

THE EFFECTIVE DATE OF THIS ORDINANCE IS SEPTEMBER 6, 2011

ORDINANCE NO. 11-20-586

**AN ORDINANCE TO AMEND CHAPTER 1-6A OF THE FREDERICK
COUNTY CODE (MODERATELY PRICED DWELLING UNITS)
TO ADD A PAYMENT IN LIEU OPTION**

Background

Under the authority granted in Article 66B, §10.01, the Board of County Commissioners of Frederick County, Maryland (“BOCC”) is authorized to adopt ordinances or other laws providing for Moderately Priced Dwelling Unit programs. In 2002, the Board of County Commissioners for Frederick County (BOCC) adopted Ordinance No. 02-25-321, establishing a MPDU program in Frederick County, codified as Chapter 1-6A of the Frederick County Code.

Section 1-6A-4 of the Frederick County Code requires the standards of eligibility to be revised when changes in market conditions affect the ability of moderate-income households to buy or rent housing. Section 1-6A-7 requires consultation with the building industry and collection of statistical information on market conditions and income levels to determine the ability of moderate income households to afford housing. Consideration must also be given to the reduction or elimination of amenities, use of cost reducing building materials, and partial finishing of certain parts of the units to attain the necessary affordable price. If after a thorough review, it is determined that MPDUs cannot be built to affordability standards or that a market already exists for affordable units, then an alternative to building the MPDUs may be approved.

County Staff has gathered current market data and statistics and has met with industry stakeholders, county management, legal and planning staff and members of the Affordable Housing Council to consider current market conditions. After a thorough examination of existing pricing standards and market conditions, staff and industry stakeholders determined that a sufficient amount of moderate income housing currently exists due to the dramatic drop in home prices and the glut of foreclosures currently on the market. Further, the group concurred that a potential risk exists in building more MPDUs regarding the ability to sell them.

After extensive discussions, the staff-stakeholder group drafted the attached Ordinance, which allows an option for payment in lieu of building MPDUs.

This Ordinance was initiated by the BOCC at a meeting on July 28, 2011, and the Board of County Commissioners held a duly advertised public hearing on this Ordinance on September 6, 2011, at which time the public had the opportunity to comment on the proposed revisions and amendments to Chapter 1-6A.

New text is shown in CAPITALS and underlined. Deleted text is shown as ~~strike through~~.

NOW, THEREFORE, be it enacted and ordained by the Board of County Commissioners for Frederick County, Maryland, that Chapter 1-6A of the Frederick County Code is amended as shown below:

Section 1-6A-5 is amended as follows:

§ 1-6A-5. REQUIREMENT TO BUILD MPDU'S; AGREEMENTS; ALTERNATIVES.

(A) EXCEPT AS PROVIDED IN § 1-6A-5.1 BELOW, Any applicant, in order to obtain a building permit, must submit to the Department of Permits and Inspections, 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 single-family dwelling unit subdivisions, each MPDU must have 2 or more bedrooms; and
- (3) In multi-family dwelling unit subdivisions, the number of efficiency and 1 bedroom MPDUs each must not exceed the ratio that market-rate efficiency and 1 bedroom units respectively bear to the total number of market-rate units in the subdivision.

[The balance of §1-6A-5 remains unchanged.]

A new §1-6A-5.1 is added as follows:

§ 1-6A-5.1. PAYMENT IN LIEU OF BUILDING MPDU'S; AGREEMENTS.

(A) IN LIEU OF THE OPTION SPECIFIED UNDER §1-6A-5, AN APPLICANT, MAY ELECT TO PAY A "PER DWELLING UNIT PAYMENT IN LIEU" CALCULATED AS DESCRIBED BELOW AND INCLUDED IN A WRITTEN MPDU AGREEMENT.

(B) EACH MPDU AGREEMENT ENTERED INTO PURSUANT TO A PAYMENT IN LIEU ELECTION MUST INCLUDE THE FOLLOWING:

(1) THE TOTAL MPDU PAYMENT IN LIEU FOR THE DEVELOPMENT, WHICH SHALL BE CALCULATED BY MULTIPLYING \$17,500 BY THE NUMBER THAT IS EQUAL TO 12.5% OF THE TOTAL NUMBER OF DWELLING UNITS APPROVED FOR THE DEVELOPMENT AS PART OF THE SITE PLAN, PRELIMINARY PLAN, OR PHASE II PLAN APPROVAL; AND

(2) THE PER DWELLING UNIT PAYMENT IN LIEU, WHICH SHALL BE CALCULATED BY DIVIDING THE TOTAL MPDU PAYMENT IN LIEU CALCULATED

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UNDER SUBSECTION (B)(1) ABOVE BY THE TOTAL NUMBER OF DWELLING UNITS APPROVED AS PART OF THE SITE PLAN, PRELIMINARY PLAN, OR PHASE II PLAN APPROVAL.

(C) THE MPDU AGREEMENT MUST BE SIGNED BY THE APPLICANT, ANY OTHER PARTIES HAVING AN INTEREST IN THE PROPERTY AND ALL OTHER PARTIES WHOSE SIGNATURES ARE REQUIRED BY LAW FOR THE EFFECTIVE AND BINDING EXECUTION OF DEEDS CONVEYING REAL PROPERTY. THE MPDU AGREEMENT MUST BE EXECUTED IN A MANNER THAT WILL ENABLE THE AGREEMENT TO BE RECORDED IN THE LAND RECORDS OF THE COUNTY. PARTNERSHIPS, ASSOCIATIONS OR CORPORATIONS SHALL NOT EVADE THIS CHAPTER THROUGH VOLUNTARY DISSOLUTION. THE MPDU AGREEMENT SHALL RUN WITH AND BIND THE LAND AND ALL SUBSEQUENT OWNERS OF THE LAND.

(D) AN MPDU AGREEMENT THAT COMPLIES WITH THIS SECTION MUST BE APPROVED BY THE DIRECTOR AND THE COUNTY ATTORNEY AND RECORDED IN THE LAND RECORDS PRIOR TO SIGNATURE AND FINAL APPROVAL OF THE SITE PLAN, PRELIMINARY PLAN OR PHASE II PLAN FOR THE PROPOSED DEVELOPMENT.

(E) ALL MPDU PAYMENTS IN LIEU SHALL BE DEPOSITED INTO THE COUNTY HOUSING INITIATIVE FUND.

(F) IF THE APPLICANT CHOOSES THE PAYMENT IN LIEU OPTION PROVIDED UNDER THIS SECTION, THE COUNTY DEPARTMENT OF PERMITS AND INSPECTIONS SHALL NOT ACCEPT A BUILDING PERMIT APPLICATION FOR THE DEVELOPMENT UNLESS THE APPLICANT ALSO SUBMITS THE PER DWELLING UNIT PAYMENT IN LIEU REQUIRED UNDER THE MPDU AGREEMENT.

(G) ANY DEVELOPMENT WITH SITE PLAN, PRELIMINARY PLAN OR PUD PHASE II PLAN APPROVAL THAT INCLUDES THE OBLIGATION TO BUILD MPDUS, BUT HAS NOT YET STARTED CONSTRUCTION OF MPDUS AS OF AUGUST 16, 2011, MAY ELECT INSTEAD TO REMIT THE TOTAL MPDU PAYMENT IN LIEU DESCRIBED IN SUBSECTION (A)(1) ABOVE. IF AN APPLICANT MAKING THE ELECTION UNDER THIS SUBSECTION HAS ALREADY ENTERED INTO AN MPDU AGREEMENT, THE APPLICANT SHALL REQUEST THE DIRECTOR TO AMEND ITS MPDU AGREEMENT. THE AMENDED MPDU AGREEMENT SHALL COMPLY WITH THE REQUIREMENTS OF THIS SECTION, AND SHALL PROVIDE THAT THE TOTAL MPDU PAYMENT IN LIEU AS CALCULATED UNDER SUBSECTION (B)(1) ABOVE ARE COLLECTED IN CONNECTION WITH THE BALANCE OF BUILDING PERMITS ISSUED FOR THE DEVELOPMENT. ALL AMENDED MPDU AGREEMENTS MUST BE APPROVED BY THE DIRECTOR AND THE COUNTY ATTORNEY.

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AND BE IT FURTHER ENACTED AND ORDAINED that, as of the effective date, this Ordinance shall apply to any Applicant, as defined in §1-6A-3, that:

(1) Submits for approval or extension of approval a preliminary plan of subdivision, which plan provides for the development of a total of 25 or more dwelling units (on public water and sewer) at 1 location in 1 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; or

(2) Submits to the Frederick County Planning Commission or to the Community Development Division a plan of housing development for any type of site review or development approval required by law, which plan includes construction or development of 25 or more dwelling units (on public water and sewer) at 1 location; or

(3) With respect to all land in zones not subject to subdivision approval or site plan review, applies for a building permit or permits, which permit is or permits are for the construction of a total of 25 or more dwelling units at one location on public water and sewer.¹

AND BE IT FURTHER ENACTED AND ORDAINED that the effective date of this Ordinance shall be September 6, 2011.

AND BE IT FURTHER ENACTED AND ORDAINED that the amendments adopted in this Ordinance shall remain in effect through September 6, 2016, and shall expire and be of no further force and effect at midnight on September 6, 2016.

AND BE IT FURTHER ENACTED AND ORDAINED that the BOCC hereby directs County staff to work with stakeholders and other interested parties to consider amendments to the MPDU Ordinance and Regulations during the effective period of this Ordinance as may be necessary and appropriate to respond to market conditions and community needs.

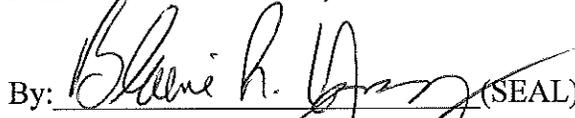
The undersigned hereby certifies that this Ordinance was approved and adopted on the 6th day of September, 2011.

ATTEST:



David Dunn, County Manager

BOARD OF COUNTY COMMISSIONERS OF
FREDERICK COUNTY, MARYLAND

By:  (SEAL)

Blaine R. Young, President

¹ The language in (1) through (3) is taken from the definition of "Applicant" in §1-6A-3. *KAM 9/6/11*