenor Heights	American Forester's	820130130	152	23	8		For-Sale	6/25/2015	EYA
Clarksburg Village, Phase 2	The Elms @ Clarksburg Village	820050410	1,680	266	10		For-Sale	7/6/2015	Albemarle Group
Clarksburg Village, Phase 2	The Elms @ Clarksburg Village	820050410	1,680	266	12		For-Sale	7/6/2015	Albemarle Group
Westside@ Shady Grove Ph1TH	County Service Park	820130220	148	16	5	4	For-Sale	8/4/2015	EYA
Clarksburg Village, Phase 2	The Elms @ Clarksburg Village	820050410	1,680	266	7		For-Sale	8/28/2015	Albemarle Group
Poplar Run	Indian Spring Property	820070020	773	116	14		For-Sale	9/11/2015	Winchester Homes
Cabin Branch Winchester Ph 1	Winchester Phase 1	82006029A	439	70	7		For-Sale	10/5/2015	Winchester Homes
Bentley Park	Fairland Park	82005006A	247	31	6		For-Sale	10/8/2015	NVR, Inc.
Clarksburg Village, Phase 2	The Elms at Clarksburg Village	820050410	1,680	266	7		For-Sale	10/14/2015	Albemarle Group
Montgomery Row @ Rock Spring	Rock Spring Park	819890491	168	21	4		For-Sale	10/28/2015	EYA
Clarksburg Village, Phase 2	The Elms at Clarksburg Village	820050410	1,680	266	8		For-Sale	12/17/2015	Albemarle Group
Total for 2015	**Number of Offering Agreements:**	**27**			**335**		**Rental MPDUs:**	**185**	
	Number of Developments	**17**					**For-Sale MPDUs:**	**150**	

86

Note: many for-sale projects have multiple offerings as units are ready; so only the MPDUs in Offering column should be totaled

1/25/2018

MPDUs Built: MPDU Offering Agreements Executed
2013 - 2016

Attachment B

2016									
Poplar Run	Indian Spring Property	820070020	773	116	6		For-Sale	1/28/2016	Winchester Homes
The Lauren	4901 Hampden Lane	820070060	40	6	6		For-Sale	1/28/2016	1788 Holdings
7770 Norfolk Avenue	4900 Fairmont Avenue	820120120	200	30	30		Rental	2/11/2016	JBG Companies
Cabin Branch Winchester Ph 1	Winchester Phase 1	82006029A	439	70	8		For-Sale	2/24/2016	Winchester Homes
Flats 8300	8300, 8400 Wisconsin Ave	82006036B	359	45	45		Rental	2/25/2016	Stonebridge Associates
Kensington Overlook	Kensington Heights	820130140	26	4	4		For-Sale	3/18/2016	K. Hovnanian Homes
Hanover Shady Grove	Shady Grove Executive Center	820120190	366	50	50		Rental	3/24/2016	Hanover Company, The
Norbeck Crossing	Greenbriar @ Norbeck Crossing	820110040	261	40	8		For-Sale	4/21/2016	CalAtlantic Homes (fka Ryland)
Cabin Branch Winchester Ph 1	Winchester Phase 1	82006029A	439	70	6		For-Sale	6/24/2016	Winchester Homes
Solaire Bethesda	7100 Wisconsin Avenue	820130230	139	21	21		Rental	7/6/2016	Washington Property Co.
Blairs, The Phase F1-F2	The Blairs Phase 1	820140170	507	64	28		Rental	7/28/2016	Tower Companies
Element 28	Bethesda Commerce	820130240	101	13	13		Rental	8/16/2016	Kettler
Cabin Branch Winchester Ph 1	Winchester Phase 1	82006029A	439	70	6		For-Sale	9/28/2016	Winchester Homes
Glenmont Metrocentre Ph 1.1	Glenmont Metrocenter	820130270	171	22	4		For-Sale	10/19/2016	Winchester Homes
Montgomery Row @ Rock Spring	Rock Spring Park, Rock Spring	81989049I	168	21	9		For-Sale	10/31/2016	EYA
Camden Shady Grove	DANAC Stiles Property	820130110	457	58	58		Rental	11/7/2016	Camden USA, Inc.
Westside @ Shady Grove Ph1TH	County Service Park	820130220	148	16	5		For-Sale	11/8/2016	EYA
Clarksburg Square	Garnkirk Farms	820120100	392	49	3		For-Sale	11/17/2016	The Duffie Companies
Clarksburg Town Center		820070220	1,206	151	4		For-Sale	11/22/2016	
Grosvenor Heights	American Forester's	820130130	152	23	5		For-Sale	11/23/2016	EYA
Cabin Branch Winchester Ph1	Winchester Phase 1	82006029A	439	70	6		For-Sale	12/8/2016	Winchester Homes
Chevy Chase Lake Townhomes		820150050	62	10	4		For-Sale	12/13/2016	EYA
Total for 2016	**Number of Offering Agreements:**	**22**			**329**		**Rental MPDUs:**	**245**	
	Number of Developments	**19**					**For-Sale MPDUs:**	**84**	
Total for 2013 - 2016	**Number of Offering Agreements:**	**103**			**1,576**		**Rental MPDUs:**	**1,032**	
	Number of Developments	**60**					**For-Sale MPDUs:**	**544**	

99

Note: many for-sale projects have multiple offerings as units are ready; so only the MPDUs in Offering column should be totaled

Attachment C

Alternative MPDU Agreements 1989 – 2016

See Page 3 for a Detailed Description of Each Agreement

	Date	Project Name (Site Plan #)	Developer	Unit Type	MPDU Requirement	Alternate Payment	Payment Per MPDU	Notes	MPDUs Not Provided On-Site
1.	1989	8100 Connecticut Avenue *Chevy Chase*	Forest City	High Rise Condominium (senior)	N/A	$107,000	N/A		
2.	1990	Madison Park *Bethesda*	Madison Park LLC	High Rise Condominium	8	$280,000	$35,000	Based on land price	8
3.	1991	Beacon Hill Grosvenor Lane *North Bethesda*	Richard Dubin	Townhouse	10	$400,000	$40,000	Based on land price	10
4.	1993	Fairmont Plaza *Bethesda*	Nathan Landow	High Rise Rental	12	None	None	Provided 18 MPDU apartments in The Seasons	12
5.	1994	Chase Grove *Gaithersburg*	Avalon Properties	Townhouse Condominium	11	None	None	Provided 22 MPDU apartments in same development	11
6.	1995	James Creek *Olney*	Martin Alloy	SF Detached	1	$69,000	$69,000	Based on land price	1
7.	1996	Sumner Gate @ Avenel *Potomac*	Natelli Communities	SF Detached	2	$200,000	$100,000	Based on land price	2
8.	1998	Cameron Hill *Silver Spring*	EYA	Piggyback TH Condominium	7	$97,634	$13,948	Based on land price	7
9.	1998	Crescent Park *Bethesda (819990200)*	Nathan Landow	High Rise Rental	22	None	None	Provided 24 MPDU apartments in The Seasons	22
10.	1999	Charrington *Rockville (819960060)*	Pulte Homes	Townhouse	1	$75,000	$75,000	Based on land price	1
11.	2000	The Whitney *Bethesda (82000014A)*	Bethesda Theater, LLC	High Rise Rental	32	$355,000	$16,136	Provided 10 MPDUs on-site	22

100

Attachment C

	Date	Project Name (Site Plan #)	Developer	Unit Type	MPDU Requirement	Alternate Payment	Payment Per MPDU	Notes	MPDUs Not Provided On-Site
12.	2002	~~Bethesda Air Rights~~ ~~*Waverly Street, Bethesda*~~ ~~*(820010080)*~~	~~Lowe Northwest~~	~~High Rise Rental~~	~~28~~	~~$294,000~~	~~$21,000~~	~~Provide 14 units on-site~~	N/A
13.	2002	The Gallery at White Flint *White Flint Metro* *(820010170)*	White Flint Place LLC	High Rise Rental	124 (27% required)	$1,764,000	$21,000	40 MPDUs provided on-site (8.8% of total units)	84
14.	2002	Wheaton CBD Metro Property *(120020260)*	EYA Bozzuto Construction	Piggyback TH Mid-Rise Rental apartments	10 30	$286,000 $288,000	$28,600 $19,200	Price for townhouse MPDUs based on land price. Provided 15 rental MPDUs on- site, 30-year controls	25
15.	2002	Wisconsin Place *Chevy Chase* *(82001010A)*	New England Development	High Rise Rental	34	$357,000	$21,000	17 MPDUs provided on-site	17
16.	2003	Grosvenor Village *North Bethesda* *(82000006A)*	Grosvenor Station Development	High Rise Rental	42	$378,000	$21,000	24 MPDUs provided on-site	18
17.	2003	8045 Newell Street *Silver Spring* *(820030370)*	Patriot Group	Mid Rise Condominium	15	$158,335	$31,667	10 MPDUs provided on-site	5
18.	2003	Rosedale Park *Bethesda* *(82002002A)*	Magruder Corp	High Rise Rental	21	$210,000	$21,000	11 MPDUs provided on-site	10
19.	2004	The Adagio (Bethesda View) *Bethesda* *(820040240)*	Sheridan Development	High Rise Condominium	10	$660,000	$66,000	Payment includes 2 extra units	10
20.	2004	The Sterling *White Flint Metro* *(82001017B)*	Donohoe Companies	High Rise Condominium	25	$600,000	$46,154	12 one-bedroom MPDUs provided on- site	13
21.	2004	Rock Spring Centre *North Bethesda* *(820030360, 820040170)*	The Penrose Group	High Rise Rental or Condominium	155 (18% required)	$1,584,000	$33,000		48
22.	2005	Edgemoor at Arlington North *(82007023A)*	Armont Development Group	High-Rise Condominiums	12	Land	N/A	Provided land to HOC; 12 special needs housing units	0 (12 lower-income units provided)
23.	2005	Quarry Springs *Potomac* *(120040420)*	W.M. Rickman Construction LLC	Mid-Rise Condominiums	15	$1,700,000	$113,333		15

101

	Date	Project Name (Site Plan #)	Developer	Unit Type	MPDU Requirement	Alternate Payment	Payment Per MPDU	Notes	MPDUs Not Provided On-Site
24.	2005	Park Potomac *Potomac* *(820040150)*	Foulger Pratt Development Inc.	High-Rise Condo and Rentals	61	$2,655,988	$85,677	30 MPDUs on-site (in buildings 3,4,5 and 6)	31
25.	2006	Woodside Courts *Silver Spring* *(820060030)*	GTM Architects	SF Homes and Townhomes	1	$155,600	$155,600	Planning Board waived 3 of 4 MPDUs; ARC approved payment for 1 MPDU	1
26.	2008	Burning Tree/Fox Hill *Bethesda* *(120020650)*	Sunrise Assisted Living	Elderly Assisted Living CCRC	36	$6,150,000	$170,833	Settlement Agreement for failure to provide affordable units on-site	36
27.	2014	Hampden Lane *Bethesda* *(820070100)*	Toll Brothers City Living	High-Rise condominiums	9	None	None	12 off-site MPDUs provided instead of 9 on-site	9
28.	2014	The Octave (1320 Fenwick) *Silver Spring* *(No site plan)*	ProMark Real Estate Services, LLC	High-Rise condominiums	13	$856,675 *(Actual - 3% total sales)*	$65,898 *Actual*	Micro Condominiums in conversion of former office building	13
29.	2016	The Courts at Clarksburg *Clarksburg* *(820150030)*	PulteGroup	Single Family Detached Seniors	18	$2,310,000 *Est. (3% of total sales)*	$128,333 *Est.*	Age restricted community	18

<u>Notes on MPDU Alternative Agreements:</u>

1. <u>Forest City, Chevy Chase</u>: This elderly condominium housing project was not affordable to MPDU eligible households due to the high fees associated with services in the property. MPDUs are oriented to first time homebuyers, which is difficult to find in the elderly population. Because of environmental constraints, no bonus density was obtained.

2. <u>Madison Park High Rise condominium, Bethesda</u>: The high condominium fees made this unaffordable to MPDU eligible households.

3. <u>Beacon Hill, North Bethesda</u>: The high homeowner's association (HOA) fees made these units unaffordable as MPDUs.

4. <u>Fairmont Plaza, Bethesda</u>: The high-rise building included services and structured parking that required high fees making the units less affordable to MPDU tenants.

5. <u>Chase Grove at Washingtonian Center, Gaithersburg</u>: Provided 11 additional MPDUs in a garden apartment portion of the development as an alternative to piggyback townhouse MPDUs with high condominium and HOA fees.

6. <u>James Creek, Olney</u>: This 10-unit subdivision was added to the project after all MPDUs were completed in the development. To design one detached MPDU would have unfairly burdened the development with architectural costs that are normally allocated over significantly more units.

7. <u>Sumner Gate, Potomac</u>: It was deemed impossible to make the MPDUs compatible with the market priced units.

8. Cameron Hill, Silver Spring: High condominium fees in an 8-unit condominium section of this townhouse project would have made these units unaffordable as MPDUs. The alternative payment was committed to the Manchester Manor apartments in the same planning area where 43 existing units in poor condition were being rehabilitated by HOC with affordable rents.

9. Crescent Park, Bethesda: This high-rise building included service and structured parking that required high fees making the units less affordable to MPDU tenants. The developer offered to provide more MPDUs in the Seasons, a nearby apartment building in the Bethesda CBD.

10. Charrington, Rockville: The rest of the MPDU requirement for this development was completed with piggyback townhouse units. The one additional MPDU would have had to be a townhouse. The HOA fees were high, and with the increased MPDU price for the larger unit, the MPDU would have been less affordable.

11. The Whitney, Bethesda: Ten one-bedroom rental MPDUs provided in the high-rise building. High construction costs associated with preserving the theater and extensive amenities made providing more MPDUs financially difficult.

12. Bethesda Air Rights: [Cancelled] *Seven efficiencies and seven one-bedroom units to be provided on-site in the high-rise building. High construction cost associated with modifying and constructing over an existing parking garage and extensive amenities require very high rents to offset.* Subsequently, the site plan was amended to eliminate the residential portion of the project.

13. The Gallery at White Flint Place, North Bethesda: Forty MPDUs evenly divided between efficiencies and one-bedrooms provided on-site in two buildings. High rise construction costs and the high condominium fees made providing all of the MPDUs difficult.

14. Wheaton CBD, Wheaton: Two phases in this development. The rental portion, known as the Flats at Wheaton Station, provided 15 of the required 30 MPDUs. The piggyback townhouse condominiums located in the second phase had high HOA fees, making the 10 MPDUs unaffordable. The developers paid $574,000 instead of providing 10 for-sale MPDUs and 15 additional rental units in the apartment building.

15. Wisconsin Place, Friendship Heights: Seventeen efficiencies and one-bedroom MPDUs provided in project. High rise construction costs made it difficult to provide all of the MPDUs.

16. Grosvenor Village, North Bethesda: The Grosvenor Village subdivision had multiple phases. Twenty-four MPDUs were provided in the Meridian at Grosvenor Station and Avalon at Grosvenor Station apartment developments. The 2005 Alternative Agreement allowed payment in lieu of 18 rental MPDUs.

17. 8045 Newell Street, Silver Spring: Ten one-bedroom condominiums provided on-site. High condominium fees made the two-bedroom units unaffordable for MPDU certificate holders.

18. Rosedale Park, Bethesda: Seven efficiencies and four one-bedroom units provided on-site. High rise construction costs, height limits and street right-of-way made providing the MPDUs difficult.

19. The Adagio (Bethesda View), Bethesda: Condominium fees and unit construction costs resulted in MPDUs being unaffordable.

20. The Sterling, White Flint: Twelve one-bedroom units provided on-site. Payment for thirteen two-bedroom MPDUs based on 10% of the average sale price of the market units. The construction cost for high rise units and the high condominium fees for two-bedroom units made them unaffordable to MPDU eligible households.

21. Rock Spring Centre, North Bethesda: Two high rise buildings, one containing 351 units (Tower I) and the other containing 352 units (Tower II), with 32 on-site MPDUs provided in each building and 48 MPDUs subject to an Alternative Payment Agreement of $33,000 per unit (or $1,584,000).

22. Edgemoor at Arlington North. Land provided in lieu of providing for-sale MPDU with ten year controls. HOC constructed a 12-unit building providing permanent supportive housing for formerly homeless individuals.

23. The Quarry, Potomac: Four mid-rise, five-story residential buildings containing a total of 97 units. The condominium fees and sales prices for the MPDUs would exceed the affordability levels for certificate holders.

24. Park Potomac, Potomac: Six high-rise, residential buildings containing 450 units, all originally planned as condominiums. Sixty-one MPDUs were required, of which 30 units were provided on-site, and an alternative payment was made for the other 31 units because the construction cost of the units and the high condominium fees made them unaffordable to MPDU eligible households.

25. Woodside Courts, Silver Spring: This site was rezoned to permit 26 units in 2004 (no MPDUs were required at that time). The site plan was approved in 2006, after the MPDU law was changed in 2005 to reduce the number of units that triggered the MPDU requirement from 35 to 20 units or more. In approving the site plan, the Planning Board set the MPDU requirement at four units, but waived three of the four units. The applicant submitted a request to the ARC for an alternative payment for the 1 remaining unit, based on the environmental and historic constraints of the site and the fact the full density of the zone could not be achieved under the rezoning and site constraints. The ARC approved an alternative payment for one MPDU.

26. Burning Tree/Fox Hill, Bethesda: This Continuing Care Retirement Community was approved under a special exception requiring an affordable housing component. While not technically MPDUs, the 36 affordable units were to be available to persons earning 50% of the median income. The high service fees would have made the units unaffordable to persons at this income level. The County and the developer executed an Amended and Restated Settlement Agreement in lieu of litigation.

27. Hampden Lane, Bethesda: This high-rise condominium in downtown Bethesda received a density bonus and therefore was not eligible for an Alternative Payment. The combination of MPDU sales prices and condominium fees make the units unaffordable to MPDU eligible buyers. Under the terms of the Alternative Location Agreement, the developer paid HOC $1,434,000. In return, HOC converted 12 rental market units in buildings in the Bethesda/Chevy Chase planning area to rental MPDUs with 30-year controls.

28. The Octave (1320 Fenwick), Silver Spring: This 102-unit high-rise condominium (a converted office building) in downtown Silver Spring was relatively affordable due to the small size of the units, but the condominium fees still made the MPDUs unaffordable to MPDU eligible buyers. The Alternative Payment was based on 3% of total sales revenue, consistent with DHCA's adopted policy. Payments were paid at the settlement of each unit in the building.

29. Courts at Clarksburg, Clarksburg: The units in this single-family detached age-restricted development were too expensive for MPDU eligible purchasers when combined with the HOA fee. In addition, prior experience has shown that there is very little demand for for-sale age-restricted MPDUs. The Alternative Payment was based on 3% of total sales revenue. Payments are due at the settlement of each unit in the building.

S:\Files\recurring\Housing\MPDU\Council Annual Reports MPDU\2016 MPDU Report\Report Attachments\C - Alternative MPDU Agreements through 2016.docx

MPDU Alternative Agreements – CY 2013-2016

CY 2013

No alternative compliance agreements were approved in calendar year 2013.

CY 2014

In calendar year 2014, DHCA entered into two new Alternative Agreements to Build Moderately Priced Dwelling Units:

- Hampden Lane, Bethesda (Alternative Location Agreement executed May 28, 2014): This 55-unit high-rise condominium in downtown Bethesda received a density bonus and therefore was not eligible for an Alternative Payment. The combination of the MPDU sales prices and the condominium fees would have made the MPDUs unaffordable to eligible buyers. Nine MPDUs (15%) would have been required on-site. Under the terms of the Alternative Location Agreement, the developer agreed to pay to HOC $1,434,000. In return, HOC converted 12 rental market units in the Bethesda/Chevy Chase planning area to rental MPDUs with 30-year controls. The number of off-site MPDUs is 33% greater than the number of MPDUs that would have been required on-site, meeting the requirement for an additional public benefit of Section 25A-5B of Chapter 25A.

- The Octave, Silver Spring (Alternative Payment Agreement executed August 8, 2014): This 102-unit high-rise condominium, a converted office building at 1320 Fenwick Lane in downtown Silver Spring, was relatively affordable due to the small size of the units, but the condominium fees still made the 12 MPDUs unaffordable to MPDU eligible buyers. The developer provided a payment of $856,675 in accordance with Section 25A-5A(b) of Chapter 25A and DHCA's adopted policy of 3% of total sales revenue.

CY 2015

No alternative compliance agreements were approved in calendar year 2015.

CY 2016

- The Courts at Clarksburg, Clarksburg (Alternative Payment Agreement executed July 19, 2016): This 140-unit age-restricted single-family housing development had a 12.5% MPDU requirement (18 MPDUs). The combination of the sales prices for the MPDUs and the HOA fees exceeded the affordability levels for MPDU certificate holders. In addition, prior experience has shown that there is very little demand for for-sale age-restricted MPDUs. The developer agreed to provide a payment of approximately $2,310,000 in accordance with Section 25A-5A(b) of Chapter 25A and DHCA's adopted policy of 3% of total sales revenue.

Attachment E

MPDU RENTALS
Properties with MPDU Agreements

High-Rise Rentals	# MPDUs
1200 East West Highway	31
7001 Arlington	21
7770 Norfolk	30
Alta Liberty Mill	38
Aurora at NBC	43
Ava Wheaton	41
Bainbridge Bethesda	30
Blairs	38
Camden at Shady Grove	58
Cameron	41
Central	31
Citron	31
Core (8621 Georgia Ave)	35
Daley (Westside at Shady Grove)	50
Element 28	13
Eleven55 Ripley	48
Elms at Clarksburg – Encore - CV Ph 3	12
Exchange at Wheaton, The	61
Fenwick	39
Flats 8300 (8300Wisconsin Ave)	45
Flats at Bethesda Avenue (The Flats)	14
Flats at Wheaton Station	15
Gallery Bethesda	36
George	25
Hanover at Shady Grove	50
Henri (Pike & Rose Ph 2)	47
Heritage	27
Inigo's Crossing (Jefferson @...)	53
Meridian at Grosvenor Station	24

High-Rise Rentals	# MPDUs
North Bethesda Market	62
Palisades of Bethesda	45
Pallas (Pike $ Rose Ph 1)	32
Pearl	8
Perry (Park Potomac)	30
Persei (Pike & Rose Ph 1)	30
Portico	23
Premier, The	20
Seasons	42
Solaire Bethesda	21
Solaire Silver Spring	44
Solaire Wheaton	32
Veridian	58
Warwick	15
Wentworth	37
Whitney at Bethesda Ave	10
Wisconsin Place (Archstone at WP)	55
	1591
Number of Properties:	**46**

Not High-Rise Rents	# MPDUs
Avalon at Grosvenor Station	68
Avalon at Traville	65
Berkshires at Rock Spring	70
Elms at Clarksburg	112
Elms at Germantown	48
Mallory Square	50
Millstone at Kingsview	64
Park at Kingsview Village	41
Pinnacle at Town Center	42
Rosedale	11
Rothbury	41
Upstairs at Bethesda Row	23
Woodward	4
	639
Number of Properties:	**13**

LIHTC Projects with MPDU Covenants

Galaxy, The	31
Residences at Thayer Avenue	42
	73
Number of Properties:	2

Units Monitored by MPDU Program: 2,230
Total Number of Properties: 59

Total MPDUs: 2,303
Total Number of Properties: 61

S:\Files\recurring\Housing\MPDU\Council Annual Reports MPDU\2016 MPDU Report\Report Attachments\[E - List of MPDU Rental Properties.xlsx]Sheet1

January, 2018

Status of Pipeline MPDU Projects

Development Name	Street Address, City	City	Zip Code	Total Units	MPDUs	Workforce Units	Tenure	Est. Complete
Pending Agreements to Build								
900 Thayer Avenue	8240 Fenton Street	Silver Spring	20910	124	16		Rental	2/28/2019
Ripley East	8250 Georgia Avenue	Silver Spring	20910	360	54		Rental	3/1/2019
Woodfield Commons	Woodfield Rd. N of Rte. 108	Damascus	20872	84	11		Rental	1/31/2019
Century	Century Blvd. & Cloverleaf Center Drive	Germantown	20874	488	61		Both	3/31/2020
	Number of Developments:	4		**1,056**	**142**	**0**		
New Projects								
4540 Montgomery Avenue	4540 Montgomery Avenue	Bethesda	20814	40	6			
7272 Wisconsin Avenue	7272 Wisconsin Avenue	Bethesda	20814	456	57			
7340 Wisconsin Avenue	7340 Wisconsin Avenue	Bethesda	20814	225	34			
7900 Wisconsin Avenue	7900 Wisconsin Avenue	Bethesda	20814	420	63			
8008 Wisconsin Avenue	8008 Wisconsin Avenue	Bethesda	20814	106	16			
8015 Old Georgetown Road	8015 Old Georgetown Road	Bethesda	20814	107	17			
BCC Rescue Squad	Old Georgetown Road & Battery Lane	Bethesda	20814	280	35			
Claiborne, The	NE Quadrant Auburn Ave. and Norfolk Ave.	Bethesda	20814	58	9			
Edgemont at Bethesda II	4885 Edgemoor Lane	Bethesda	20814	160	24			
Glen Aldon Property	4857, 4858, 4890 Battery Lane	Bethesda	20814	692	104			
Pooks Hill	Pooks Hill Road NW of Dudley Lane	Bethesda	20814	650	98			
St. Elmo Apartments	St. Elmo Ave. & Fairmont Ave.	Bethesda	20814	210	32		Rental	
Woodmont East, Phase II	Woodmont Ave. NE of Bethesda Ave.	Bethesda	20814	210	27			
ZOM Bethesda	SE corner Arlington Rd and Moorland Ln	Bethesda	20814	235	36			
Chevy Chase Lake - Block B	CT Ave. & Manor Rd., SE Quadrant	Chevy Chase	20815	534	69			
Chevy Chase Lake Blocks A, D	E & W sides of CT Ave., @ Chevy Chase Lake Dr.	Chevy Chase	20815				Both	
Crescent at Chevy Chase, The	Newdale Rd. W of CT Ave.	Chevy Chase	20815					
Washington Episcopal Day Sch.	5600 Little Falls Parkway	Bethesda	20815	121	16		For-Sale	
Westwood Shopping Center	Westbard Ave. bet River Rd. & Westbard Cir.	Bethesda	20816	874	150			
Ourisman Ford Montgomery Mall	Motor City Dr. and Westlake Ter.	Bethesda	20817	340	43			
Rock Spring Centre Phase III	NE quad, Rockledge Dr. & Rock Spring Dr.	Bethesda	20817	161	44			
WMAL Bethesda	Greentree Road S of Grubby Thicket Way	Bethesda	20817	328	42		For-Sale	
Cabin Branch Multi-Family	E. of Byrne Park Drive & Cabin Branch Ave.	Clarksburg	20841	272	34			
Tapestry	MD Rte. 355 NW, SW of West Old Baltimore Rd.	Boyds	20841	67	10		For-Sale	
Ten Mile Creek	MD Rte 121 & W. Old Baltimore Rd.	Boyds	20841	1,007	116		For-Sale	
Gables White Flint	Old Georgetown Rd. & Executive Blvd.	North Bethesda	20852	476	60			
Grosvenor Place	Grosvenor Place N of Grosvenor Lane	North Bethesda	20852	43	7			

Development Name	Street Address, City	City	Zip Code	Total Units	MPDUs	Workforce Units	Tenure	Est. Complete
North Bethesda Center Parcel G	Marinelli Road east of Rockville Pike	North Bethesda	20852	294	37			
North Bethesda Gateway	Rockville Pike 250 ft. S of Nicholson La.	North Bethesda	20852	513	65			
North Bethesda Market II	Rockville Pike 200 ft. S of Nicholson La.	North Bethesda	20852	470	59		Rental	
Pike and Rose Phase III	NW quad Rockville Pike & Old Georgetown Rd. -	Rockville	20852	827	103		Rental	
Randolph Farms	S Side of Randolph Road E of Parklawn Dr.	Rockville	20852	104	13			
Saul Centers White Flint	Rockville Pike & Nicholson La. (NE & NW Quads)	North Bethesda	20852	775	97			
Saul Centers White Flint West	SW quadrant, Rockville Pike & Marinelli Rd.	North Bethesda	20852	325	41			
White Flint West Bldg A	Rockville Pike & Marinelli Road	North Bethesda	20852	330	42			
White Flint View	5511 Nicholson Lane N of Huff Court	North Bethesda	20852	193	28			
Cabin John Village	NE corner of Seven Locks Rd & Tuckerman	Potomac	20854	48	6			
Shady Grove Station - East Side	Crabbs Branch Way at Shady Grove Rd.	Derwood	20855	689	96	53		
Westside @ Shady Grove MF Bldg B	Crabbs Branch Way and Shady Grove Road	Rockville	20855	306	46	25		
Westside @ Shady Grove MF Bldg C	Crabbs Branch Way and Shady Grove Road	Rockville	20855	263	39	22		
Westside @ Shady Grove MF Bldg D	Crabbs Branch Way & Shady Grove Road	Rockville	20855	212	32	17		
Westside @ Shady Grove Ph 2TH	Crabbs Branch Way and Shady Grove Road	Rockville	20855	114	12	5		
Westside @ Shady Grove Ph 3TH	Crabbs Branch Way & Shady Grove Road	Rockville	20855	145	16	11		
Porter Road	Olney Sandy Spring Road and Porter Road	Sandy Spring	20860	23	3			
Cabin Branch - Concordia (Phase I)	MD Rte. 121 & I-270, SW quadrant	Clarksburg	20871	116	6		For-Sale	
Cabin Branch Winchester Phase 3	Clarksburg Rd. & I-270 - SW Quadrant	Clarksburg	20871	185	10			
Dowden's Station	Frederick Rd. & Cool Brook La.	Clarksburg	20871	105	27			
Armstrong Property	Lewis Dr. W of Ridge Rd.	Damascus	20872	55	7		For-Sale	
Townes of Damascus	Beall Ave. E of Ridge Rd.	Damascus	20872	48	6		For-Sale	
Victory Haven	New Church Street W of Mt. Vernon Ave.	Damascus	20872	72	9			
Black Hills - Phase 2A	Crystal Rock Dr. & Century Blvd.	Germantown	20874	649	82			
Milestone (2015)	I-270 between Ridge Rd. & Dorsey Mill Rd.	Germantown	20876	485	61			
Mt. Prospect	Quince Orchard Rd. & Turkey Foot Rd.	North Potomac	20878	187	24		For-Sale	
Bloom Montgomery Village	Montgomery Village Ave. & Stewartown Rd.	Gaithersburg	20886	494	68			
Lost Knife Townhouse Community	NW Corner Lost Knife Rd & Montgomery Village Ave	Gaithersburg	20886	56	7			
Montgomery Village Center	Montgomery Village Ave. & Stedwick Rd., NW Quad	Gaithersburg	20886	115	15			
East Village @ N. Bethesda Gateway	N. of White Flint Mall	Kensington	20895	614	77			
Solera Reserve at Kensington	SW corner Metropolitan Ave. & St. Paul St.	Kensington	20895	66	10			
White Flint Mall Redevelopment	Rockville Pike (MD 355) E of Security Lane	Kensington	20895	2,459	308			
Wheaton Grandview	Grandview Avenue SE of Ennals Avenue	Silver Spring	20902	204	62			
Hillandale Gateway	W side of New Hampshire, S of Powder Mill Road	White Oak	20903					
Topaz Trace	Columbia Pike & NH Ave., NE Quadrant	Silver Spring	20904	90	14		For-Sale	
Viva White Oak	W of Cherry Hill Road; S of Rte. 29	Silver Spring	20904					
White Oak Town Center	12345 Columbia Pike	Silver Spring	20904	289	38			
Willow Manor at Fairland	3310 Briggs Chaney Road	Silver Spring	20904	121	16			

Attachment F

Development Name	Street Address, City	City	Zip Code	Total Units	MPDUs	Workforce Units	Tenure	Est. Complete
Bradford's Landing	Norbeck Road E of Georgia Avenue	Silver Spring	20906	244	61			
Glenmont Metrocentre	Glenallen Road NE of Georgia Avenue	Silver Spring	20906	306	39			
8001 Newell Street	8001 Newell Street	Silver Spring	20910	182	23			
850 Sligo Avenue	850 Sligo Avenue	Silver Spring	20910	85	13			
8787 Georgia Avenue	8787 Georgia Avenue	Silver Spring	20910					
Blairs, The Master Plan	Blair Mill Road	Silver Spring	20910	1,183	148		Rental	
Elizabeth Square	Second Ave. & Apple Ave., NW quad	Silver Spring	20910	906	139	91	Rental	
Falkland North	East-West Highway & 16th St. (NE quad)	Silver Spring	20910	1,250	157		Rental	
Guardian Building	8605 Cameron Street	Silver Spring	20910	177	23			
Metro Plaza - Silver Spring	East-West Hwy. NW of Colesville Rd.	Silver Spring	20910	552	75			
Ripley II	Dixon Ave. S of Ripley St.	Silver Spring	20910	440	66		Rental	
Silver Spring Park	Fenton St. & Silver Spring Ave. (SE quadrant)	Silver Spring	20910	58	7	5		
Sligo Artspace	801 Sligo Avenue	Silver Spring	20910	79	10	4	Both	
	Number of Developments:	78		**25,575**	**3,492**	**233**		

S:\Files\recurring\Housing\MPDU\Council Annual Reports MPDU\2016 MPDU Report\Report Attachments\[F - Project Pipeline Report 2018.xlsx]Sheet1