



Committee: PHED
Committee Review: At a future date
Staff: Livhu Ndou, Legislative Attorney
Pam Dunn, Senior Legislative Analyst
Purpose: To receive testimony – no vote expected
Keywords: #Density, #MPDU

AGENDA ITEM #7
November 9, 2021
Public Hearing

SUBJECT

Zoning Text Amendment (ZTA) 21-07, Density and Height Allocation – Development with Moderately Priced Dwelling Units

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

DESCRIPTION/ISSUE

Zoning Text Amendment (ZTA) 21-07 would exempt applications with 100% income-restricted housing from mapped FAR limits.

SUMMARY OF KEY DISCUSSION POINTS

- Developments with 100% income-restricted housing, under a government regulation or binding agreement, would be exempt from the FAR limits if maximum density does not exceed 2.5 FAR.
- This exemption would only apply if the underlying zone is CR or CRT.
- The government regulation or binding agreement must limit the price or rent charged for each unit for at least 30 years.
- The average area median income (AMI) of all households must be 60% or less to qualify for this exemption.

This report contains:

ZTA 21-07
RESJ Impact Statement

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Zoning Text Amendment No.: 21-07

Concerning: Density and Height
Allocation –
Development with
Moderately Priced
Dwelling Units

Draft No. & Date: 2 – 10/20/2021

Introduced: October 5, 2021

Public Hearing: November 9, 2021

Adopted:

Effective:

Ordinance No.:

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

Lead Sponsors: Council President Hucker and Councilmember Riemer
Co-Sponsor: Councilmember Rice

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- exempt applications with 100% moderately-priced dwelling units (MPDUs) from mapped FAR limits; and
- generally amend the density provisions for MPDUs

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

Division 4.5 “Commercial/Residential Zones”

Section 4.5.2. “Density and Height Allocation”

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

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

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

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

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

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

ORDINANCE

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

1 **Sec. 1. DIVISION 59-4 is amended as follows:**

2 * * *

3 **Section 4.5.2. Density and Height Allocation**

4 * * *

5 **C. Development with Moderately Priced Dwelling Units**

6 For any application that includes more than 12.5% of the gross residential
7 floor area as Moderately Priced Dwelling Units (MPDUs), qualified under
8 Chapter 25A, the following provisions apply:

- 9 1. Except in the Bethesda Overlay zone, residential density may be
10 increased above the mapped residential FAR by:
 - 11 a. 0.88% for each 0.1% increase in MPDUs above 12.5%, up to
12 and including 15%;
 - 13 b. 22% plus 0.16% for each 0.1% increase in MPDUs above 15%,
14 up to and including 20%; or
 - 15 c. 30% plus 0.1% for each 0.1% increase in MPDUs above 20%.
- 16 2. In the Bethesda Overlay zone, residential density may be increased
17 above the mapped residential FAR by 17.5% plus 0.1% for each 0.1%
18 increase in MPDUs above 17.5%.
- 19 3. Total density may be increased above the number following the
20 zoning classification on the zoning map by an amount equal to the
21 residential density achieved under Sec.4.5.2.C.1.
- 22 4. Any increase in density allowed under this section must be calculated
23 after the base density of the property has been increased under
24 Sec.4.5.2.B for development using FAR averaging.
- 25 5. To achieve an increase in density under Section 4.5.2.C, at least one
26 more MPDU than would be required at 12.5% must be provided.

- 27 6. The floor area counted as MPDU floor area includes a proportional
28 share of the gross floor area not devoted to residential units.
- 29 7. The height limit of the applicable zone and master plan does not apply
30 to the extent required to provide the MPDUs. The additional height is
31 calculated as the floor area provided for MPDUs above 12.5% divided
32 by the average residential floor plate area, where each whole number
33 and each remaining fraction allows an increase of 12 feet.
- 34 8. In the CR or CRT zones, an application with 100% of the units under
35 a government regulation or binding agreement that limits for at least
36 30 years the price or rent charged for each unit such that the average
37 cost of all units is affordable to households earning less than 60% of
38 the area median income (AMI), adjusted for family size, is exempt
39 from the FAR limits of the underlying zone provided the maximum
40 density does not exceed 2.5 FAR.

41 * * *

42 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
43 date of Council adoption.

44

45 This is a correct copy of Council action.

46

47

48 Selena M. Singleton, Esq.
49 Clerk of the Council

Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

ZTA 21-07: DENSITY AND HEIGHT ALLOCATION – DEVELOPMENT WITH MODERATELY PRICED DWELLING UNITS

SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment 21-07 could narrow racial and social inequities in the County if it increases the supply of affordable housing units for low- and moderate-income households.

PURPOSE OF RESJ STATEMENT

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities. Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.¹

PURPOSE OF ZTA 21-07

The purpose of ZTA 21-07 is to offer developers in commercial residential zones a density bonus if they devote a 100 percent of the residential units they build to the Moderately Priced Dwelling Unit (MPDU) program.² The density bonus proposed under ZTA 21-07 for eligible projects increases developments maximum densities to a Floor Area Ratio of 2.5.³ ZTA 21-07 aligns with Montgomery County Preservation Study’s recommendation to leverage land use and planning rules guiding development (including zoning codes and area plans) to incentivize housing affordability.⁴

MPDUs refer to dwelling units offered for sale or rent to eligible low- or moderate-income households through the Department of Housing and Community Affairs’ MPDU program.⁵ The MPDU program requires that 12.5 to 15 percent of new housing units in projects with 20 or more units to be affordable to households earning up to 65 or 70 percent of the area median income.⁶ The required affordability period for MPDUs is 30 years for units sold and 99 years for units rented.⁷ In 2020, the MPDU program approved 183 units to be built and offered 244 new units (82 for sale and 162 for rent).⁸ Since 1976, the MPDU program has produced more than 16,400 units.⁹

If enacted, ZTA 21-07 would exempt 100 percent MPDU developments in the commercial residential (CR) and commercial residential town (CRT) zones from established Floor Area Ratios (FAR) maximums on the current zoning map. More specifically, ZTA 21-07 would amend the Montgomery County Zoning Ordinance (Chapter 59 of the Montgomery County Code) under Division 4.5: “Commercial/Residential Zones” and Section 4.5.2. “Density and Height Allocation” to increase the FAR maximum for eligible development as follows:¹⁰

In the CR or CRT zones, an application with 100% of the units under a government regulation or binding agreement that limits for at least 30 years the price or rent charged for each unit such that the average AMI of all units is 60% or less, adjusted for family size, is exempt from the FAR limits of the underlying zone provided the maximum density does not exceed 2.5 FAR.

RESJ Impact Statement

Zoning Text Amendment 21-07

AFFORDABLE HOUSING AND RACIAL EQUITY

Historically, zoning laws and other government policies have restricted the supply of affordable housing and exacerbated the racial wealth gap.¹¹ Collectively exclusionary zoning, restrictive covenants, redlining, New Deal housing policies, the Federal Housing Administration and GI bill created two disparate housing systems where:¹²

- Government subsidized White-only enclaves enabled many White families to build home equity and inter-generational wealth; and
- Underinvested communities for People of Color where residents actually paid more for lesser housing and fewer amenities and were in turn denied opportunities to build family wealth.

Of note, while the Fair Housing Act of 1968 eliminated racially explicit segregation in housing, the policies that built the segregated housing market “have never been remedied and their effects endure.”¹³ The wealth gap by race and ethnicity is staggering in the Metropolitan Washington region where White households had more than 80 times the wealth of Black households and 21 times the wealth of Latinx households in 2014.¹⁴ Moreover, residents of color still experience discrimination in the housing market due to predatory lending practices and bias in the rental and real estate markets.¹⁵ As such, racial disparities in housing security by race and ethnicity, as described below, persist.

Housing Security. Local data on three metrics of housing insecurity - rent-burdened households, rental assistance during the pandemic, and homelessness - demonstrate that Black and Latinx households in Montgomery County are especially housing insecure. More specifically, in Montgomery County:

- Among renter households in 2019, rent-burden (expending 30 percent or more of income on rent) was experienced among 66 percent of Latinx renters and 60 percent of Black renters compared to 40 percent of White renters and 33 percent of Asian renters.¹⁶
- Among COVID Relief Rental Program clients (approved as of April 4, 2021), 43 percent were Black, and 37 percent were Latinx while 9 percent were White, and 3 percent were Asian or Pacific Islanders.¹⁷
- Among adults experiencing homelessness in 2020, 60 percent were Black, 30 percent were White, 17 percent were Latinx, and 5 percent were Asian and Pacific Islanders.¹⁸ Among families experiencing homelessness, 78 percent were Black, 15 percent were White, 9 percent were Latinx, and 2 percent were Asian.¹⁹

Data on homeownership also demonstrates housing inequities by race and ethnicity where 75 percent of White and Asian households in Montgomery County resided in owner-occupied units in 2019 compared to 50 percent of Latinx and Native American households and 42 percent of Black households.²⁰ Black, Latinx and Other race mortgage holders were also more likely to experience housing cost burden, with 39 to 47 percent expending more than 30 percent of their income on their mortgage compared to 20 percent of White and 29 percent of Asian mortgage holders.²¹

Taken together, local data on racial and ethnic inequities in housing security demonstrates that Black, Latinx, and Other race residents have a higher demand for affordable housing than White and Asian residents.

Affordable Housing: Among regions across the country, Metropolitan Washington is one of the most severely impacted by shortage of affordable housing. In the 2017 VoicesDMV survey, nearly 20 percent of households reported being unable to pay for food or housing in the past 12 months.²² According to the survey, most households in the region with incomes below \$54,300 (500,000+ households) pay more than 30 percent of their income toward rent or mortgage.²³

RESJ Impact Statement

Zoning Text Amendment 21-07

Data from the Montgomery County Preservation Study also demonstrates a shortage of affordable housing in the County, especially for low-income households. It notes that “(t)he private market does not effectively provide rental housing options that are affordable to renters in the lower income bands, as 78 percent of households earning below 65 percent of AMI are housing cost-burdened, paying more than 30 percent of their household” income.²⁴ In addition, the Preservation Study notes that “60 percent of households earning below 50 percent” of AMI are “severely housing cost-burdened – paying more than 50 percent of their gross household income on housing costs.”²⁵

The Preservation Study also finds that the County is at-risk of losing affordable housing units, particularly near public transit hubs that are essential to connecting residents to employment and other opportunities.²⁶ They note that 2,085 deed-restricted housing units that are set to expire in the 2020’s and 2030’s are located within one mile of existing and planned transit stations.²⁷ Many of these units are clustered around the Silver Spring, Bethesda, and Wheaton Metrorail stations. During this time frame, the study estimates that another 7,500 – 11,000 naturally occurring affordable housing (NOAH) units could also be lost and that approximately 2,300 of these NOAH units are at risk of becoming unaffordable for households earning up to 80 percent of AMI. All these units are within one mile of public transit.²⁸

Further, the Montgomery County Planning Department’s Housing Needs Assessment summarizes current demographic, economic and housing market conditions organizing the analyses under two viewpoints:

Table 1: Housing Needs Assessment²⁹

Demographic, economic and housing market conditions analysis:	Analysis of existing housing supply and demand conditions:
<ul style="list-style-type: none"> • Since 2010, the Washington, D.C., region has added more than 150,000 households. Montgomery County captured only 5 percent of that growth, having one of the lowest growth rates in the region. • 1 out of every 2 new households is low-income (earning under \$50,000 a year), which means the County is capturing an outsized share of low-income households. • The income needed to afford the median-priced home is rising faster than the median household income. In 2018, the household income required to afford the median home was \$125,621, which is above the 2018 median household income of \$108,188. 	<ul style="list-style-type: none"> • Between 2014 and 2018, housing supply tightened rapidly for households earning less than 65 percent of Area Median Income (AMI). In 2014 there was a 5,700-unit surplus of housing at 65 percent AMI, however, in 2018 that number receded to 800 units. • Every submarket in Montgomery County faces a supply gap for households earning up to 60 percent AMI. • Submarkets with relatively affordable stock have also faced the most significant pricing pressure, leading to the loss of affordably priced units.

ANTICIPATED RESJ IMPACTS

Given the disproportionate need for affordable housing among Latinx and Black households, OLO anticipates that ZTA 21-07 will have a favorable impact on reducing housing inequities if it results in the construction of more MPDU’s. OLO anticipates the construction of MPDUs in transit-oriented districts that characterize many of the County’s commercial residential zones would also narrow racial and social disparities in transit and access to employment that could further reduce racial and social inequities in the County.³⁰ Further, OLO anticipates that the favorable impact of ZTA 21-07 on reducing housing, transit, and economic inequities across the County could be improved if:

- MPDU’s built under ZTA 21-07 were affordable for both lower-income (earning 30 - 50 percent of AMI) and moderate-income households (65 – 70 percent AMI); and
- A significant share of MPDU’s built under ZTA 21-07 were large enough to serve families with multiple children.

RESJ Impact Statement

Zoning Text Amendment 21-07

ADDITIONAL OBSERVATIONS

Beyond the RESJ analysis, OLO also observes that the ZTA may benefit from clarifying its language on the maximum FAR of 2.5. Section 59.2.1.3.D: *Commercial Residential Zones specifies the following:*

Each CRN, CRT, and CR zone classification is followed by a number and a sequence of 3 additional symbols: C, R, and H, each followed by another number where:

- The number following the classification is the maximum total FAR allowed unless additional FAR is allowed under Section 4.5.2.C and Section 4.7.3.D.6.c. Maximum.*
- The number following the C is the maximum nonresidential FAR allowed.*
- The number following the R is the maximum residential FAR allowed unless additional residential FAR is allowed under Section 4.5.2.C and Section 4.7.3.D.6.c.*
- The number following the H is the maximum building height in feet allowed unless additional height is allowed under Section 4.5.2.C and Section 4.7.3.D.6.c.*

OLO finds that the ZTA's language relative to the nonresidential (C) components of the underlying zone is unclear. Amending the language to clarify whether the 2.5 FAR exemption applies only to the residential portion of the

classifications (if the MPDU building includes a nonresidential component) would adhere to what is already mapped as the underlying zone classification. This clarification could minimize potential confusion with future interpretations of the provision when applied to development applications. The applicability of provision No. 6 in Section 4.5.2.C.1 relative to the provision proposed by the ZTA may also warrant examination.

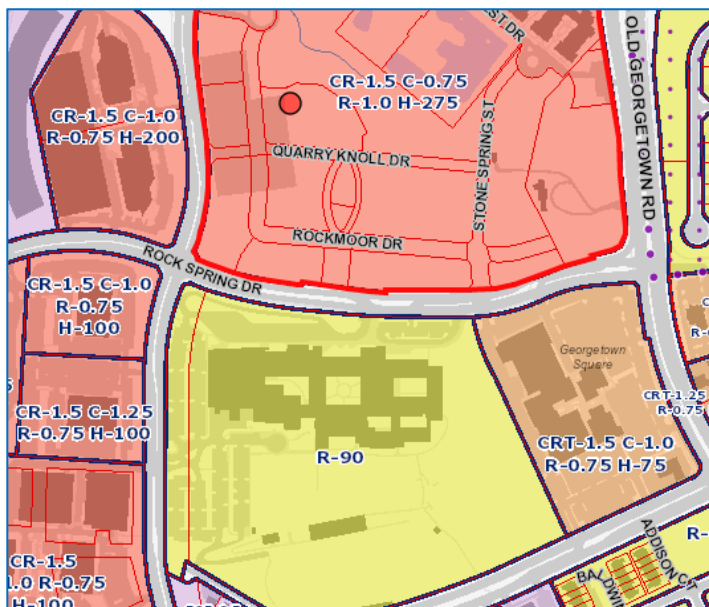


Figure 1: Sample Zoning Map, CR and CRT zones with Maximum FAR and Height

Additionally, OLO notes the ZTA does not make a reference with respect to height "H". However, given the fact that maximum height limits in the CR (35'-300') and CRT (35'-150') zones are generally generous (adjusted to density and intensity), its absence in the proposed ZTA's language is not likely to have a notable difference within the context of the MPDU development the ZTA addresses.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council's decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the ZTA under consideration.

RESJ Impact Statement

Zoning Text Amendment 21-07

CONTRIBUTIONS

OLO staffers Elsbett Tesfaye, Performance Management and Data Analyst, and Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this racial equity and social justice impact statement.

¹ Adopted from racial equity definition provided by Racial Equity Tools. <https://www.racialequitytools.org/glossary>

² Zoning Text Amendment (ZTA) 21-07, Density and Height Allocation – Development with Moderately Priced Dwelling Unit https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20211005/20211005_5-5.pdf

³ Ibid

⁴ Montgomery County Preservation Study, July 2020 <https://montgomeryplanning.org/wp-content/uploads/2020/11/200914-Montgomery-County-Preservation-Study.pdf>

⁵ Chapter 25A. Housing, Moderately Priced.

⁶ Aseem Nigam, Annual Report on MPDU's Covering Calendar Year 2020, Department of Housing and Community Affairs https://www.montgomerycountymd.gov/DHCA/Resources/Files/housing/affordable/publications/mpdu/annual_report_mpdu-2020.pdf

⁷ Montgomery County Preservation Study

⁸ Nigam

⁹ Ibid

¹⁰ Zoning Text Amendment (ZTA) 21-07

¹¹ Richard Rothstein, *The Color of Law: A Forgotten History of How Government Segregated America*, 2017

¹² Melvin Oliver and Thomas Shapiro, "Disrupting the Racial Wealth Gap" *Sociology for the Public*, May 7, 2019; Kilolo Kijakazi, et. al, *The Color of Wealth in the Nation's Capitol*, November 2016 https://www.urban.org/sites/default/files/publication/85341/2000986-2-the-color-of-wealth-in-the-nations-capital_8.pdf

¹³ Rothstein

¹⁴ Kijakazi

¹⁵ Keeanga-Yamahtta Taylor, *Race for Profit: How Banks and the Real Estate Industry Undermine Black Homeownership*, 2019; Urban Institute, *Exposing Housing Discrimination*, <https://www.urban.org/features/exposing-housing-discrimination>

¹⁶ American Community Survey, *Gross Rent as a Percentage of Household Income, 2019 1-Year Estimates*, United States Census Bureau. Table ID S0201.

¹⁷ Linda McMillan memorandum to County Council regarding FY22 Operating Budget: Homeless Services, Rental Assistance, and Housing Initiative, May 11, 2021 (Agenda Item #30, Joint Committee Worksession), see page circle 13. https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20210512/20210512_30.pdf

¹⁸ Ibid, see page circle 8.

¹⁹ Ibid.

²⁰ Calculations based on American Community Survey, 2019 1-Year Estimates, Table ID S2502.

²¹ American Community Survey, Table ID. S0201.

²² Tatian, Hendey, and Bogle 2017 cited in Meeting the Washington Region's future Housing Needs. *Urban Institute* 2019. <https://www.urban.org/research/publication/meeting-washington-regions-future-housing-needs>

²³ Ibid

²⁴ Montgomery County Preservation Study

²⁵ Ibid

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

²⁹ Montgomery County Housing Needs assessment., July 2020 <https://montgomeryplanning.org/wp-content/uploads/2020/07/MoCo-HNA-July-2020.pdf>

³⁰ See OLO Racial Equity Profile for current data on transit, employment and income disparities by race and ethnicity in Montgomery County. <https://www.montgomerycountymd.gov/OLO/Resources/Files/2019%20Reports/RevisedOLO2019-7.pdf>