

IN BRIEF: THE MPDU PROCESS FOR DEVELOPERS AND BUILDERS

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INTRODUCTION:

This summary briefly describes the regulatory process for developing Moderately Priced Dwelling Units (MPDUs) in the City of Annapolis. Please note that the actual laws implementing the MPDU program in City of Annapolis are found in Chapter 20.30 MODERATELY PRICED DWELLING UNITS of the City of Annapolis Code, 1996 edition, as amended. This summary is intended to supplement those sources - please refer to these laws to fully reference and understand the requirements of the MPDU program. The City of Annapolis Code can be referenced online here.

PLANNING AND DEVELOPMENT REVIEW PROCESS:

Minimum Threshold and Percentage Required:

The requirement to provide a certain percentage of Moderately Priced Dwelling Units (MPDUs) applies to any new development in City of Annapolis with 10 or more units. This requirement applies even if the development is phased in over time.

The percentage of MPDUs required varies from 6% to 12% of the total number of units in the development, with the actual percentage for any particular development based upon the density bonus achieved. Developments that receive no density bonus are still required to provide the required number of MPDUs unless a waiver is approved by the Planning and zoning director in accordance with the requirements of Section 20.30.060 Contribution in lieu of developing MPDUs. The actual percentage and number of MPDUs required is set by the City of Annapolis Planning & Zoning Department as part of the review process for the project.

REQUIRED AGREEMENTS RELATED TO MPDUs:

There are two main agreements the developer/builder must execute with the Department of Planning & Zoning (P&Z) relating to MPDUs. The first is the Agreement to Build Moderately Priced Dwelling Units, which is required before the final plat is recorded and the building permits may be obtained. The second is an Offering Agreement, which is submitted to P&Z once the developer (or the builder) is ready to make the MPDUs available for sale or rent to eligible MPDU certificate holders.

When the developer and the builder(s) are separate, please note that the Agreement to Build is executed between P&Z and the developer, while individual Offering Agreements are executed between P&Z and the builder(s) offering the units. **In all cases, however, City of Annapolis law recognizes the developer as the responsible entity for ensuring that the MPDUs are provided as required.**

The Agreement to Build MPDUs:

Once the MPDU requirement has been set as part of the development review and approval process, the developer must execute an Agreement to Build Moderately Priced Dwelling Units with P&Z. This agreement must be submitted with the final plat for review and approval. The agreement must be executed and recorded at the same time as the final plat is recorded. After recordation of both the agreement and the final plat, Department Of Neighborhood & Environmental Services (DNEP) will process building and grading permits.

Along with the standard form document, the Agreement to Build must include:

- a listing of the individual addresses of the MPDUs and the market rate units;
- an un-executed copy of the standard MPDU restrictive covenants (either for sale or rental, depending on the development); and
- a copy of the final approved site plan with the MPDUs clearly highlighted.
- assuming the developer submits a complete and acceptable Agreement, P&Z will make every effort to return the executed document within 7 to 14 days so that the developer/builder may obtain building permits.

The Agreement to Build is the document that enforces the development requirements of Section 20.30.040 of Chapter 20 MODERATELY PRICED DWELLING UNITS. Among other things, this agreement requires that:

- a specific number of MPDUs be constructed on an approved time schedule;
- in single-family dwelling unit subdivisions, each MPDU must have 2 or more bedrooms; and
- in multi-family dwelling unit subdivisions, the number of efficiency and one-bedroom MPDUs not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.

Additionally, the Agreement requires that the construction phasing requirements for building MPDUs comply with the law so that:

- MPDUs are built along with or before other dwelling units;
- no or few market rate dwellings are built before any MPDUs are built;
- the pace of MPDU production reasonably coincides with the construction of market rate units; and
- MPDUs are spread throughout the development and not clustered in one or more areas;

Please refer to Chapter 20 MODERATELY PRICED DWELLING UNITS to review the full requirements of the law.

Amendments to the Agreement to Build:

If at any time the MPDU requirement for a development changes (due to a site plan amendment, for example), or if the construction schedule contained in the agreement changes, the developer must notify P&Z and request an amendment to the agreement to build to reflect the changes. Failure to do so may result in sanctions ranging from "stop permitting" orders to civil fines.

MPDU Offering Agreements

At the time the MPDUs are ready to be offered for sale or rent to eligible MPDU certificate holders, the developer/builder must submit an Offering Agreement to P&Z for its review and approval. At a minimum, the Offering Agreement must contain:

- the applicable standard form Offering Agreement (either for sales units or rental units) with the number of units indicated;
- the lot/block, street addresses, and tax account numbers of the MPDUs;
- a recorded subdivision plat, a copy of the approved preliminary plan and/or site development plan designating the location of the MPDUs;
- an executed copy of the applicable covenants (in recordable form);
- a copy of the floor plans for of each unit type; and
- completed price calculation worksheets for each unit type (for sales units), or approved rent schedule by unit type (for rental units). Additional information on setting sales prices and rents is included below.

MPDU Sales

Before offering any MPDUs for sale or rent, the developer/builder must notify P&Z of the proposed offering and the date on which the developer/builder will be ready to begin marketing to eligible persons. The notice must include:

- whether the units will be sold or rented
- the number of units offered
- the number of bedrooms
- 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
- a vicinity map of the offering; and
- other information or documents as P&Z finds necessary to determine compliance with this chapter.

Within 30 days of receiving the notice, P&Z staff will work with the sales agent to begin marketing the units. P&Z will mail an interest form to MPDU certificate holders. From the interest form mailing, P&Z will generate a list of names that will be immediately forwarded to the developer's sales agent. P&Z will pick 2 to 2.5 times as many names as there are MPDUs available to send to the sales agent. The sales agent then contacts the MPDU certificate holders in the order that their names appear on the list to arrange for a sales meeting. If the sales agent has MPDUs left over after the initial list is exhausted, the agent must contact P&Z to request more names. This process is repeated as often as necessary during a 90 day marketing period.

If, towards the end of the 90 day marketing period, it appears MPDUs will remain after all the names provided by P&Z have been exhausted, the developer/builder must contact P&Z to discuss next steps.

DETERMINING SALES PRICES AND RENTS FOR MPDUs:

Developers/builders may hold initial discussions with P&Z staff to explore sales prices and rents at any time during the development and planning phases. However, the final sales prices and rents for MPDUs are set at the time the developer/builder submits, and P&Z approves, an Offering Agreement for a specific number of MPDUs in a development. The methodology used to determine sales prices and rents for MPDUs is outlined in Chapter 20.30.130

To help make MPDUs available at an affordable price, P&Z allows, among other things:

- MPDUs may be smaller in terms of square footage;
- the finishes of MPDUs may be of a lower standard than for market rate units (for example, Formica counter tops instead of granite, and/or standard builder grade cabinetry instead of hard wood finishes, standard builder grade plumbing fixtures instead of top of the line fixtures, etc.);

Rental MPDUs:

Is offered for a monthly rental price of 100% of HUD's fair market rents if the landlord pays all utilities (heat, water, sewer, electric, and trash) or 80% of Baltimore MSA, HUD fair market rents if the landlord does not pay all utilities (heat, water, sewer, electric, and trash).

The monthly rental price will be recalculated each year by the Department of Planning and Zoning based on HUD's recalculation of fair market rents.

THE SALES/RENTAL PROCESS FOR MPDUs:

The sales or rental process for an MPDU is a private transaction between the developer/builder and the MPDU certificate holder. While P&Z certifies program participants as eligible and provides names to the developer/builder, P&Z does not act as an intermediary, or involve itself in the process except in the rare case of a dispute between the two parties.

P&Z does not provide financing, financial assistance, or rental assistance to MPDU purchasers or renters. Each MPDU purchaser must qualify for and secure their own mortgage financing. Every MPDU renter must meet the necessary credit checks and income tests as with other rental applicants, and must have the resources (which may include rental assistance from third parties) to pay the monthly rent.

The sales and rental agent is a partner in helping P&Z enforce the MPDU program rules. P&Z does its best to qualify applicants as eligible under the law, but the sales agent is an invaluable resource to help ensure the MPDU program serves the households it is intended to serve. Each household certified as eligible receives an MPDU Eligibility Certificate (for sales, for rental, or for both). The primary eligibility criteria are below; if the sale agent discovers a potential purchaser no longer meets these eligibility criteria, please notify P&Z right away:

- MPDU purchasers can not currently own a home;
- MPDU purchasers and renters must earn be at or below the maximum MPDU income, adjusted for household size, as is indicated on their Eligibility Certificate;
- MPDU purchasers must remain income eligible up to the time their mortgage loan is submitted for underwriting.

Sales and Rental Forms:

To enforce the MPDU program's rules and requirements, P&Z requires several forms for each MPDU purchaser or renter. Some of the forms are generated by the MPDU program, while others are copies of forms signed at contract signing, leasing date, or settlement.

Sales: The following forms are required for each purchaser of an MPDU; some must be signed at contract signing, and some are due after settlement has occurred:

After Contract Signing (the following must be received at least 30 days prior to settlement):

- the original copy of the Purchaser's Certification form
- the original copy of the purchaser's Acknowledgment of Receipt of Covenants
- the purchaser's original Certificate of Eligibility from the MPDU office
- the purchaser's original Homebuyer's Seminar Certificate
- a copy of the initial sales contract or agreement

After Settlement (within 45 days):

- a copy of the final settlement sheet
- a copy of the two-party deed
- a copy of the financing statement recorded against the proceeds of sale

Rental: The following documents must be sent to the MPDU office within 14 days of the date of lease ratification on an MPDU rental unit:

- a copy of the lease
- the renter's original Certificate of Eligibility from the MPDU office
- the MPDU Renters Certification form

CONTACT INFORMATION:

For more information on the MPDU program's requirements please contact Theresa Wellman, tcw@annapolis.gov.