

"Federation Corner" column  
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### **Updating our affordable housing programs**

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The Montgomery County Civic Federation strongly supports the goal of creating and retaining affordably priced housing in the county. The retail clerks, nurses, teachers and especially first responders--police, firefighters and emergency medical personnel--who serve us ought to be able to afford to live in the communities where they work.

To that end, the Federation's Housing Committee has suggested exploring alternative approaches including one-for-one replacement of affordable units in redevelopment projects, employer-assisted housing for county employees, and leasing of publicly-owned land to create entirely affordable projects. At the same time, citizens need to consider what the true costs are of some government initiatives, like the Moderately Priced Dwelling Unit (MPDU) Program, which were designed to spur the development industry to meet this market demand.

### **Background**

The county's MPDU law was approved by the Council in 1975, and has been used as a model for affordable housing program legislation in communities throughout the nation. But, at the time of passage developers threatened to sue the county claiming that this type of "inclusionary zoning"--requiring inclusion of moderately priced units in certain sized projects--was tantamount to a taking of land and, therefore, unconstitutional.

To head off the filing of lawsuits against the county, developers were granted bonuses for providing required MPDUs. These bonuses include allowance of building types other than those approved for a zone (for instance, townhouses in a single-family detached home zone), decrease in the minimum setbacks required from property boundaries, and a reduction in required greenspace in certain developments. A 2004 Council staff report declared the constitutionality argument "not legally sound."

Over the years other changes to the MPDU law were approved, including a lowering of the percentage of MPDUs required in projects from 15% to 12.5%, and allowing developers to pay a fee in lieu of providing required MPDUs. A system for granting bonus density was also established, allowing a developer to volunteer more than the required 12.5% MPDUs in exchange for added density. Still in place today, this system allows the approval by the Planning Board of up to 22% added density in a project if 15% of the total units are MPDUs. And therein lies the rub.

### **Violation of master plans**

Most if not all community master plans in the county specify not only the zone category applied to each property but also a building height limit, which might be lower than the maximum allowed by the zoning. But an MPDU law amendment passed by a majority of the County Council in 2004 allows height or density of a development to exceed master plan limits, up to the maximum allowed by the zone, in order to accommodate MPDUs in a project--including any density bonus.

Master plans are carefully constructed compacts, crafted with community input and approved by the Planning Board and County Council. County law now requires realtors to inform prospective buyers of the existence of the community master plan, in order to see what future development may occur in the area where they are considering buying. But, the bonus provisions in MPDU law grant authority to violate master plans by allowing up to 122% of planned density and additional building height to

accommodate it. Developers in Metro station areas are now routinely seeking this density bonus, rendering those master plans unreliable as reflections of possible future development.

We should consider whether the infrastructure costs to taxpayers to accommodate one-fifth more density is worth the few added MPDUs achieved. As an example, on a property in Bethesda or Silver Spring with a 65 foot height limit, a mixed use CBD Zone building proposed for 100 similar sized dwelling units with 13 MPDUs could seek approval to build 122 units with 19 MPDUs. In exchange for 6 additional affordable units, the developer would be granted permission to build 16 more market rate units and be allowed two added floors in height.

But, can the county afford the infrastructure to support those 16 added market rate units? Or, as Councilmember Marc Elrich posed to the Federation at our December 13 meeting, can we find a way to build just the affordable units we need? In the upcoming months, while the Council is discussing issues surrounding sustainable growth, it would be appropriate to assess the true costs of outdated bonus provisions that still exist in the county's housing laws.

### **A fresh approach**

In 2005, the previous Council approved legislation drafted by Councilmember Silverman to clarify that the recently created Alternative Review Committee had authority to decide when projects including MPDUs could be granted added height and/or density, based on a claim that they would otherwise be financially infeasible. The ARC membership consists of the Director of the Department of Housing and Community Affairs, Executive Director of the Housing Opportunities Commission, and Director of Park and Planning (a title that no longer exists, having been split into two separate positions in the past year).

Earlier this year Councilmember Marilyn Praisner stated that she would like the Council to reexamine the purpose and process of the Alternative Review Committee. In the meantime, officials should bear in mind there is no legal requirement that the added height or density the ARC recommends must be granted, especially in cases like the one before the Planning Board today for which there is a site specific guideline in the Bethesda Sector Plan for a height limit on the subject property. The county is not obligated to grant bonus density, and incur the costs of providing supporting infrastructure, solely because poor financial judgment results in a developer's inability to build a profitable project within master plan limits.

Perhaps the Council and Executive could take a fresh approach, beginning with this critical Bethesda gateway property at the corner of Woodmont Avenue and Battery Lane. The county government could purchase the land and construct a building with 100% affordable units within the height limit. By doing so, they could quadruple the number of affordably priced units created and assure the reliability of the master plan.