



THE MARYLAND-NATIONAL CAPITAL
Park and Planning Commission

POSITION STATEMENT

Bill: HB 0538 Land Use – Affordable Housing – Zoning Density and Permitting (*Housing Expansion and Affordable Housing Act of 2024*)

Position: Support with Amendments

Date: February 20, 2024

Contact: Debra Borden, General Counsel

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Dear Chair Marc Korman and Vice Chair Regina T. Boyce,

The Maryland-National Capital Park and Planning Commission (M-NCPPC or “the Commission”) has voted to support this bill with amendments. The Commission respectfully requests that the Environment and Transportation committee consider this information and include it in the record.

Overview: The Commission supports the need to provide more housing throughout the State of Maryland. This Bill is a great start to moving the state in that direction. We have some suggested amendments to clarify language and help to avoid conflicts and confusion in implementation.

Proposed Amendments

Effective Date:

A proposed effective date of October 1, 2024, may not allow the counties sufficient time to amend their zoning and subdivision ordinances to conform to the bill.

Suggested language:

- Change to December 31, 2024, or later.

Section 4-104:

There is a distinction between “manufactured home” and a home manufactured off site and assembled on a property, which is known as a “modular home” in current planning parlance and can be a more reasonably priced housing option than a stick-built home. Further, allowing these in any zone would provide more housing options.

Suggested language:

- (page 2, line 24): §4-104(C) (Limitations – Modular Homes)
- (page 4, lines 1-8): A legislative body may not prohibit the placement of a modular home in any zone that allows residential development. A modular home for this section means a house built in a factory in two or more modules that meets the State or local building codes where the house will be located, and where such modules are transported to the building site, installed on foundations, and completed.

Section 7-501 Definitions:

- Definition of “affordable dwelling unit” should allow inclusion of existing affordable or inclusionary housing programs in various jurisdictions across the state.
Suggested language (page 5, lines 9-11): Affordable dwelling unit means a dwelling unit that is affordable to households earning 60% or less of the area median income or meets the criteria of a local jurisdiction’s inclusionary zoning housing program and provides price controls for at least 30 years.
- Definition of “mixed use” should capture residential with any other use.
Suggested language (page 6, lines 2-3): “Mixed use” means any combination of a residential use with a non-residential use.
- Definition of “town house” should align with general planning definitions and allow for different ownership structures, such as a condominium regime. It should be 3 units and should not specify it has to be on a separate lot to allow for condominium ownership.
Suggested language (page 6, line 13-16): “Town house” means a complex of dwelling units constructed in a row of three (3) or more attached units, where each dwelling unit shares at least one common wall with an adjacent dwelling unit.

Section 7-502:

- Definition of “unreasonable limitation or requirement” should be modified to help explain its limitations. The term “affordable housing development” is also not needed and is confusing because it is not a defined term, because the term “Qualified Project” encompasses the affordability component. Also, including an impact on not only density but also the number of units to capture various ways of calculating more units.
Suggested language (page 6, lines 17-23): “Unreasonable limitation or requirement” includes any limitation or requirement that has a substantial adverse impact on:
 - (1) The viability of a Qualified Project;
 - (2) The degree of affordability of affordable dwelling units in a Qualified Project; or
 - (3) The allowable density or number of units in a Qualified Project.
- Density Bonus language should specify that a Qualified Project can exceed the density of the zone including any local bonus density. In the section allowing middle housing units, there is no

need to restrict this to exclusively single-family zones, it can just apply to all residential zones. This would allow more housing types and density in more locations. Further, including that it could be more units or square footage may also provide more opportunities for more housing in certain zones.

Suggested language:

- (page 7, lines 12-14): In accordance with this subsection, a local jurisdiction shall allow the density of a Qualified Project to exceed the density otherwise authorized, including bonus density allowed by the local jurisdiction, in a district or zone.
- (page 7, lines 15-16): In an area zoned exclusively for residential use a Qualified Project may include middle housing units.
- (page 7, lines 23-26): In an area zoned exclusively for non-residential use, a Qualified Project may consist of mixed-use development with density limits that do not exceed the highest allowable density, in the local jurisdiction's multifamily residential zones, including any bonus density allowed by the local jurisdiction.
- (page 7, lines 27-29): In an area zoned for mixed use, a Qualified Project may include 30% more housing units or residential development square footage than may be allowed in that zone, including any bonus density allowed by the local jurisdiction.

Section 7-503:

- A Qualified Project under this section should include projects that are deed-restricted for 30 years as opposed to 40 years, as this is fairly standard for such programs and financing. Also, the rail station should not need to be within the State of Maryland as stations located in the District of Columbia but within 1 mile of a Maryland project could be useful locations for more housing as well.

Suggested language:

- (page 8, lines 6-7): Is on property that is located within 1 mile of a rail station
 - (page 8, lines 10-11): Is deed restricted to include 25% of units that are affordable dwelling units for a period of at least 30 years.
 - (page 8, line 17): Metrorail system station.
- The Bonus Density, like in the prior section, should specify that it is in addition to any bonus density afforded by the local jurisdiction. Also, remove restriction to only single-family residential zones for middle housing.

Suggested language:

- (page 8, lines 19-21): In accordance with this subsection, a local jurisdiction shall allow the density of a Qualified Project to exceed the density otherwise authorized, including any bonus density allowed by the local jurisdiction, in a district or zone.
- (page 8, lines 22-23): In an area zoned exclusively for residential use, a Qualified Project
- may include middle housing units.
- (page 8, lines 24-25 and page 9, lines 1-3): In an area zoned exclusively for multifamily residential use, a Qualified Project: (i) shall have a density limit that

exceeds by 30% the allowable density in that zone, including any density bonuses allowed by the local jurisdiction.

- (page 9, lines 9-11): In an area zoned for mixed-use, a Qualified Project may include 30% more housing units or residential square footage than may be allowed in that zone, including any bonus density allowed by the local jurisdiction.

Section 7-504:

- Allow for situations of non-profit entities owning or controlling the land, possibly by ground lease or other structure. Also reduce the time frame from 40 years to 30 years.

Suggested language:

- (page 9, lines 22-23): Is wholly owned or under control of a non-profit organization
 - (page 9, lines 28-29): Is deed-restricted to include 50% of units that are affordable dwelling units for a period of 30 years.
- Clarify that the additional bonus density is above what the local jurisdiction otherwise provides, as stated in the above sections. Also remove restriction for middle housing units to only single-family zones.

Suggested language:

- (page 10, lines 1-3): In accordance with this subsection, a local jurisdiction shall allow the density of a Qualified Project to exceed the density otherwise authorized in a district or zone, including any bonus density provided by the local jurisdiction.
- (page 10, lines 4-5): In an area zoned exclusively for residential use, a Qualified Project may include middle housing units.
- (page 10, lines 8-10): Shall have a density limit that exceeds by 30% the allowable density in that zone, including any bonus density allowed by the local jurisdiction.
- (page 10, lines 16-18): In an area zoned for mixed-use, a Qualified project may include 30% more housing units or residential square footage than allowed in that zone, including any bonus density allowed by the local jurisdiction.

Section 7-505:

- In this section, it makes sense that design criteria cannot impose an unreasonable limitation or requirement, but operational aspects of a use, like loading, should still be considered by a local jurisdiction to assure that projects do not have unintended negative impacts.

Suggested language (page 10, line 27): Remove this line related to “loading, dimensional, or area.”

Suggested language:

- (page 10, line 28): Remove the phrase “Similar requirements”.

Section 7-506:

- Projects that come before the Planning Board often require more than one application approval. For instance, a project might need approval of a concept plan, a subdivision plan and a site plan, each with their own hearing. Applicants generally decide how many applications they wish to process at the same time, as there is significant investment in creation of these plans.

Sometimes financing is staggered or business partners need to be found before a project can proceed to the final approval stages. Therefore, it may not be possible or economical for a qualified project to have only one hearing before the Planning Board. However, in the interest of streamlining and preventing unnecessary hearings we could offer some amendment to the language.

Suggested language:

- (page 11, lines 2-5): Except as otherwise provided or required by State law, a local government may not require that a Qualified Project under this subtitle be subject to more than one public hearing for each required development application, before each of the following:

Section 10-103:

- Change the nomenclature from “Manufactured Homes” to “Modular Homes”.

Suggested language:

- (page 11, line 26): § 4-104(c) (Limitations – Modular Homes)

Section 7-105:

- All development needs adequate public facilities. It is important that affordable housing has public services, and facilities that are comparable in quality to those of market-rate developments. We understand the goal of this provision is to prevent the use of APF to block affordable housing and agree that APF should not be a tool to specifically prevent affordable housing, but a different approach may address this issue more effectively to ensure affordable housing developments have equitable access to infrastructure and amenities. If these projects are receiving state funding, it would be most equitable for the state funding to include the necessary infrastructure funding. Alternatively, in jurisdictions with local impact taxes these units should be exempt from the local jurisdiction impact taxes, but not from all APF.

Suggested language:

- (page 13, new lines 17-20): (C) Notwithstanding the above section B, in a local jurisdiction that imposes impact taxes for transportation and schools, State Funded Affordable Housing Projects will be exempt from local impact taxes but will be subject to the local Adequate Public Facility Law.

The Commission urges the committee to give this bill a favorable report with the proposed amendments.