

Building Equity: The Evolution and Efficacy of Montgomery County's  
Moderately Priced Dwelling Unit Legislation

by

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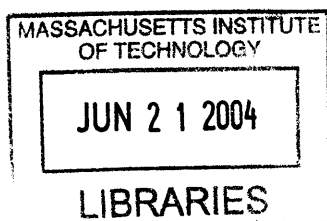
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Andrew Jakabovics

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## ABSTRACT

This thesis describes the history of Montgomery County, Maryland's Moderately Priced Dwelling Unit (MPDU) law. Passed in 1973, it is the oldest inclusionary zoning legislation in the country. The law emerged out of three policy streams—land use and density, fair housing and desegregation, and workforce housing and economic development—that coalesced in the late 1960s and early 1970s. Advocates for affordable housing appealed to widely held values in their effort to pass the MPDU legislation. The law stipulated that 15 percent of all units constructed in subdivisions of 50 units or more must meet the county's definition of affordability. Among the county's goals was the equal distribution of units across the county. Because the county left provision of the affordable units to the private sector, the county had little control of where units got built. In addition, a sewer moratorium limited growth in the county for most of the 1970s. As a result, housing prices appreciated rapidly, further increasing demand for affordable units. The 1980s saw many MPDUs delivered, and the county made several important changes to the law to keep the implementation in line with the original policy goals. The 1990s saw a decrease in units delivered as the areas of the county where units were required became built out and the size of planned subdivisions fell. As units' control periods expired during the 1990s, fewer new units were coming on line to replace them. Today, only about 1,900 units are controlled. The county is currently considering additional changes to the law to ensure the delivery of future MPDUs.

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# CHAPTER 1. INTRODUCTION

**M**ontgomery County, Maryland, lies due north and northwest of Washington, DC. For much of the first part of the century, the county was predominantly rural. Between 1900 and 1940, the population rose from just over 30,000 to nearly 84,000, an annual average growth rate of 2.5 percent. After World War II, Montgomery County, like many other close-in counties, experienced rapid population growth as peace, prosperity, and Federal incentives led to suburbanization. The population doubled in the 1940s and again in the 1950s, ending the decade with 340,928 residents. During the 1960s, the rate of growth was halved, but the county still added over 180,000 new residents. The 1970s saw relatively little housing growth in the county as a building moratorium was put in place so as not to tax the water and sewer infrastructure. The Washington, DC, region as a whole saw little growth in the 1970s. The 1980s and 1990s mirrored the 1960s in terms of absolute population growth. As of the 2000 Census, the population of the county stood at 873,341.

Over the last three decades, the county emerged as the region's second largest employment center, second only to downtown Washington, DC. While increased population growth and household wealth increased the demand for new housing, the supply of new housing was limited by commercial and retail competition for available land in the county's dense corridors, infrastructure capacity, and a general land use plan that favored open space. As a result, home prices continued to rise, often well above the rate of inflation.

In 1974, Montgomery County, Maryland, passed its Moderately Priced Dwelling Unit legislation (MPDU). While not the first such inclusionary zoning law in the United States, that distinction goes to its neighbor, Fairfax County, Virginia, it is the oldest law still in force.

## **A BRIEF NOTE ON THE STRUCTURE OF THE ANALYSIS**

My analysis of the process by which the MPDU law was formed is based on the conceptual framework advanced by Janet Weiss. She posits that changes in the status quo must be grounded in three interrelated theories: a theory of the problem, of desired outcomes, and of intervention (Weiss, 1999; 2000). The three theories form the heuristic device for each of the thesis's three chapters.

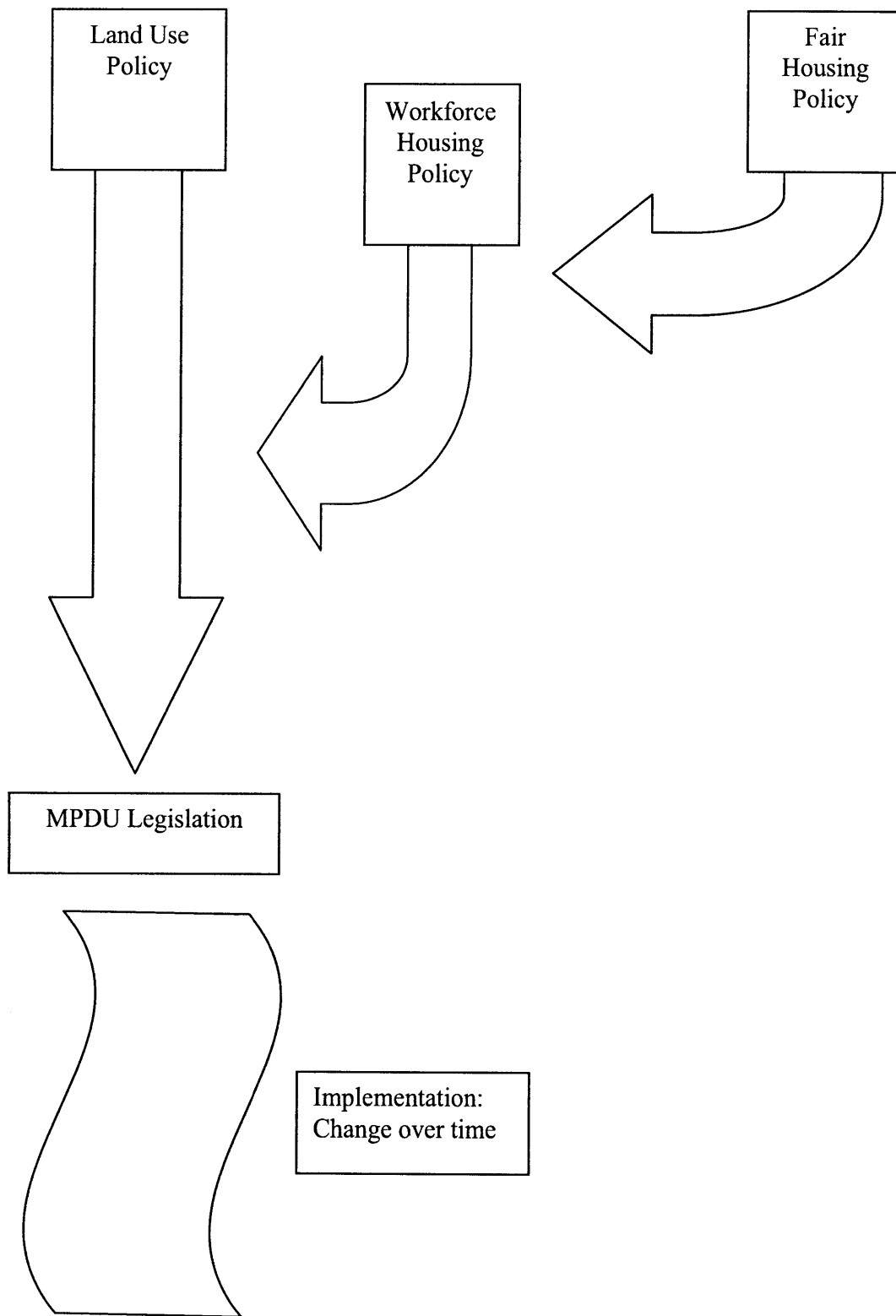


Figure (1)



She considers the theory of the problem as a historical question asked by policymakers. It requires framing and naming the origins of the problem and its current manifestation. In this regard, it is a theory of the past and a theory of the present. The story of the policies that led up to the passage of the MPDU legislation make up the first chapter. Intertwined with the theory of the problem is the theory of the desired outcome, which links present to future (as does the theory of the intervention). The theory of the desired outcome posits a future state where the problem is “solved.” The arguments made in favor of the law speak to the proponents’ desired outcomes. These are included in the second chapter. The theory of the intervention is the method by which the outcome comes into being. In the third chapter I describe the county’s efforts to ensure that the outcome sought—privately constructed affordable housing dispersed across the county—would emerge.

## **A SHORT HISTORY OF THE MPDU PROGRAM**

The story you are about to read describes the policies that came together to make the MPDU law a reality, what that law looked like, and how it changed over time in an effort to stay true to its initial goals. (See figure (1), opposite, for a diagrammatic version of the MPDU legislation's evolutionary process.) The primary actor in this story is the county with its innovative efforts to create and maintain affordable housing as market prices continued to escalate. The county’s success can be measured by more than 11,000 units that have been built since the law went into effect. It is not an unqualified success, however. Fewer than 2,000 units remain under control, and the number of new MPDUs has been falling over the past several years even as market-rate growth has remained steady. The county recently conducted a review of the program that set out a series of recommendations for changing the law to ensure its continued ability to mandate new affordable units. Despite self-imposed limitations on affordability like the land use plan and externally imposed limitations like the sewer moratorium or high interest rates, the county has demonstrated through its policies and actions its commitment to affordable housing for its residents.

The MPDU law that passed the Montgomery County Council in 1973 was the outgrowth of three policy streams—land use and density, fair housing and desegregation, and workforce housing and economic development—that coalesced in the late 1960s and early 1970s. In revising the 1960s land use plan for the county, it became clear that housing needs should be incorporated into the

general plan. That led to debates over affordability versus open space. A second policy stream that grew in importance in the late 1960s was the fair housing movement. The county passed local legislation banning discriminatory behavior in real estate that was stronger and more comprehensive than existing Federal or state laws. Many of the advocates for fair housing also took an active role in encouraging workforce housing, which would be the third policy stream. In the early 1970s, all three streams merged to create the MPDU legislation. The history of these three streams and efforts to create low- and moderate-income housing in the county before the passage of the MPDU law is detailed in chapter one.

The MPDU law required 15 percent of all units in subdivisions with 50 or more units to be set aside for moderate-income families. Chapter two describes the form the law took and the process of passing the legislation. There were legal boundaries that determined what powers the county had to enact certain types of legislation. In addition, since the county was making demands on the use of private property, caution had to be taken to ensure the property owners' rights were not being violated. The arguments made for and against the legislation appealed to widely shared beliefs of equality and the right to property. Those in favor argued that equality meant society had an obligation to ensure equal access to housing. Those opposed argued on the same principle that the cost of providing such housing should be shared by all and not just a few. The chapter concludes with a description of the explicit and implicit goals of the MPDU policy.

Over time, the county would change some of the parameters of the law in an effort to balance the needs of county residents and developers and to maximize the number of units whose prices were controlled. It also modified the law to respond to barriers imposed by outside agencies, most notably the Washington Suburban Sewer Committee. As costs and income both increased, the county adjusted the program to maximize the number of eligible participants who would qualify to buy homes. Because the buyers were dependent on the market to provide financing, as lenders' requirements changed, the county adjusted the eligibility requirements. One of the goals of the MPDU program was to distribute units across the county. That goal was thwarted in the 1970s by the sewer moratorium and in the 1980s and 1990s by uneven growth across the county. The evolution of the MPDU program and its efficacy over time are analyzed in chapter three.

Before turning to the MPDU law, its origins, and its efficacy, I place it in a broader policy context. As will be detailed in the coming chapters, the MPDU policy was not the only tool used by the county to create affordable housing. The county had an active public housing agency that was innovative in finding opportunities to provide low-income units. The county established a housing initiative fund that could be used by non-profit developers in addition to the public housing agency to build affordable housing. While this thesis focuses primarily on the MPDU program, mentioning other efforts to provide affordable housing only when those efforts come in contact with the MPDU program, those other activities must be kept in mind to understand the full picture of housing affordability in Montgomery County.

Not convincing-why is the stuff to the end of the chapter here? To show the ways from a policy perspective a concerned county (or any other public body could move on the issue?

## **THE UNIVERSE OF HOUSING POLICY**

Before delving into the particulars of Montgomery County's MPDU program, it is useful to touch upon the range of possible solutions to the problem of affordable housing available to a county or other public body that seeks to address the problem. Not all of the potential policy solutions could have been implemented in Montgomery County, and several pre-MPDU attempts made by the county were unsuccessful. To the extent that the story of Montgomery County's evolving MPDU program serves as a guide to other municipalities, augmenting that story with a general set of alternatives may be instructive to policymakers. In addition, it will help ground the reader unfamiliar with housing policy.

There are two broad categories of affordable housing programs. The dialectic between the two streams of policy is often couched in economic terms of supply and demand, although it may be framed as a debate between person and place. Demand-side policies are tied to the individual households needing housing assistance. Demand-side solutions to housing affordability constraints are predicated on the idea that barriers to housing stem from a lack of income rather than from high pricing of units. The current Section 8 voucher program, now the Housing Choice Voucher Program, is tied to the individual, not to the housing unit. A voucher holder can theoretically use the voucher for a market rate unit anywhere in the metropolitan area in which the voucher issued. The voucher holder pays 30 percent of his or her adjusted income to the landlord, and the Federal

government pays the difference between the market rent and the tenant's payment. Under Section 8, as an individual's income rises, the value of the subsidy decreases. Implicit in the program is the notion that as a person's income reaches the program limits, the effective subsidy drops to zero. Ideally, at that point, the individual can then afford a market rate unit and demand for government intervention in the market is negated.

Likewise, homeowner tax deductions for mortgages and real estate taxes function as a demand-side solution to housing affordability by lowering the effective cost of ownership.<sup>1</sup> A discrepancy in the nature of the two programs must not be overlooked. A limited number of vouchers are made available, but the tax deductions are universally available to all homeowners. Moreover, existing demand-side policies miss the growing number of households too wealthy to qualify for vouchers and too poor to avail themselves of the tax deductions (Keyes and DiPasquale, 1990). This is not a new problem; in 1972, Montgomery County officials acknowledged "they did not know how to help those who earn between \$12,000 and \$18,000 a year, which is too much to qualify for subsidized housing but not enough to afford a new house in Montgomery unless they spend more than the usual 25 percent of their income on housing" (Bowman, 1972). It is the wide gulf between the two demand-side policies that leads many affordable housing advocates to agitate for supply-side solutions to augment the existing demand-side policies.

Supply-side policies concern themselves with ways of providing a greater number of affordable units. There are essentially four ways in which affordable housing is constructed in the suburbs: (1) publicly constructed housing, (2) privately built units whose prices are regulated by local governments, (3) affordable units built by non-profit community-based development organizations, and (4) market-rate units built by the private sector that meet the local criteria for affordability. There is no silver bullet; there is also no single solution. As will be demonstrated in Montgomery County's efforts to provide affordable housing, public housing often serves a different population than other affordable units. Within the broader housing delivery methods, it is possible to distinguish between for-sale and rental units, as *de facto* as well as *de jure* income thresholds for the two categories may vary, particularly among market-rate units.

The price of a unit of housing reflects the cost of the land, labor, and materials. The price of the land includes the consumer surplus that reflects a willingness to pay for access to jobs, good

schools, low crime, and other amenities. To some extent these benefits are priced into the cost of land. In housing markets where the cost of land is high, no new units are built to meet the criteria for affordable housing in the absence of subsidies or regulation.

## **DEFINING HOUSING AFFORDABILITY**

Housing affordability is tied to household income by virtue of the simple fact that greater income means better quality housing, a lower percentage of income going to housing costs, or at the very least the ability to choose some mix of these two variables. When commuting costs are included in the income equation, proximity to employment will impact home prices. The consumer surplus created by reduced commuting costs created by proximity is captured in the form of higher housing prices nearer to the center. By extension, home prices at the margins should be significantly lower. This creates a perverse system where poorer individuals must travel further and incur greater commuting costs than wealthier individuals who can choose to live closer to employment centers. This system of tradeoffs holds true for rent gradients in a multi-centric employment network like modern suburbia as well as the stylized monocentric city. Empirical evidence for this pattern will be demonstrated below by the impact of Federal agencies' relocations on low-income black workers' commutes.

Anti-poverty programs, however, are not necessarily affordable housing programs. (Nor, for that matter, are fair housing programs, as we will see below.) There may be overlap between the target populations for each program, but the goals of each must be kept separate. Many of the housing programs target families in poverty, but the challenge of keeping the cost of housing below the traditional threshold of 30 percent of income is not limited to the poor. Moderate-income families in regions with high housing costs may also exceed the threshold.

Much of the literature on housing affordability discusses the gap between home prices or rents and median income. In contrast to the standard definition of affordable housing, Glaeser and Gyourko consider affordability a function of price relative to construction costs. They argue that regulation rather than construction costs lie behind the high cost of housing by limiting the supply of developable parcels and creating inefficiencies by forcing people to buy homes on larger lots than they may want. They focus on the supply of housing rather than on the factors that create demand for housing in a given location (Glaeser and Gyourko, 2003). In this paper, I will use the traditional

definition of an affordable unit, even if, as O’Flaherty notes, the term is probably misunderstood (O’Flaherty, 2003). This supply-side theory of the problem of affordability connects to a policy outcome that looks to reduce constraints on development.

Glaeser and Gyourko argue that the solution to reducing high housing costs is “reforming the barriers to new construction in the private sector,” with a focus for affordable housing on zoning reform (Glaeser and Gyourko, 2003). This argument is essentially an updated version of the argument forwarded by Anthony Downs in “Housing the Urban Poor,” wherein he argue that high housing standards prevent the production of large numbers of affordable units by keeping per unit costs high (1969). Downs recognizes the existence of rent gradients and households’ varying abilities to consume greater or lesser quantities of housing and recommends adjusting building codes and zoning laws to reflect that reality. The section on the CHOICE program (see chapter 1) discusses one such attempt to lower costs by lowering standards and shrinking zoning requirements.

Housing demand and construction costs are too high in supply-constrained markets like Montgomery County for developers not to build high-end units. There is reason to believe that prices would remain out of the range of affordability even if there were no regulation. Theoretically, one might assume that as older units depreciate, the real asking rents and sales prices will decline over time, but there is solid evidence that housing stock is essentially subdivided into two types of units, ones which depreciate and ones which do not. All units constructed are, by definition, of construction quality. Marginal units on the cusp of construction quality are apt to begin deteriorating only if operating costs increase such that the cost of upkeep exceeds the cost of new construction. Assuming costs are stable and there are no external shocks, however, there is no reason to expect that prices will decline with an increase in supply (O’Flaherty, 1998).

Montgomery County is not unique in facing the challenge of providing affordable housing. The issues faced by the county three decades ago are ever more prevalent in many metropolitan areas, particularly along the coasts. What is more, over time the gap between the price of units delivered by the market and the price deemed affordable to the average household has only gotten wider in these markets. Montgomery County's experience can be a useful guide for those places. For places where the gap is still relatively narrow but growing, the early years of the MPDU program may provide guidance.

## NOTES

1 It may be reasonably argued, however, that since the benefits of the tax breaks are available to every home buyer, the value of the savings are priced into the sales price of the home and accrue to the seller rather than the buyer. Low interest rates may also have a similar impact on prices. A buyer willing to spend \$1,000 per month will theoretically get “more house” for his or her money at low interest rates, but one must also assume that the sales prices will rise so that the consumer surplus created by the drop in interest rates will shift to the seller. The effects of price changes and interest rate shifts on ownership are interchangeable. DiPasquale attributes barriers to ownership in the 1970s to price inflation and in the 1980s to high mortgage rates (DiPasquale, Denise, 1990, *First-time Homebuyers: Issues and Policy Options*. In: Langley C. Keyes and Denise DiPasquale (Eds.), *Building Foundations: Housing and Federal Policy*. University of Pennsylvania Press, Philadelphia.).





## CHAPTER 2. PRE-HISTORY OF THE MPDU LAW

**M**ontgomery County's entrepreneurialism in developing an inclusionary zoning policy that could withstand judicial scrutiny is undeniable. It emerged as the nexus of three policy streams—land use, fair housing, and workforce housing—that attempted to establish a set of physical and social goals for the county and its residents. Working within the self-imposed land use constraints, the county sought to meet economic development and social justice goals through its housing stock. That the MPDU law took the form of regulating the private sector, described in the coming pages, is a function of the failure of the CHOICE program to attract widespread developer interest and the slow pace of public housing unit delivery in the face of strong local opposition and Federal foot dragging.

The story of Montgomery County's efforts to balance the challenge of ensuring affordable housing with providing controlled growth and maintaining open spaces, "a parklike atmosphere . . . and a relief from the regimented row on row of houses in most modern projects" (Diggins, 1965) begins in the mid-1960s. The Washington Beltway (I-495), the ring highway that circles Washington, DC, roughly 10 miles from the center of the District and runs through Montgomery County passing just north of Silver Spring and Bethesda, opened in 1964. Within two years of the Beltway's opening, more than 3,000 apartments were built in Northern Virginia alone. Nine percent of the residents of those new units commuted to jobs in Montgomery County. Likewise, 12 percent of Montgomery's residents commuted to jobs in Fairfax County, Virginia (1968e). Local economic development planning would no longer be able to be conducted in a vacuum. County employment patterns and housing choices would be impacted by adjacent jurisdictions more acutely than before.

Even more important than the opening of the Beltway were the county's 1965 activities. That year saw the release of the Year 2000 Plan, the county's land use plan; active efforts by the County Council to develop common ground between developers and affordable housing advocates, which would lead to the creation of the Montgomery County Middle Income Housing Commission; and the initial stages of reconstituting the county's public housing agency. Those three actions define the three policy streams that would coalesce to create the 1974 Moderately Priced Dwelling Unit law.

This analysis looks at efforts made by the county to develop affordable housing. I will attribute specific actions to the county or one of its agencies. By using “the county” as an atomic unit, I do not imply that the actions described met with unanimous consent from county residents. As will become quite clear, many of the county’s actions met with significant opposition, sometimes from its own elected officials or other county agencies. Nevertheless, the evolution of the Moderately Priced Dwelling Unit law was possible because of consistent efforts by “the county” reaching back nearly a decade before the law’s enactment to provide affordable housing or to encourage others to do so.

### **SQUEEZING HOUSING PRICES**

To give a sense of the impending crisis in affordable units in Montgomery County, consider a report from 1964 in *Suburban Maryland Builder* indicating that the average sales price for new home in the county was \$30,000, even with majority of resident households earning \$8,000-\$12,000. Rural parts of county had homes for sale under \$10,000, but nothing in the suburban parts of the county fell in that range. “There is little incentive for private enterprise in Montgomery County to try to cut costs to build housing for low income families. High land and development costs and a ready market for more profitable expensive homes and apartments contribute to the tendency to build only for the upper-income market” (Cochran et al., 1965). Land use decisions over the coming decade would only exacerbate the problem.

### **ENDING RENT CONTROL**

Changes in policies at the Federal level also impacted housing affordability in the county. After rent control ended in 1970, apartment dwellers in the county saw rents rise 35 percent in 3 years (Hamilton and Goodman, 1973). Rising rents has the effect of making homeownership more attractive. Increased demand for marginally priced homes will raise all home prices.<sup>1</sup> In addition, the county saw a large number of condominium conversions in the early 1970s to take advantage of tax benefits (Hamilton and Goodman, 1973). The supply of affordable rental units in the county declined markedly both as a result of shrinking supply and rising prices. Even as the prices of rental units rose, however, for-sale housing also rose, keeping many moderate-income families out of the market to buy and stuck in increasingly expensive rental units.

## LAND USE

The tendency “to build only for the upper-income market” was reinforced by the 1965 land-use plan. The General Plan for the Year 2000, as the plan was known, incorporated corridors of mixed-use cluster zoning at higher densities that would leave undevelopable wedges, increasing the amount of recreation and open space in the county. The county allocated more than 1,500 acres per high-density, mixed-use transit corridor known as “town sectors.” The size of the “planned neighborhood,” the second of the three cluster types, was set to correspond to the size of a community that would support its own elementary school. While the planned neighborhood cluster would be predominantly residential, they were also required to incorporate a shopping center that would meet local demand. Some higher density uses such as multifamily buildings as well as offices were permitted in the zone. County planners estimated that these clusters would range in size from 300 to 450 acres. The final classification was exclusively residential and set the guidelines for traditional subdivisions of 10–60 acres (Diggins, 1965). Zoning in the county discouraged density by requiring single-family detached housing with minimum lot sizes of 4–6,000 square feet and maximum lot coverage of 35 percent. There were minimum setbacks, lot widths, and green space requirements of the type that creates what we would currently consider suburban sprawl (Montgomery County Zoning Ordinance, 59-C).

Outside these zones, the rest of the county was generally set aside for limited to no growth. This was achieved through the creation of open spaces that limited the land area that may be developed. In addition, peripheral areas of the county were precluded from dense development by the lack of access to the municipal sewer system. These areas were predominantly rural and required the use of wells and septic tanks. Housing density in these areas were well below one unit per acre. Economic theory predicts that these types of land-use plans drive up the price of housing not only because of the restriction in supply, but also because of the amenities created from the open space itself as well as the value attributed to small communities (Brueckner, 1998).

The plan, which was unveiled in early 1965, was purely physical in its focus, with no mention of social concerns or questions of equity. The absence of any mention of affordability in the General Plan was addressed later in the year, after the November elections altered the County Council’s makeup. The new Council president, Kathryn Diggs, sought to encourage discussion between

various groups in the county that would create “a pattern of development that ‘meets the needs of individuals,’” arguing “We have accidentally fallen into a pattern of planning people for land instead of land for people” (Barnes, 1965).

The earliest attempt to address the issue of affordable housing through changes in the zoning ordinance was an inclusionary zoning proposal made in 1967 by Idamae Garrott, a Democratic member of the County Council, that stipulated that planned subdivisions must include a minimum number of affordable units. That proposal was deemed a non-starter by the County Attorney, who said that it was tantamount to conditional zoning, which was prohibited by Maryland’s courts. Later efforts to create an inclusionary zoning requirement would result in the 1973 MPDU law. Those efforts were not tied to changing the county’s general plan.

The county pursued affordable housing on other fronts. The Middle Income Housing Commission was tasked with identifying ways to provide housing for families with incomes under \$10,000. In 1968, the commission surveyed 20 large firms that represented about 13 percent of the total employment in the county and found that 78 percent of their employees needed housing under \$25,000. At the time, sales prices for new houses averaged \$33,000 (1968f; Scharfenberg, 1969c) and there were almost no homes for sale, including older homes, for less than \$20,000 (1968c). The commission advocated reduced setbacks and allowing the use of small sewage treatment plants in parts of the county not served by the municipal sewer system to allow greater densities that would enable developing affordable units in all areas of the county (Feinberg, 1968a).

In response to the commission’s findings, the county took steps to reduce the land-use barriers to the development of affordable housing. Although the commission recommended across-the-board reduction of standards that drove up the cost of housing, the County Council ultimately decided to pursue the creation of a new category of subdivision zoning that would incorporate some of the land-use principles advocated by the Middle Income Housing Commission. These changes were also made in conjunction with the county’s participation in the Federal Housing Administration’s CHOICE (Cost-effective Home Ownership in an Improved Contemporary Environment) demonstration project, described below.

In April 1969, Montgomery County’s planning board unanimously approved a pilot project to develop 350 “zero-side lot” homes which would be arranged in clusters around small parks. The

homes would be built by a private developer who would charge between \$21,000 and \$25,000 for them. The homes would be affordable for households earning \$11,000 (Scharfenberg, 1969b). By limiting the reduction in setbacks to a single category of residential subdivision rather than adjusting the criteria across the county, the county saw very few affordable units that would ultimately be built under the new subdivision category.

To put the issue of affordability in a more regional context, Fairfax County was also attempting to consider the implications of escalating housing prices with respect to workforce housing and economic development. While Montgomery was taking small steps to cut the cost of land per unit, Fairfax introduced a garden court classification that cut the space between detached homes from 24 feet down to four feet, allowing densities of up to six units per acre, up from two and a half. The target price for the homes built under this zoning classification was between \$20,000 and \$32,000 (Bredemeier, 1969). At the lower end of the range, these homes would be considered affordable, but the top price exceeded the median price for new homes by about 15 percent.

In 1969, the County Council held a public hearing on a proposal by Richmond Keeney (R) that would offer density bonuses of 5 to 10 percent to developers of large subdivisions if they would provide a certain amount of affordable units. The tension between social planning and land-use planning can be plainly seen in the debate that ensued. Ironically, it was Ms. Garrott, who had made the initial inclusionary zoning proposal, who opposed the new plan on the grounds that the density bonuses conflicted with the general zoning plan. She argued, “Our overwhelming need for low- and middle-income housing must not be used to torpedo good planning and zoning in Montgomery County” (Edwards, 1969a). On the other side of the density debate were developers who sought changes in the zoning ordinance that would increase densities around Metro stations, then under construction, in the county. Claiming that existing zoning has been used as “a tool, a fence to keep low-income people out,” they argued for a mix of office and residential uses, including up to 10 percent of housing units set aside for low- and moderate-income families (Hardy, 1971c; Scharfenberg, 1971).

Keeney and Garrott were not always at odds on the debate between growth and affordability. The two joined forces in April 1969 to delay construction of rural roads in the county. In calling for the delay, Garrott requested a report on the impact the new roads would have on growth patterns,

particularly in terms of encouraging or discouraging growth in limited corridors in accordance with the General Plan. Instead of “stimulat[ing] suburban sprawl,” Garrott argued the \$2.7–\$4.8 million saved from the capital budget should go to “projects for people” such as affordable housing (Feinberg, 1969). Ironically, by consistently constraining growth to the corridors part of the General Plan’s “wedges and corridors,” housing prices in the county would continue to rise, making county intervention and public provision of affordable units increasingly necessary.

In the context of reviewing the priorities for housing in the General Plan in 1969, the County Planning Board approved a proposal that would “assure” there would be affordable housing in large-scale developments. The absence of a defined mechanism for delivering the units is important, as is the rejection of language that would have called on the county to provide a “fair share”—loaded words, to be sure—of regional housing needs (Scharfenberg, 1969a). At a subsequent hearing on the General Plan in early 1970, one witnesses called for the elimination of “rich ghettos as well as poor.” Echoing earlier proposals made to the County Council, the League of Women Voters (LWV) and Suburban Maryland Fair Housing (SMFH) issued a joint recommendation that “specific quantities of low and moderate priced housing [be required] in all zones where mixed land uses are permitted” (Edwards, 1970a). The densest development was still planned for the I-270 corridor, with wedges of lower density extending to the east and west of the corridor.

In the end, the planning board created a “transit-impact zone” category that set aside 10 percent of residential square footage for low-income units in mixed-use developments and a requirement to match retail footage with public housing in an otherwise all-residential development. The 10 percent figure was at the bottom of the 10–16 percent range sought by the LWV and SMFH (1971f).

A consistent theme in the decade leading up to the MPDU legislation is the tension between social planning and land use. The county recognized early on that there were significant barrier to affordable housing and that new construction in the county was priced at levels beyond what many households could afford. At the same time, however, the county had a strongly defined vision of what its growth strategy and land use should be. When land use came into conflict with affordable housing, the county inevitably preferred maintaining its vision of small-scale, neighborhood-oriented development with large amounts of open space and parks rather than allow density increases across

the board. Only in areas where growth was inevitable or encouraged, such as in the mixed-use transit corridors, were land use regulations changed to accommodate or even encourage affordable housing construction by the private sector.

### **MORATORIUM ON NEW PERMITS**

The debate in 1969 between sprawl and affordable housing was not limited to the County Council; it surfaced in discussions over the Washington Suburban Sanitary Commission's (WSSC) 10-year plans for new water and sewer lines in Montgomery County. The WSSC was a quasi-independent agency that controlled the water and sewer systems—and their permits—in Montgomery and Prince George's Counties. Ivan Goldman, a journalist for the Washington Post noted, the power over permits “gives the semiautonomous agency powerful control over development patterns and growth rates” (Goldman, 1972b). Opposition to extending water and sewer lines into the more rural parts of the county was predicated on the fear that opening new areas of the county up to development would lead to increased property taxes and generate sprawl. The Montgomery County Civic Association, an umbrella organization for some 60 other groups, expressed these sentiments in hearings before the WSSC. The county's planning board had expressed similar reservations at an earlier time, arguing that existing water and sewer capacity was sufficient to meet projected growth through 1980.

Developers, on the other hand, argued that curtailing growth of the water and sewer systems would prevent them from building by right on their property; contemporary zoning in many cases allowed for greater densities than could be served in the absence of sewer hookups. Moreover, “they argue[d] further that the opening up of large areas for development [would] lower the price of land and allow them to build more moderately priced housing” (1969). The WSSC decided to prevent the construction of extensions to existing sewer lines but allowed new hookups along the length of the existing lines. In 1972, the WSSC put a moratorium on new sewer permits, restricting any builder to permits for no more than 10 units per year (Goldman, 1972b). Clearing up any ambiguities, the spokesman for the WSSC said, “It's saying to developers, don't bring (an application for sewer hookups) to us anymore, because we're not going to do anything with it. We're not even going to look at it.” In response, the executive director of the Suburban Maryland Home Builders Association

argued that the effects of the moratorium would cripple the local economy, as home construction was the second largest industry in the county (Goldman, 1972a).

As a result of the sewer moratorium, growth in the county dropped significantly. New construction in 1974 was the lowest it had been since 1970. Prices for new homes rose nearly 10 percent in the second half of 1974, with the median single-family house priced at \$70,000. Even development that was encouraged by the General Plan, including dense, mixed-use projects in the transit corridors, was stalled by the WSSC moratorium on new permits. The sewer moratorium serves as a cautionary tale about the possibility of overlapping jurisdictions with competing goals stymieing expected policy outcomes.

## **FAIR HOUSING**

At the same time Montgomery County was considering its long-range vision for land use, it was also struggling with the question of housing segregation within the county and within the region. The late 1960s saw Federal, state, and local efforts to end discriminatory housing practices. Suburban Maryland Fair Housing (SMFH) was one of many groups in Montgomery County that sought to end racial biases in housing. SMFH recognized that barriers to multi-racial communities were also economic. Affordable housing would become a key part of SMFH's efforts to end segregation, and it would ultimately be at the forefront of efforts to pass the MPDU law.

Montgomery County in the 1960s was overwhelmingly White, while Washington, DC, its neighbor to the south was predominantly Black. Whereas Montgomery County was, along with Fairfax County, Virginia, one of the wealthiest counties in the United States, the District of Columbia had high poverty rates and a degraded stock of housing. Not surprisingly, when Walter Tobriner, Chairman of the District of Columbia Board of Commissioners,<sup>2</sup> considered allowing poor residents of Washington, DC to move to Montgomery County, there were strident complaints. The Montgomery County Citizens Council opposed the "importation of disease, crime, and additional welfare cases," and couched their opposition not only in terms of "states' rights" but in the name of maintaining "racial integrity". The group wanted to see local policies that would encourage private provision of units for low-income residents of the county. Among their recommendations was a two-year residency requirement for applicants for the units (1965). It is not entirely clear why they



wanted to see any provision of housing for low-income residents, but it may be tied to an interest in upgrading the substandard housing stock in poor Black enclaves. They may have felt that there would be social benefits to small-scale urban renewal-type activities. Alternately, they may have viewed the provision of affordable housing as necessary for creating housing opportunities for their own children. Even though at the time the Citizens Council spoke out against Tobriner and, indirectly, the newly created Department of Housing and Urban Development, no regional fair share distribution of affordable units had been planned, the Citizens Council's recommendations were essentially a pre-emptive response to regional housing policies and fair housing laws that would emerge in the county over the next few years.

In opposition to the Montgomery County Citizens Council stood a wide range of religious organizations. In early 1966, a petition "deplor[ing] the present pattern of residential segregation whereupon members of minority groups have little or no chance of finding homes" was circulated to about 125 groups in the county. In addition to the active participation of religious groups, representatives of CORE, the NAACP, the Citizens Committee on Human Relations, and the county's own Human Relations Committee were involved in drafting the language of the petition (1966).

It was not until 1967 that discriminatory behavior with regard to the sale or rental of apartments was outlawed in Maryland. While the state's legislation represented a good first step towards ending housing discrimination, in practice it was extremely limited in scope; it applied only towards single-family housing and apartments in buildings with 12 or more units that would be permitted after May 30, 1967. In response to the relatively weak state law, Montgomery County drafted legislation that would apply to all existing apartments and single-family homes. Moreover, it would prohibit discrimination by real estate agents and outlaw "block busting" tactics. While the legislation was supported by a majority of the seven-member County Council—it passed by a 4–3 margin, with Council President David Scull, a Republican, joining the three Democrats on the council—several amendments to the bill indicate wide differences in implementation. David Scull's wife, Elizabeth, was one of the leaders of SMFH and would ultimately succeed him on the County Council after his death in 1968.<sup>3</sup>

The most controversial aspect of the bill was the single-family provision. The state's fair housing legislation did not apply to existing single-family homes, which made up the overwhelming

majority of units in the county. Excluding these single-family homes from the law would have done little to address the county's problems; the law would have been so circumscribed as to be effectively meaningless. Scull initially tied his support for the resolution to a provision that would establish a presumption of compliance if a quota of 10 percent non-Whites in any apartment complex were met. (The presumption clause was omitted from the final legislation (1968a).) Scull argued that quotas were "necessary to prevent 'starting new ghettos' in the suburbs." He said he was concerned about the tipping effect that might otherwise take place. At the time, the county's population was less than 6 percent Black (Bernstein, 1967; Lippman, 1967). The fear of creating new ghettos speaks directly to Scull's desired outcome, a widespread distribution of minorities.

The legislation enjoyed the support of over 50 civic and religious organizations in the county, as evidenced by their participation in an amicus brief submitted to the Maryland Court of Appeals, which heard the case challenging the county's right to pass the law (1968g). The county's fair housing law was ultimately upheld by the state circuit court. When finally enacted, it was more stringent than even the Federal civil rights law then in force. The county law forbade discrimination in selling or renting all units in the county, regardless of the involvement of a broker, and prohibited discrimination in lending or in advertising.

Discrimination continued to be a problem in the region even after passage of Federal, state, and local laws, as school desegregation in neighboring Prince George's County led some residents to move to mostly white Montgomery County. One county planner attributed part of the demand for affordable housing in Montgomery to the population growth caused by desegregation in Prince George's (Hamilton and Goodman, 1973).

SMFH and the other civic and religious groups worked locally and regionally to combat segregation, but their view of discrimination as a pervasive rather than localized problem meant a regional program was desired. They partnered with the Metropolitan Washington Planning and Housing Association (MWPHA), an umbrella group that coordinated several of the region's fair housing advocacy groups. Flyers posted by MWPHA invited people to join action groups in the suburban counties with a banner criticizing the distribution of public housing in the region: "HUD's failure to establish criteria for site selection perpetuates racial and economic segregation of housing for low/moderate income families in the national capital area" (Metropolitan Washington Planning

and Housing Association, 1971). The flyer prominently featured a map showing the distribution of assisted units in the region and the size of the projects. Southeast Washington, DC, had a very high concentration of large public housing projects. Montgomery, by contrast, had a total of 13 projects (excluding scattered site units not depicted), five of which were senior housing. None had more than 224 units.

Fair share agreements were predicated on the notion that all jurisdictions in the Washington area bore an equal responsibility to provide affordable housing. The first coordinated regional “housing program for ghetto residents as well as the suburban poor” was not introduced until 1968 by then-councilmember James Gleason. (Gleason would later become the county executive.) At the time he first made his recommendation for a regional housing plan, Gleason said he expected all the jurisdictions to participate and share the burdens equally (Bensinger, 1968). Nevertheless, as a Washington Post editorial made it clear following a Council meeting several months later, he faced considerable opposition at home:

When Councilman Gleason proposed the Council sit down with officials from the District of Columbia to talk about regional housing problems, his colleagues leaped for cover. Their comments made it clear that several of them see problems in terms of ours are ours and theirs are theirs and never the twain shall meet. (1968h)

Abortive efforts in the late 1960s to develop a regional plan for affordable housing were generally a result of a lack of inter-county relationships. In 1971, the Metropolitan Washington Council of Governments (COG) reached an agreement among its members to distribute the 2,400 units allocated by HUD to the Washington area in a manner that would create an equal distribution of subsidized units. Washington, DC, officials supported the allocation, even though they would receive fewer units under the regional plan than they had received in the past, because it would meet metropolitan housing needs. Under the agreed upon formula, Montgomery County would receive 27 percent of the new units. At the time, less than 8 percent of the region’s subsidized units were in the county. The precedent set by the formula was viewed as politically sensitive “in the suburbs because it implic[d] that they may be asked some day to help the city solve its housing problem by providing for the dispersal of low- and moderate-income families” (Bowman, 1971).

While the new units had the potential to attract District residents to Montgomery County, the allocation of units was quickly co-opted to meet the needs of existing county residents. In fact, at the time the subsidies were allocated, there was a one-year residency requirement in Montgomery County before becoming eligible for subsidized units. The requirement was subsequently modified; the housing authority dropped the rule requiring residency to allow Washington, DC, residents who commute to jobs in Montgomery County to live there (Scharfenberg, 1973). Note that the change in policy still required some pre-existing connection to the county. A District resident with who worked elsewhere in the region would not have been eligible for a unit in Montgomery County. Thus, the county successfully co-opted the fair share allocation to meet its own, rather than the region's affordable housing needs.

In the end, cutbacks in the Section 236 program, which would have funded the construction of the subsidized units, meant that few of the allocated units were ever built. President Nixon suspended the subsidy program in 1973, leaving funding for only 3,321 units for the region in the 1974 funding round. Competition between the District and the suburbs for the subsidies was fierce. When considering the universe of policy options, the inconsistency of Federal funds for subsidized units was likely one of the reasons the county decided to look away from the public sector as a delivery vehicle for moderately priced units.

## **WORKFORCE HOUSING AND ECONOMIC DEVELOPMENT**

The issue of workforce housing is not entirely independent of fair housing. The 1960s and 1970s saw the migration and expansion of a number of Federal agencies into the suburbs. A study conducted by the U.S. Commission on Civil Rights looked at impact of the National Bureau of Standards' move to Gaithersburg in 1966. It found that the Federal government's failure to ensure housing opportunities for its workers was tantamount to racism. While the government's actions were not cited as discriminatory outright, the study found "a failure of responsible agencies to act positively to bring equal opportunity to Montgomery County" (Scharfenberg, 1969e). After the move from Washington to the suburbs, only 32 percent of low-income Black workers lived outside the District, compared to 93 percent of Whites at the same pay scale. The study found that Whites, regardless of income, were generally able to find housing in Montgomery County in conjunction with the Bureau's

move. The study also linked the dearth of workforce housing to development patterns in the county and the Federal government's failure to encourage equitable population growth. It criticized the lack of attention to the housing needs of low-income and minority workers where development is enabled by Federal expenditures:

Rather than changing existing patterns, the introduction of 70S [now I-270] has seen the growth of large new areas of industry and housing in the county that are closed to the same population segments—Negroes and low and moderate-income families—to which it has previously been closed. (Scharfenberg, 1969e).

In response to the report, when the Department of Health, Education, and Welfare (HEW) prepared to move to Rockville in 1970, it worked with HUD, the county, and advocacy groups including SMFH to create housing opportunities for black workers. It supported efforts to get Federal funds to build workforce housing near their new offices, asked Congress for money for buses to run between Washington and Rockville to ease workers' commutes, and guaranteed low-income workers jobs in Washington if they didn't want to move or commute. SMFH worked with HEW to sponsor a conference to bring together real estate agents, apartment managers, county and Federal officials, bankers, and citizens groups to raise awareness of the lack of affordable housing for workers in general and minority workers in particular (Scharfenberg, 1969d). David Smith, a local developer, commented, "We are not now supplying houses for the county's teachers and police or for what you might call the upper echelon blue collar workers" (Scharfenberg, 1969b).

Little headway had been made with respect to affordable housing by the early 1970s. Moderate-income housing, then defined as homes for households in the \$6,000–\$12,000 income bracket, was increasingly hard to come by, as the median price for new construction exceeded \$40,000 and older homes sold for more the \$30,000 (Mann and Scharfenberg, 1971). In an editorial in early 1971, at the same time as the county was considering leasing the Watkins Glen townhouses (see below) for use as public housing, *The Washington Post* opined:

The people in these income groups will be in greater demand to provide essential services in public utilities, shops, offices, and other fields. Left unchecked, the housing shortage could mean that Montgomery would wind up more and more as a daytime work center for commuters who

can't afford to live there—and that the county would remain 96 percent white while Washington, next door, is more than 70 percent black. (1971c)

## PUBLIC HOUSING

In conjunction with the shift in land use policy in the late 1960s, the county also set about to reestablish a public housing agency, which would lease existing units until they could build new ones (Barnes, 1966a; Watson, 1965).<sup>4</sup> The new housing authority, initially set out to purchase six existing complexes across the county. Some of the complexes were set aside for elderly individuals, but the remaining complexes were to be available to low-income families. Provision of public housing was often delayed or prevented by NIMBYism; several of the selected sites were dropped due to neighborhood opposition. In the two years after the reestablishment of the authority, only 240 families had been housed. In 1969, the People's Organization of Montgomery County, a local advocacy group, testified before the Maryland-National Capital Park and Planning Commission (MNCPPC) that the county's plans to build public housing fell far short of the 32,000 low-income units estimated to be in demand by 1980 (Scharfenberg, 1969c). As it stood in 1969, an additional 17,000 low- and moderate-income units were needed, including 6,600 for moderate-income families, to meet existing demand (Edwards, 1969c).

In what may be viewed as an early analog to the normative outcome of the MPDU legislation, the county's coordinator of community development recommended that the housing authority lease units scattered across the county rather than concentrate them in a single area (Barnes, 1966b). When, in 1968, HUD set aside funds for 500 units in the county, 25 were allocated to Toby Town, a pocket of dilapidated housing inhabited mainly by poor Blacks. The remainder of the units was to be spread throughout the county, with no more than 50 units concentrated in any single location. The fear of concentrated poverty, in particular black poverty, and minimizing the impact on surrounding homes continued to be a concern, as indicated by Alexander Greene, the County's Housing Authority Chairman: "We want our units to conform as much as possible to the areas they go into. . . . We don't want them to be isolated, identified public housing units, and we don't want to create ghettos" (1968b).

In 1969, in the context of revising the General Plan (and incorporating housing recommendations for the first time) the County Planning Board recommended that public housing be built away from poorer areas of the county. At the same time, it also recommended locating new public housing units near employment, retail, and recreational facilities (Scharfenberg, 1969a).

Rock Creek Gardens, built south of Rockville, conformed to these recommendations, even though it was built by a private developer under the Section 236 program. Its 528 units were located within a mile of Federal employment complexes and near the Route 70 corridor that had a concentration of blue-collar jobs. It was the largest subsidized housing project in the county at the time. It met with strong opposition from neighbors who argued that the project would overburden the schools in the area. Final approval for the project was made contingent on the donation of about two acres for a primary school. Opposition to the project was also on racial grounds; nearby residents did not want to see low-income Black families moving into an otherwise White, middle-income neighborhood (Edwards, 1970b).

As we will see, there would continue to be strong opposition to creating concentrations of non-market-rate housing anywhere in the county. In fact, at the same meeting where the MPDU legislation was first introduced, the County Council also rejected a 366-unit subsidized apartment complex in the northeastern part of the County on the grounds that it “represented a ‘concentration’ of low and moderate income families and would be located in an area of inadequate opportunities and services for the families.” The Council wanted to see market rate units included in the project (Bowman, 1972).

The first project built by the county’s housing authority was the \$900,000, 50-unit Bel Pre.<sup>5</sup> It was located along Georgia Avenue near Silver Spring. Delivered in late 1969, it offered a wide range of social services on site. HUD provided a \$25,000 grant for the services in the first year above the subsidies for construction. What made the project innovative was its homeownership component for very low-income families. Eligible households must have lived in the county for a year and must not have incomes above \$4,800 for a family of four (Mann, 1969). (At the time, median household income in the county was \$18,000 (Edwards, 1970b).) Residents paid 20 percent of their income and gained equity that would lead to full ownership after 25 years.

## WATKINS GLEN

The story of Watkins Glen is indicative of the creative efforts and entrepreneurialism demonstrated by the county to provide affordable housing through its public housing authority. At the same time, however, it is also the story of the limits to creativity imposed by bureaucratic hierarchies and limits to action imposed by internal opposition. Reliance on outside institutions for funds as a limiting factor in innovative policies is an ongoing theme in the story of the attempts to provide affordable housing in Montgomery County.

Watkins Glen was a 52-unit townhouse development in Potomac. It was advertised by the developers as “luxury” housing and was priced accordingly; the asking price for the units was \$45,000. When the homes failed to sell, however, they were scheduled to be auctioned off as part of foreclosure proceedings. The county stepped in and offered to lease the units for 20 years. While the housing authority would be responsible for maintenance costs during the lease, the lease payments would come from tenants’ rents and Federal Section 236 subsidies.

The plan met with substantial opposition from neighbors, who latched on to the term luxury used by the developers. At one hearing, a local resident commented, “I don’t think any public housing authority should buy \$40,000 homes to put indigent people in” (Mann, 1971a). Supporters of the plan accused the opponents of “raw and blatant racism and classism” (Raspberry, 1971) for their claims that the plan was tantamount to “forced integration” (1971b). Alexander Greene, then chairman of the housing authority, defended the plan on the grounds that the term luxury was no longer applicable, as extra rooms designed as dens and recreation rooms would be converted to bedrooms (Hardy, 1971b). Troy Chapman, then executive director of the housing authority, defended the plan saying, “It’s like going to a fire sale or a closeout. If you buy a \$150 suit for \$75, why not? We’re getting more for our dollar” (Mann, 1971a). The fact that the market as a whole rejected the \$45,000 price tag was not lost on the plan’s supporters (Raspberry, 1971).

Hundreds of opponents of the plan called the county to complain, and several threats were made to Chapman. James Gleason, who had been elected to county executive after serving on the County Council, warned the housing authority that their actions could be detrimental in the long term, since public support would be needed for future projects (Hardy, 1971b). A member of the



county's human relations commission acknowledged after the hearing and the phone calls that the opposition to the plan "appear[ed] to be based more openly and much more blatantly on racial lines." The president of one of the local neighborhood associations that opposed the plan admitted that some of the opposition "would stand up and be counted in saying their feelings [were] racial while others [were] concerned with the social impact that a small ghetto of poor people would have" (Hardy, 1971a). It is important to recognize that the even though the opponents understood the small scale of the public housing, they were still concerned about the potential of creating a ghetto next door. Watkins Glen's 52 units was roughly one-fourth the size of the county's recommended maximum concentration of units.

Forty-three local residents who opposed the plan to lease the units succeeded in getting an injunction from the county's Circuit Court on the grounds that their constitutional rights were being violated insofar as "their property values would be diminished 'without due process of law'". Thus, while there was opposition on racial grounds, the court filings were not explicit on that front, couching the request for an injunction in terms of the economic impact of the social change. In response, the housing authority sought Federal jurisdiction in the case on the grounds that constitutional issues are a Federal matter. The move was also calculated to increase the county's chances of victory, as Federal courts had been more "sympathetic" to issues affecting the poor and minorities (Hardy, 1971d). Even though neither side openly admitted the role of race, each sought legal advantages with respect to it.

The Federal District Court in Baltimore assumed jurisdiction in the case and dissolved the Montgomery County Circuit Court's injunction, theoretically allowing the lease to go forward. In the end, however, the ruling was irrelevant; George Romney, secretary of HUD, rejected funding the plan on the grounds it was not "economically feasible," despite "encouragement and assurances" from regional HUD officers that the plan was viable. In rejecting the plan, Romney echoed some of Gleason's early comments saying the proposal "create[s] resistance . . . (It) causes people to think, why should they subsidize people and put them in units that are that costly?" When asked, Romney denied that his opposition was based on the Nixon administration's opposition to actively desegregating the suburbs. The supposedly deciding factor was the high cost of utilities at the project, which would not have been covered by HUD and would have posed a burden for tenants, but the county disputed the

costs used by Romney saying lower utility costs were accurate and had earlier been agreed upon by HUD (Mann, 1971b). Romney's personal intervention in what should have otherwise been a routine approval of a project that met the stated criteria is an indication of the deep-seated concerns about creating suburban ghettos and efforts to create mixed-race, mixed-income communities.<sup>6</sup>

## **CHOICE PROGRAM**

The county government's concerns about housing affordability were not limited to low-income families. Shortly after reestablishing a public housing agency, the county also created the Middle Income Housing Commission. The commission issued a report cautioning that the lack of affordable housing was driving out young couples and pushing industrial growth elsewhere.

In response to the critical shortage of moderately priced housing in Montgomery County, in 1968, the FHA selected the county to participate in the CHOICE (Cost-effective Home Ownership in a Contemporary Environment) program. Homes built under CHOICE were targeted at households earning between \$6,000 and \$10,000 per year, enabling them to afford mortgages ranging from \$13,250 to \$17,500. Under CHOICE, half the units in a subdivision must fall under \$20,000 (Edwards, 1968). The program was designed to streamline the approvals process and relax some of the building codes that contributed to the high cost of housing. Recommended revisions to the building codes included reduced setbacks and rights-of-way on the exterior and cutting costs by allowing the use of plastic rather than iron pipes inside. In exchange for processing priority and changes to the building code, the FHA would offer mortgage insurance that would also lower the cost of the homes to the buyers (1968c; Feinberg, 1968a, b).

While the Middle Income Housing Commission recommended changes to the building code be made on a county-wide level, the County Council chose to create a special subdivision category for CHOICE homes (Feinberg, 1968b). Even as the county supported the CHOICE program in principle, they rejected what would have been the first CHOICE project outside of Seattle, where the program started, on the grounds that the site was too far from public transportation and employment (1968d). Other applications were rejected for conflicting with existing land use plans; of the ten projects submitted for the program, only four were selected. They were approved in January 1969 and included 395 units (Edwards, 1969b). By 1971, three of the four projects were dead, with two

killed off by delays and lack of approvals from other government entities, namely HUD and the Washington Suburban Sanitary Commission (WSSC). The development killed off by HUD inaction was the result of a two-year wait for approval of a water line. The WSSC effectively killed the other project by refusing to issue a permit for a temporary sewage treatment plant (1971a).

In the end, the first attempt at privately built moderate-income housing was a failure. Only 130 units were eventually built, with just more than half of the units bought by low- and moderate-income families. The county bought seven units for use by the Housing Authority. According to the program coordinator, the public housing units were more of a concern for moderate-income buyers than for wealthier families (1971a).<sup>7</sup> As with Watkins Glen, dependence for approvals on entities over which the county had no control made two of the CHOICE projects unfeasible.

In many ways, the CHOICE program could have been the solution to the county's affordable housing needs. It had many of the same conceptual elements as would be found in the MPDU program. Aside from the building code changes and the FHA mortgage guarantee to lower the cost of the loans, the CHOICE program was a model for the MPDU bill, insofar as both relied on the private sector to build a certain share of affordable housing in otherwise market-rate developments. The failure to attract widespread support for the CHOICE program from the builder community, however, was an indication that optional provision of low- and moderate-priced units would not yield much participation. The higher profit margins associated with high-end housing were noted on several occasions as the reason the market was not building affordable units. The rejection of several applications on the grounds that the greater densities conflicted with existing land use plans is an indication of the relative priorities of the planning board at the time. Similarly, inaction and interference by supra-county jurisdictions served as an indication that an effective county-level policy would have to be largely self-contained.

## CONCLUSION

The lessons learned from the attempts in the late 1960s and early 1970s to provide affordable housing were not limited to the MPDU program. The county was wise not to put all its eggs in one basket. The public housing agency, reconstituted with expanded powers in 1974 as the Housing Opportunities Commission (HOC), would continue to develop subsidized units. In light of the

vocal opposition to public housing, the HOC implemented a policy not to develop on parcels that would require rezoning in an effort to reduce the opportunities for opponents to intervene. Similarly, the HOC scheduled hearings only after the development program was mostly planned and offered neighbors input only on a limited scale (McRory, n.d.). Ultimately, the county turned to the MPDU legislation to meet its affordable housing needs in recognition of the fact that reliance on Federal subsidies or approvals had the power to hinder the development of affordable housing as much as help in its provision.

## NOTES

1 I assume that tenure is a function of income. If a household can afford to purchase a home, it will. The maximum rent, therefore, in a static system would be infinitesimally smaller than the least expensive mortgage payment. Rising rents would therefore shift renters into the lowest priced houses. That in turn would generate upward pricing pressure on all other qualities of houses.

2 Until limited home rule was granted to the District of Columbia in 1973, the President appointed the Board of Commissioners and the mayor.

3 Elizabeth “Betty” Scull was rejected by the Republican Party and ran as a Democrat, winning a seat on the County Council in 1971.

4 Montgomery County originally established a public housing authority in 1939, but it fell dormant in 1955. (Barnes, Andrew, 1966b, Housing Authority Reactivated by Montgomery, The Washington Post, Washington, DC, pp. B1.)

5 HUD allowed spending up to \$18,000 per unit at the time.

6 Shortly after the Watkins Glen incident, Chapman resigned as executive director and took a job near Philadelphia. He denied that Watkins Glen impacted his decision and lauded the housing authority commissioners for having “a lot of guts” 1971d, Montgomery Housing Boss Quits, The Washington Post, Washington, DC, pp. C6.. He was succeeded by the former Rockville city manager, who had also directed the city’s human rights commission 1971e, Montgomery Housing Unit Head Named, The Washington Post, Washington, DC, pp. E2.. The overlap between individuals active in public housing and civil rights is yet another indication of the degree to which affordable housing cannot be disentangled from concerns about segregation.

7 The editors at the Washington Post saw the nearly 50 percent upper-income families as evidence of a failed program. Hence the title, “Higher Income Group Led to Housing Flop.” In fact, they had it entirely wrong. The purpose of CHOICE was to create a mixed-income community with half the units priced affordably. One has to wonder to what degree were articles critical of programs that met their stated criteria responsible for creating the perception of failure.

## CHAPTER 3. PASSING THE MPDU LAW

**H**aving seen the failure of previous programs to deliver moderate-income, affordable housing to Montgomery County, we now turn to the county's Moderately Priced Dwelling Unit (MPDU) law. The form the law took was more than just a function of the county's entrepreneurialism and innovative policymaking in light of previous failed attempts to generate affordable housing. There are very real limits on a county's powers to legislate that set the absolute parameters within which the county can maneuver. Some of these are a function of the county's charter while others stem from individuals' constitutional rights. Once those limits have been defined, however, the county is free to create laws to meet its needs.

This chapter also focuses on the arguments submitted in favor and in opposition to the law, as widespread support for an innovative and potentially controversial law is necessary. Once the basic legal framework is structured, the law needs to be sold to the public. The naming or marketing of a problem in public discourse is important, as it offers the potential to reduce conflict around the problem. To pass the MPDU law, supporters made appeals to widely held beliefs. Opponents made similar appeals on the other side. We have already seen reluctance among residents of Montgomery County to providing housing for Washington's poor. In that light, Fairfax's framing of the affordability problem as an economic development issue and potentially tax-saving measure is instructive. Likewise, the reasons given by the Virginia Supreme Court when it overturned the law are also valuable for defining the limits of a county's innovation.

### FRAMING THE NATION'S FIRST INCLUSIONARY ZONING LAW

Fairfax, according to the 1960 census, was second in the United States only to Montgomery County with respect to median household income. Fairfax's housing problems closely mirrored those of Montgomery, with more than 45 percent of families earning less than \$11,500 in 1968 and a median home price of \$28,000. Afraid that property taxes were nearing a maximum rate and that the rate of growth of the tax base was going to drop sharply and with it the tax revenue stream from the county's \$190 million construction industry, Fairfax County officials turned to attracting light industry. The greatest obstacle to attracting firms was the absence of low- and moderate-income

housing for the new workers. Fairfax had an effective unemployment rate of 1.5 percent, meaning new jobs would attract new residents rather than employ existing residents looking for work.<sup>1</sup>

While it was implied that new low- and moderate-income workers in new affordable units would likely be drawn from Washington, DC, and West Virginia, by framing the housing policy in terms of the benefits to existing residents—no increases in taxes or new bond issues—rather than as a solution to Washington’s problems, Fairfax officials “make it clear that their efforts will first serve County, not District, ends” (Stout, 1969).<sup>2</sup> Advocates for the new law believed that when faced with a choice of changing the housing stock or significantly raising taxes, the Board of Supervisors would opt for the former. Framing the affordable housing policy as an economic development tool allowed passage of the country’s first inclusionary zoning law.

The Fairfax legislation stipulated that 6 percent of the units be reserved for low-income households and 9 percent be set aside for moderate-income households. Low-income households were classified by eligibility for public housing, while the income thresholds for moderate-income households corresponded to the limits set forth under Section 236 housing guidelines. At the time, there were Federal housing subsidies available to builders of low- and moderate-income housing that would ease the economic burden on developers. Fairfax excused developers from compliance in the absence of Federal subsidies (Franklin et al., 1974).

## **OVERTURNING THE NATION’S FIRST INCLUSIONARY ZONING LAW**

The Fairfax legislation was found unconstitutional by the commonwealth’s courts in *Board of Supervisors of Fairfax County et al. v. DeGroff Enterprises, Inc. et al.* (Bowman, 1972b; Mallach, 1984). In striking down the Fairfax law, the Virginia Supreme Court found Fairfax County “exceeds the authority granted by the enabling act to the local governing body because it is socio-economic zoning and attempts to control the compensation for the use of land and the improvements thereon.” The Virginia Supreme Court continued, “Of greater importance, however, is that the amendment requires that the developer or owner rent or sell . . . at rental or sale prices not fixed by a free market. Such a scheme violates the guarantee . . . that no property will be taken or damaged for public purposes without just compensation” (1973a).

## CONSTRAINTS ON COUNTY LAW

From the experience in Fairfax, it becomes clear that there are two potentially limiting principles with respect to a county's ability to promulgate an inclusionary zoning ordinance. The first is the degree of autonomy granted to it by the state. The second principle, which is ultimately far more limiting for Montgomery County, is the just compensation clause of the Fifth Amendment. A similar guarantee exists in each state constitution as well. From this right stems the body of regulatory and case law prohibiting "takings."

With respect to the first principle, there are two broad categories of states with regard to the powers reserved for local governments under state constitutions: Dillon Rule states and Home Rule states. The Dillon Rule holds that all power resides at the state level, save for those powers explicitly granted to local jurisdictions. Because of the narrow construal of the rights granted, any local law created *ex nihilo* rather than as a parameter of a granted power would be unconstitutional (Fischel, 1995).<sup>3</sup> In home-rule states, municipal charters grant local governments autonomy. Therefore, if the sum total of the Virginia Supreme Court's decision had been a finding that Fairfax exceeded its authority, the ruling would have had limited bearing on Montgomery County, as the County Council exercises home rule. Even so, opponents of the MPDU law would make arguments that the legislation exceeded the powers of the county (see below).

Zoning regulations, at least of the traditional, *id est*, exclusionary, variety, fall under the police power of general statutory authority. This is the precedent set by *Euclid v. Ambler* (1926). Thus, even where the Dillon Rule is in force, the right to zone out noxious uses is an extension of the police power of the state, a power that has been extended to counties. The ability to zone in uses, however, had no legal precedent and was rejected by the Virginia Supreme Court as takings. The legal precedent upholding inclusionary zoning did not come until the *Mount Laurel II* decision, handed down in 1983, well after the MPDU law had been implemented.<sup>4</sup> Takings, therefore, were a universal concern for legislatures and one that would have to be addressed in the MPDU legislation. The sixth policy goal enumerated in the MPDU legislation appears to be an effort not to run afoul of takings:

(6) Ensure that private developers constructing moderately priced dwelling units under this Chapter incur no loss or penalty as a result thereof, and have reasonable prospects of

realizing a profit on such units by virtue of the MPDU density bonus provision...

Even if a developer does not take advantage of the density bonus in a given instance, that does not invalidate the constitutionality of the law.

## APPEALS TO EQUITY

Unlike Fairfax, which stressed the economic development benefits of workforce housing, Montgomery County's affordable housing advocates appealed to residents' sense of equity and a desire to end racial and economic segregation in the county as much as to the need for workforce housing. Moreover, even when raising affordable housing as necessary for economic development, much of the rhetoric was couched in the language of equal opportunity. Fair share is a manifestation in the policy realm of the moral principle of equity. There is value, it was argued, to mixed income communities. "The richest county in the country cannot continue to separate itself from its service personnel," David Holtz, president of the Montgomery Chapter of the American Institute of Architects, said when asked to comment on the bill (Bowman, 1972c).

Peg McRory, one of the county's leading affordable housing activists testified before the County Council:

Increasingly through the years we have priced out people of limited, even moderate means. We welcome their labor, mind you, as long as it is in nice clean industry, but we have left it up to Prince Georges County and the District to house them and educate their children... .The Community Renewal Program report clearly states that the county's developing road network bypassed these historic [poor]<sup>5</sup> enclaves thereby isolating them. Water and sewer lines have similarly skirted them, greatly increasing problems of renewal. (1973b)

The Community Renewal Program referred to by McRory reported that their aim was to create "a County in which people of diverse backgrounds and incomes live together in a climate of mutual acceptance, free to move at will with an adequate supply of housing in a complete range of prices available to all" (1980). Shortly after the release of the report, the County Council issued the following resolution:

It shall be the policy in Montgomery County that each area of the County will contribute to meeting the need for housing for low and moderate income families in accordance with that area's share of the housing supply in Montgomery County. (1980)



This resolution, passed in 1971, could have resulted in a policy similar to Massachusetts's Chapter 40B, which requires every community to have 10 percent of its units designated affordable. That policy assures equal distribution as a function of the total housing stock. The inclusionary zoning law that emerged from the County Council looked very different.

Given that separate is inherently not equal according to the highest court in the land, systematic exclusion of low-income households may be illegal. The Gautreaux case had already set a precedent for distributing public housing across a region, but there is a wide gulf in jurisprudence between directing public sector activities and limiting property rights.

Builders opposed the MPDU legislation on the grounds of sharing the burden of providing affordable housing. Implicitly acknowledging that they would try to pass the cost of compliance on to new homebuyers by allocating the cost of the MPDUs' land to the market-rate units, they claimed the legislation would raise home prices for non-MPDUs. This was part of the argument used by the Suburban Maryland Homebuilders' Association when they sought the right to deed land to county to build units on. Why pass cost of housing on to new buyers, they argued; the cost of affordable units should be borne by all residents of county (Bowman, 1972a). Deeding land to the county to build housing on was a way to shift the obligation to provide affordable housing back to the county, and by extension, all its residents.

## **APPEALS TO SHARED VALUES**

In truth, a purely self-interested populace should never pass legislation like the MPDU law. As long as the median voter is ineligible for a means tested program, the perceived costs are likely to outweigh the perceived benefits. Further, in the case of the MPDU requirement, the median voter is likely to bear the cost of affordable units if s/he decides to move in the form of passed through costs. (Some of the cost of providing the units falls to landowners in the form of depressed land prices as a result of constraints on land use, but most of the burden is reflected in the price of market-rate units in the development.) Both the costs and benefits are narrowly concentrated, since the true beneficiaries (defined as those who will get an MPDU) are few in number relative to the total population. In such a case, Wilson argues, interest-group politics come into play (1980). Indeed, while interest groups like

SMFH and LWV were instrumental in framing the legislation, passage required a greatly expanded base of support.

“Associat[ing] the legislation with widely shared values” (Wilson, 1980) is the hallmark of entrepreneurial politics and was the key to passing the MPDU legislation. Rhetoric such as “Housing in Montgomery generally is so expensive . . . that many of the county’s employees, teachers, secretaries, policemen, and firefighters cannot afford to live there” (Scharfenberg, 1971), is a clear call to deeply rooted sentiments. Consider the outcry in New York City when, after September 11, the city sought to close firehouses that were not needed (Kilgannon, 2003). Similar sentiments were at play in Montgomery County, as the police were a potentially valuable ally in passing the MPDU law.

The role of the police is illustrative of the potential dangers of alliances. While it is necessary in an entrepreneurial environment to create coalitions with a wide appeal, one cannot assume that all members of the coalition share the same views on all other policy issues. What is a primary concern for one group may be of secondary or tertiary importance to another. Moreover, groups that do not prioritize an issue may join alliances specifically to get the benefits of a “win” without investing serious resources to the problem. Prior to 1974, there was a law in Montgomery County that required police officers to live in the county. The original intent of the requirement was to make them part of the neighborhood, on the assumption that a beat officer who lives there will know his neighbors and his presence will be a deterrent to criminals and an extra set of eyes on the street. Unfortunately, police salaries were well below county median income, with starting salaries around \$10,000. According to a police spokesman, officers were taking second jobs to keep up with the cost of housing in the county.<sup>6</sup> As such, the police were potential allies in seeing the creation of more affordable units in the county. (While the MPDU legislation had already been passed at this point in time, no MPDUs would be constructed for two more years.)

At the time, several groups were vying to become the bargaining agents for the county’s police force. These groups could have continued to push for more housing, allying themselves with SFMH and LWV. That would have been a difficult battle, however. Another solution to the problem of police being unable to afford homes in the county would be to raise their wages. This solution conflicts with a desire to keep taxes low. As tax increases are generally unpopular solutions to policy problems, another solution would need to be found. While they groups supported the push for greater

affordability, the need for a “win” to create legitimacy meant taking the path of least resistance. In the end, the county dropped the residency requirement (Hamilton, 1974). Once the police gained the right to live elsewhere, affordable housing in the county would become less important to them. Thus, while proponents of affordable housing looked to the shared value that police should have housing, the potential ongoing alliance was co-opted by police gaining the right to live elsewhere.

In addition, there is an argument that describes moderate-income families as “deserving.” It is an argument along the lines of “perhaps but for the Grace of God go I.” The lack of affordable units is not viewed as a failure of individual responsibility; the deck is stacked against them, proponents argued. Therefore, we owe it to these families to help them afford good housing. These sentiments would be repeated by participants in a 1980 conference on affordable housing in the county.

Participants’ comments included:

- Our children cannot afford to live here.
- Young-marrieds moved out of state so they could afford a dwelling with some land.
- A woman with a child can’t afford to buy her own apartment which is turning to condominium. She is ineligible to borrow or rent on the basis of a government secretary’s income.
- Teachers in Montgomery County are moving out.
- Even ministers can’t buy a house in the County.

(Community Ministry of Montgomery County, 1980)

All of these individuals would be classified as “deserving” by a majority of the population.<sup>7</sup> Teachers, ministers, government employees, even your own children; the desired outcome of the program is to provide housing to these deserving people.

Opponents of the MPDU law also made appeals to shared values. The Suburban Maryland Homebuilders opposed the law because it limited to whom the builder could sell the units. Interestingly, the opposition was framed as being supportive of the legislation as a whole. The builders opposed the right of the county to purchase up to one-third of the units (Bowman, 1972a). The appeal on this side is also to the idea of the deserving. Their argument is that the county wants to take away one-third of the units that should go to your children, and the teachers, and the preachers. If those units go to the county, the argument implied, then the “undeserving poor” will get them. I cannot say whether this was a political gambit trying to sink the legislation over this aspect of the legislation

or whether they had come to terms with their soon-to-be obligation to build MPDUs and were looking to maintain some degree of control over the property. I believe it was a political gambit, as the petition circulated by SMFH explicitly called for keeping the county's right to purchase units in the legislation.

By making minor concessions to the opposition, the policy entrepreneur may overcome a vocal opposition. Homebuilders, as we have seen, were opposed to the MPDU law, except in cases where the additional densities would benefit them, primarily around transit stops. The final legislation included the right of developers to transfer finished lots to the county. In reality, few developers would take advantage of this provision because in ceding the lots to the county, they also lose control over the design, scope, and nature of the housing that would be built there. Since the builders have a reasonable expectation that they will be able to meet the construction costs of the MPDUs, they have no real reason not to build the units themselves in an architectural style that fits the rest of the development. The risk associated with giving the land to the county is high, as most any use the county would select would have a negative impact on home prices in the new subdivision. It is a rarely used provision of the law, but its inclusion allowed advocates to argue that reasonable efforts had been made to accommodate the concerns of those who may be asked to bear the cost of the program. In addition, the change allowing developers to transfer part of their property to the county for development was made because of concerns by the county attorney. Including the transfer provision likely strengthened the bill to be able to withstand a court challenge (Logan, 1973).

## **APPEALS TO ECONOMIC DEVELOPMENT**

While economic development was the primary frame in Fairfax County, the champions of the MPDU law were more concerned with appeals to equity and common ground. Nevertheless, arguments that a lack of affordable housing hamper economic growth and adversely impact the county's tax base by discouraging industrial expansion and firm relocation resonated in the business community. For firms, the stabilizing functions of government are important as they allow long-range planning with reduced risk: "The stabilization function is concerned with the preservation of satisfactory levels of economic growth, employment, and price stability" (Majone, 1996). While the policy tools available to municipalities differ significantly from those available at the Federal

level, particularly with respect to fiscal and monetary policies, the stabilization function is reflected in the MPDU legislation as part of the need to provide housing for government employees and “mercantile and service personnel needed to serve the expanding industrial base and population growth of the county” (1972a).

Litton Industries and the Atomic Energy Commission both supported bill, saying “lower echelon employees had a difficult time finding housing they could afford in the county” (Bowman, 1972a). Likewise, a survey of 154 businesses in the county conducted by the MWPHA found that only 60 percent of new workers would be able to live in county. County growth forecasts in the early 1970s expected 90,000 new jobs by 1980. The high cost of housing, the MWPHA survey found, could exclude “some teachers, policemen, postmen, accountants, engineers, middle level managers and technicians”(Bowman, 1972e). The failure to create affordable housing would either significantly curtail economic growth or would require increased commuting into the county by residents of surrounding jurisdictions who work in Montgomery but cannot afford to live there. The County Council found:

(4) The inadequate supply of housing in the County for persons of low and moderate income results in large-scale commuting . . . thereby overtaxing existing roads . . . significantly contributing to air and noise pollution, and engendering greater than normal personnel turnover in business, industry, and public agencies of the County, all adversely affecting the health, safety, and welfare of and resulting in an added financial burden on the citizens of the county. (1972a)

In truth, providing affordable housing is the wrong tool for correcting the mis-pricing of the social costs of commuting.<sup>8</sup> A more reasonable policy goal, and one that is explicitly stated, is to produce housing that meets “existing and anticipated future employment needs in the County” (1972a).

## **COMPETING CLAIMS: MPDU OPPOSITION ON LEGAL GROUNDS**

Opposition to the legislation came from several quarters, but since the legislation was presented as being in concert with widely agreed upon values, as indicated above, opponents were forced to resort, by and large, to legal arguments to change the legislation. The Apartment House Council of Metropolitan Washington argued along the lines of the Dillon Rule that the County Council would “need (state) enabling legislation for this type of bill” (Dash, 1972). There was, in

fact, precedent for this argument; the fair housing legislation passed by the county was initially overturned by Maryland's Court of Appeals on the grounds that a public referendum was needed on the bill as it was considered a "local public law" subject to the provisions of home rule. The county had argued at the time that the law fell within the police powers granted by the state and was not subject to the limits of home rule (Lippman, 1968).

When presented with a preliminary draft of the MPDU bill, the county's attorney responded that it "would not withstand a court challenge based on the constitutional grounds of denial of equal protection and taking without just compensation." The issue of takings arises, as we have seen, insofar as the law might require developers "at their own expense to provide a public benefit without assuring a return of fair or just compensations" and could therefore be confiscatory. The attorney offered that a modified bill would have to include some form of subsidy or make it optional rather than a requirement (Bowman, 1972d). Councilwoman Idamae Garrott responded by acknowledging that "the builders should not be compelled to build at a loss" (Dash, 1972).

The equal protection argument is not one advanced elsewhere, to my knowledge. The attorney responded that insofar as the law "requires developers to deal with the resolution of a problem common to the county as a whole for which they are no more responsible than other citizens," it violates the equal protection clause of the 14th Amendment to the U.S. Constitution (Bowman, 1972d). This is an interesting argument in light of Wilson's description of widespread benefits and narrow cost burdens as a standard feature of an entrepreneurial policy environment.

## **BUILDING SUPPORT**

Suburban Maryland Fair Housing and the League of Women Voters (LWV) sponsored a campaign coordinating office for the moderate price dwelling unit legislation. They compiled a mailing list of 800 organizations, followed up with 250 telephone calls, and distributed 25,000 flyers. They worked with civic organizations, professional societies, labor unions, Kiwanis, and churches. The petition they circulated read:

Recognizing that the serious shortage of low and moderate priced housing makes it impossible for a substantial portion of our fellow citizens to afford adequate living quarters in Montgomery County, we, the undersigned, urge passage of Bill # 3-72 requiring large new developments to construct 15% of their units as Moderately Priced

Dwelling Units. In addition, we support the zoning amendments needed to make the law feasible; and we oppose the amendment recommending removal of the Housing Authority option.

The petition was signed by 2,800 voting age residents of the county and 57 non-residents who worked in the county and who would have moved if they could afford it (1972b).

## **A SUPPORTIVE COUNCIL**

The election of 1970 proved to be a turning point in providing fair and affordable housing in Montgomery County. The County Council's three Republicans were replaced with Democrats, setting the stage for several battles between the seven Democrat members of the County Council and James Gleason, the Republican County Executive. During the campaign, all seven councilmembers endorsed, in principle, inclusionary zoning (Bowman, 1971b). In August 1971, the Council proposed an inclusionary zoning requirement for new master-planned communities. The initial proposal mandated 20 percent affordable units with one-third of those sold or leased to the county's public housing agency. To reduce sprawl and encourage providing necessary services to residents, the planned communities would allow higher densities than previous zoning categories and allow mixed uses. In addition, density bonuses would be offered for public facilities (Bowman, 1971a).

The final draft of the ordinance, prepared by the Council's staff in conjunction with SMFH, focused less on the services for residents and was not limited to large-scale subdivisions. It mandated that all subdivisions with 50 or more units include a minimum of 15 percent affordable units. Developers were free to seek Federal subsidies to offset the cost of constructing low- and moderate-income units, which would be subject to price and rent caps as well as income eligibility guidelines set by HUD. In the absence of subsidies, the prices and rents would be set by the county (Bowman, 1971b). On one hand, this provision was essentially irrelevant; on the other hand, the fact that the presence or absence of subsidies only determined whose guidelines would be used for eligibility and had no bearing on a developer's obligation to provide affordable units was ultimately crucial to the longevity of the program.

By way of comparison, Los Angeles, which passed an inclusionary zoning law in 1974, and Fairfax both excused developers from compliance in the absence of Federal subsidies. Montgomery, however, relied on the density bonus to incentivize provision of affordable units; the sales prices established by the MPDU ordinance were between \$4,000 and \$5,000 above the limits set by the Federal government in its Section 235 program, the homeownership analog to the Section 236 (later Section 8) rental subsidy (Franklin et al., 1974). Montgomery County was fortunate that it did not rely on state- or Federal-level programs for encouraging the private sector. By the time the MPDU legislation was enacted, the Federal subsidies had been discontinued.<sup>9</sup> Had the MPDU law been contingent on outside entities' subsidies or authorization to construct the units, far fewer units, if any, would have been built. (See the chapter on implementation for constraints on the program imposed by outside agencies.)

The seven members of the Montgomery Council unanimously passed the bill on October 23, 1973. The unanimity of the Council meant that any county executive's veto could be easily overridden. Bill 3-72, the MPDU legislation, became chapter 25A of the Montgomery County Code. As enacted in 1974, it stipulated that any application for subdivision, site-plan approval, or building permits for 50 or more units must include at least 15 percent affordable units on the site.<sup>10</sup> It created a five-year control period for both sale and rental units, with prices on the units established by the county executive. Over the course of the next 30 years, the threshold size, share of units, and control period would all be changed, but the MPDU law would remain in force. A discussion of the factors that led to the emendations follows in the next chapter on implementation. Suffice it to say here that the county's commitment to the goal of affordable housing, in law and in practice, is demonstrated by its willingness to revise the law as necessary to keep to the spirit of the enabling legislation described below.

## **STATED AND UNSTATED GOALS OF THE MPDU LAW**

The County Council included 12 findings of fact (below, box) in the original enabling legislation that correspond to seven policy goals also laid out in the bill. The findings are essentially a summation of the forces that had led to high housing prices and the failure of the market to meet the demand for affordable housing. It touches on the three policy streams I described in the previous



## FINDINGS OF FACT

1. The County is experiencing a rapid increase in residents of or approaching retirement age, with consequent fixed or reduced incomes; young adults of modest means forming new households; government employees in moderate income ranges; and mercantile and service personnel needed to serve the expanding industrial base and population growth of the County;
2. A rising influx of residents into higher priced housing in the County with resultant demands for public utilities, governmental services, and retail and service businesses has created an increased need for housing for persons of low and moderate income who are employed in the stated capacities;
3. The supply of moderately priced housing was inadequate in the mid-1960's and has grown since then at a radically slower pace than the demand for such housing;
4. The inadequate supply of housing in the County for persons of low and moderate income results in large-scale commuting from outside the County to places of employment within the County, thereby overtaxing existing roads and transportation facilities, significantly contributing to air and noise pollution, and engendering greater than normal personnel turnover in the businesses, industry and public agencies of the County, all adversely affecting the health, safety and welfare of and resulting in an added financial burden on the citizens of the County;
5. A careful study of market demands shows that approximately one-third of the new labor force in the County for the foreseeable future will require moderately priced dwelling units;
6. Demographic analyses indicate that public policies which permit exclusively high-priced housing development discriminate against young families, retired and elderly persons, single adults, female heads of households, and minority households; and such policies produce the undesirable and unacceptable effects of exclusionary zoning, thus failing to implement the Montgomery County housing policy and the housing goal of the general plan for the County;
7. Experience indicates that the continuing high level of demand for more luxurious housing, with a higher profit potential, discourages developers from offering a more diversified range of housing; and the production of moderately priced housing is further deterred by the high cost of land, materials, and labor;
8. Actual production experience in the County indicates that if land costs can be reduced, houses of more modest size and fewer amenities can be built to be sold at a profit in view of the existing ready market for such housing;
9. Every indication is that, given the proper incentive, the private sector is best equipped and possesses the necessary resources and expertise required to provide the type of moderately priced housing needed in the County;
10. Rapid regional growth and a strong housing demand have combined to make land and construction costs very high and to have an effect on the used housing market by causing a rise in the prices of those units;
11. In past years efforts have been made to encourage moderately priced housing construction through zoning incentives permitting greater density and through relaxation of some building and subdivision regulations. Very little moderately priced housing had resulted; and
12. In some instances existing housing for persons of low and moderate income is substandard and overcrowded.

chapter and acknowledges the failure of the public sector and previous incentive programs like CHOICE to deliver enough units (see findings 9 and 11). Affordable housing is seen as necessary for the public good.<sup>11</sup> These findings of fact are an amalgam of different positions issued by the various organizations and institutions that were instrumental in bringing the legislation before the council and in working towards its passage.

The seven policy goals written into the law (below, box) are essentially a reaffirmation of the previous findings rewritten to provide criteria by which the MPDU program may be later assessed. The policy goals are, however, rather broad in scope so as to make it difficult to evaluate the program in the absence of further delineation of specifics. The concepts of convenience and suitability are inherently subjective barring further clarification. Does compliance with the existing housing code meet the baseline definition of suitability? Convenience is an equally nebulous term. I will be evaluating convenience as a function of access to employment, but I acknowledge that others may define it

#### **DECLARATION OF PUBLIC POLICY**

The County Council hereby declares it to be the public policy of the County to:

1. Implement the Montgomery County housing policy and the general plan goal of providing for a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and family sizes;
2. Provide for low- and moderate-income housing to meet existing and anticipated future employment needs in the County;
3. Assure that moderately priced housing is dispersed within the County consistent with the general plan and area master plans;
4. Encourage the construction of moderately priced housing by allowing optional increases in density in order to reduce land costs and the costs of optional features that may be built into such moderately priced housing;
5. Require that all subdivisions of 35 or more dwelling units include a minimum number of moderately priced units of varying sizes with regard to family needs, and encourage subdivisions with fewer than 35 units to do the same;
6. Ensure that private developers constructing moderately priced dwelling units under this Chapter incur no loss or penalty as a result thereof, and have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus provision of Chapter 59 and, in certain zones, the optional development standards; and
7. Allow developers of residential units in qualified projects more flexibility to meet the broad objective of building housing that low- and moderate-income households can afford by letting a developer, under specified circumstances, comply with this Chapter by contributing to a County Housing Initiative Fund.

based on proximity to schools, parks, shopping centers, places of worship, highway access, or the Baltimore Orioles.<sup>12</sup> How do increased densities and reduced setbacks affect the notion of suitability? If minimum lot sizes have been reduced to allow affordable units to be built, we have redefined the notion of a suitable lot size. Reflective practitioners are undoubtedly aware that meanings change over time. By and large, this is a healthy process of feedback and evaluation. But in the absence of a firm starting point, it can be hard to measure the magnitude and the validity of the redefinition. Flexibility in allowing for changing notions of success lets the program evolve over time without being forced to scrap the law and start from scratch. As will be seen in the following chapter, there is inevitably a gap between the intended outcome and the implemented reality. By having a set of broad policy goals, unforeseen circumstances or the discovery of unintended loopholes that run counter to the original intent will not undermine the policy in its entirety. When specific provisions of the law are determined to have come into conflict with the stated goals, it is the specific rather than the general that is revised.

In addition to the explicit set of desired outcomes, the MPDU legislation has a set of implicitly desired outcomes as well. The explicit desired outcome is affordable housing. What is clear from the rhetoric and the framing of the issue is that in many instances the implicit goal is providing for-sale housing, not just any type of housing. Consider the eligibility criteria for MPDUs; points are given for residency. The rhetoric is even more enlightening in this regard. The policy was aimed at providing affordable housing for police officers, among others. Yet, in 1973, when the legislation was passed, police officers were still obligated to be county residents. The residency requirement was not dropped until 1974. There was greater concern that low-income residents were living in substandard housing than that those individuals were paying too much of their incomes for rent. The concern that households were paying too great a share of their incomes for housing was raised only with respect to the elderly on fixed incomes who were faced with rising housing costs as a result of the end of rent control. Other than that, the issue was not raised when passing the MPDU law. The implicit bias against rentals may stem from the notion of the “American Dream” of a single-family detached house with a white picket fence and well-manicured yard. It may also link back to the county’s view of itself from the 1950s and early 1960s when it legitimately was seen as a bedroom community for Washington, DC, rather than an employment center in its own right. It may very well be that this

implicit desire for homeownership also biased the policy development in favor of private provision of the affordable units: The government builds apartments, but the private sector builds houses.

## CONCLUSION

On its surface, the MPDU legislation is an amendment to the zoning laws of Montgomery County. Whereas Euclidian zoning has often been exclusionary, keeping out “racial minorities, lower-income residents, or additional population of any kind” (Mallach, 1984), the MPDU law and others like it are considered inclusionary zoning. Exclusionary zoning creates sets of allowable uses for a given piece of property. If the property is to be developed by right, no further intrusion by government is warranted. Under inclusionary zoning, however, development creates an entirely new obligation where none existed before. This is, in many ways, revolutionary.

At its core, the MPDU legislation is about housing provision, a function of government usually associated with the welfare state. Nevertheless, at the same time as it expands the obligations of the social contract, the legislation also divests government of responsibility for fulfilling that contract, choosing instead to place the onus on the private sector through regulation. Whereas prior to the MPDU legislation, the welfare state took responsibility for housing the very poor, Montgomery County, in passing the legislation, included moderate-income families among those deserving of housing assistance. Despite expanding the welfare state, the County did not seek to build those units itself.

We find an interesting paradox; while the county expanded its obligations, it also shifted the obligation to build affordable housing to the private sector. While inclusionary zoning is clearly a form of regulation, the MPDU legislation shares much with privatization. Defined as “the shifting of a function, either in whole or in part, from the private sector to the public sector,” privatization “involves the increased reliance on private actors and market forces to take over functions or responsibilities that had in recent decades come to be regarded as properly within the governmental sphere” (Feigenbaum et al., 1998). In this definition of privatization, time passes between the assumption of government responsibility and the shifting of the burden to the private sector. The MPDU law, in contrast, accepted the responsibility at the same moment that it shifted the burden of that responsibility.

The acceptance of responsibility is an outgrowth of the county's stated commitment to desegregation, as indicated by its fair housing law, and affordable housing for moderate-income workers. At the same time, the county recognized that the private sector was best suited to producing the necessary units. It is for those reasons that we find the county assuming responsibility for affordable housing as it mandates the private sector to provide it. An analysis of that commitment and regulation of the private sector over time follows in the next chapter.

#### NOTES

1 Of course, existing residents may choose to work in the newly created jobs, but assuming they already worked in the county, the vacancy created at the old job would have the same net effect of attracting a new resident as creating a new job.

2 County officials in support of the plan also argued that creating affordable units was important to allow young families, teachers, policemen, and county staffers to live where they work (Stout, Jared, 1969, A New Idea for Old Suburbia, *The Washington Post*, Washington, DC, pp. E1.). While this argument is nearly identical to those advanced by MPDU supporters in Montgomery County, the appeal to the business needs of Fairfax County seems to have carried more weight.

3 For example, if the state legislature granted municipalities the right to issue dog licenses, a town could decide that residents must obtain a license for all dogs weighing more than fifty pounds. It could not, however, require licenses for cats under the same power.

4 Mallach notes that socio-economic zoning rather than purely physical zoning oversteps the police powers was rejected outright in the Mount Laurel II decision: "It is nonsense to single out inclusionary zoning (providing a reasonable opportunity for the construction of lower income housing) and label it 'socio-economic' if that is meant to imply that other aspects of zoning are not. . . . Indeed practically any significant kind of zoning now used, has a substantial socio-economic impact, and in some cases, a socio-economic motivation. It would be ironic if inclusionary zoning to encourage the construction of lower income housing were ruled beyond the power of a municipality because it is 'socio-economic' when its need has arisen from the socio-economic zoning of the past that excluded it." (1983, *Southern Burlington County NAACP v. Township of Mount Laurel*. 456 A.2d, pp. 390.)

5 Brackets in the original.

6 The *Washington Post* reported on an officer who spent four years without success looking to buy a home in the county. He eventually found a townhome that was built after the county changed some zoning regulations to eliminate 6,000-square-foot minimum lot sizes in part of the county (Lippman, Thomas W., 1974, 17 New Houses in Montgomery: Last of Their Kind, *The Washington Post*, Washington, DC, pp. C1.). Only 17 units were built as a result of the zoning variance.

7 Note here the absence of reference to police officers. I explain the absence below, in the section on Co-opting Allies.

8 This legislative finding ties not only to the stabilization function but also to the regulatory function of government, whereby government intervention is called upon to correct market failures and negative externalities.

9 Franklin, et al. (1974) simply note that as a result of the end of the subsidy programs, “Compliance in Los Angeles was thus legally excused.”

10 There is a provision that allows a waiver in extraordinary circumstances that create “unusual practical difficulties or undue hardship to a developer” (Trombka, Aron, Faden, Michael, Healy, Sonya, Michaelson, Marlene, Wilson, Ralph et al., 2004. Strengthening the Moderately Prced Dwelling Unit Program: A 30 Year Review, Montgomery County Council, Rockville, MD.).

11 “Public good” is used in the philosophical rather than economic sense. The definition of public good in an economic context is considerably more circumscribed, in its purest form applicable only to things that are non-excludable and non-rival. While a door may not be a door when it’s ajar, as the old saw goes, a public good may not be a public good when it’s affordable housing.

12 Opposition to returning Major League Baseball to the nation’s capital is based on the claim of Peter Angelos, owner of the Baltimore Orioles, that relocating the Montreal Expos to Washington would infringe on his territorial rights.

## CHAPTER 4. IMPLEMENTATION AND EVOLUTION

**T**his chapter will trace the evolution of the MPDU program since its inception and track efforts by the county to maintain the goal of overseeing the development of affordable housing. In addition, it will measure the efficacy of the program using the set of policy goals incorporated into the enabling legislation. The key questions to be addressed in terms of the program's implementation are tied to the volume and durability of the units. In short, how many are there and how long are they in the program? Failure to deliver any units—as was the case through 1976—or units that expire shortly after construction—as until 1981—negates the possibility of asking more probing questions about what types of units have been built and where the units are. We must therefore turn first to efforts to provide MPDUs in light of the severe constraints on new development in the county during the 1970s.

### DELIVERING AFFORDABLE UNITS

In the ideal world, the MPDU legislation would have gone into effect and immediately created a large number of affordable units distributed evenly throughout the county. In such a world, there would also be no need to study the efficacy of the program or examine what elements are replicable in other places and what aspects are unique to the time and place.

In reality, over the first several years of the program, few affordable units were made available. This is due to grandfathering of previously approved subdivisions and a moratorium on sewer hookups that lasted through much of the 1970s. In fact, no affordable units were constructed in the first two years after the legislation's passage because subdivisions approved prior to 1974 were grandfathered in under the old zoning ordinance. An April 1974 report issued by the county, *Beyond the Mid-Million Mark*, described the extent of an affordability problem with no end in sight:

The problem extends to residents with annual incomes of \$20,000 who are unable to afford a home . . . the few available houses go to the highest bidder, who will probably need a \$30,000 income and at least \$15,000 for a down payment. (Gleason, 1974)

By the time the first MPDUs were delivered in 1976, affordability was an even greater concern.

The lack of affordable housing in Montgomery County in the mid-1970s was due to a combination of externally and internally imposed constraints. Successful implementation of the MPDU program would require minimizing internal constraints by balancing the tension between affordable housing and land use plans. It would also require vigilance to prevent solutions to externally imposed problems from undermining the MPDU program. In short, policymakers in a wide variety of government agencies would need to be mindful of the impact of their actions on the affordable housing silo.

### **DEALING WITH THE SEWER BACKUP**

The first major barrier to providing affordable units under the MPDU program was the moratorium on new sewer permits in the county. Dating back to 1972, well before the MPDU legislation went into effect, the sewer moratorium was applied to all hookups, not just extensions of the sewer lines. Development that took place while the moratorium was in effect was of three types. If it received sewer permits prior to the ban, it predated the MPDU law and was exempt from providing affordable units. If it was newly permitted under the WSSC's decision to grant builders up to 10 permits per year, the entire subdivision was unlikely to meet the threshold of 50 units which would have triggered the requirement to build MPDUs. The last way development took place in the county was on lots that did not require sewer hookups. Large lots that relied on wells and septic tanks could still be developed. These lot sizes were exempt from the MPDU regulation since no density bonuses could be offered.

In September 1974, the County Council took steps to alleviate the housing shortage by developing a plan to allow the construction of temporary treatment plants while waiting for the WSSC to bring oft-delayed sewer capacity on line at the Dickerson plant in the western part of the county, then scheduled for 1980. The plan allowed developers to build private plants that would serve several subdivisions. The plants built would have to comply with all Federal and state standards and would have access to only 40 percent of the total capacity. Of the 60 percent remaining, 20 percent would be given to the county to reduce overflow conditions at the existing Blue Plains treatment plant and the remaining 40 percent would be sold to the WSSC. The county also stipulated that 15 percent of the capacity be set aside for MPDUs (Bonner, 1974). Even as the county strove to solve



the general housing crisis, it did not lose sight of its commitment to providing affordable housing along with market-rate units.

In July 1975, the first two private sewage treatment plants were approved by the county. The two plants combined would treat 5.5 million gallons per day, enough to serve up to 8,000 single-family homes or 12,500 apartments. The plants were to be built by conglomerates of developers who would charge hookup fees of \$1,500 per single-family house and \$1,000 per apartment to cover the \$16 million projects (Green, 1975).

The EPA ultimately rejected the Dickerson plant in April 1976 (Gorney, 1976); by that time home prices in the county averaged \$73,000 (Sumichrast, 1976). With the rejection of the Dickerson plant by the EPA, the county's efforts to gain independence from the WSSC and the capacity constraints imposed by the shared infrastructure were denied. The sewer ban was lifted in June 1978, when sewage transmission problems were corrected by the WSSC effectively increasing the system's capacity. The capacity was further increased that summer, when one of the privately built treatment plants came on line (Willmann, 1972). In May 1979, however, the WSSC voted in a split decision to reinstate a sewer moratorium on the county applicable to new construction awaiting permits. The bi-county WSSC was split along county lines, with the three Prince George's commissioners approving the ban, with the Montgomery commissioners abstaining. At issue was Prince George's unused capacity. The system itself was not at capacity, but the unused capacity had been allocated to Prince George's County.

Even within Montgomery County, however, there was unused capacity. Undeveloped parcels were allocated sewer taps while still in the planning process even though they were not using any real capacity. The county estimated it had more than 11 million gallons of physically available flow capacity even as it bumped into a paper ceiling. To alleviate the problem of future sewer limits, the county changed the process of allocating capacity to a first come, first served system. The procedural change allowed the development of approximately 14,000 new residential units without adding any physical capacity. The county estimated that the change in the system would allow for 8–10 years of development. By then, it was assumed, the physical capacity of the system would be augmented with additional treatment plants and sludge processing (Grubisich, 1979; Prager, 1979).<sup>1</sup> In response to the county's actions to end the sewer moratorium, the Suburban Maryland Homebuilders Association

noted that the change could help lower land prices that had been inflated by the ban. Lowering the cost of land and removing a significant barrier to development can translate into lower home prices, as indicated by County Executive Gilchrist: “(Creating) competition in the marketplace . . . should help produce available housing in every price range” (Prager, 1979).

## **AFFORDING AFFORDABLE HOMES**

While dealing with the broader challenge of delivering any type of housing in the county as a result of the sewer moratorium, an unanticipated question arose. The county was forced to face the question of affordability within the MPDU program. The first housing development to be built under the new law was Montgomery Village, which went on sale in 1976. Of the 93 units designated affordable under the MPDU requirement, only 65 went to moderate-income families. The rest were sold to the general public after the families who were eligible for the units were unable to secure mortgages (Reid, 1977). What is to be done about affordable housing that income-qualified program participants cannot afford?

In response to losing nearly one-third of the affordable units to the market, rather than lower the price of the units, the county raised the maximum income limits. Part of the impetus for raising the income limits rather than decrease the prices was due to the developers’ need to meet their costs of construction. Another reason was the lack of innovative financing mechanisms in place. Whereas today homes can be bought for a token down payment or even nothing down, in the 1970s, a 25 percent down payment was required. (A 33 percent down payment could save 25 basis points on a loan. But while that would reduce the ongoing mortgage payments, it demanded an even greater payment up front.) Therefore, even families that were income qualified with respect to eligibility and would have been more than able to make their mortgage payments were ultimately excluded from homeownership because of the difficulties in making the down payment. In the absence of alternative financing mechanisms offered by the private sector and the constitutional constraints on pricing units below cost, the county had no alternative but to change the eligibility criteria.

Unit prices and income limits have risen over time to reflect changing costs, building codes, and incomes. Over time, however, the gap between the median price for market rate units and the maximum price of affordable units has grown consistently larger. In 1976, the first year affordable

units were available, the median home price in the county was about \$50,000. Affordable units ranged in price from \$15,700 for an efficiency in a garden apartment to \$44,400 for a five-bedroom house (Reid, 1977). By comparison, the median home price in the county today is over \$320,000, with the median price for new single-family detached homes in excess of \$590,000. New townhouses have a median price of \$367,000. New three-bedroom MPDU townhomes sold last August and September for between \$89,000 and \$109,000, roughly 25–30 percent of market rate housing prices (Montgomery County Department of Park and Planning, 2004a).

One of the key factors in the rising cost of affordable units was the rising cost of land in the county. The sewer moratorium (described below) drove up land prices by limiting the supply of developable land. Because the county allocated sewer permits early in the planning process, when the WSSC imposed its ban on new connections, there were a large number of developable tracts that would be ready to built upon as soon as the moratorium was lifted. One developer expected land prices to drop by as much as 25 percent once the ban was lifted.

Citing an experience of his own, Mitchell said he was offered a group of quarter-acre lots with sewer hookups in Bethesda at \$50,000 each last year (1978). “Then they called me back this year and said, ‘We’ve got an offer from someone else, but we wanted to give you an opportunity. We’ll take \$70,000.’” (Grubisich, 1979)

Given that the cost of land is one of the factors in the formula used by the county to set affordable housing prices, the increase in prices should come as little surprise.

In 1979, the county developed a loan program that reduced the cost of borrowing, making homeownership possible for households who were unlikely to qualify for market-rate loan programs. The program was run by the HOC and offered mortgages 3 percent below the market. To pay for the \$50 million pool, the county issued bonds through its general borrowing authority. Although buyers who did not put 25 percent down were still subject to paying private mortgage insurance, the discounted mortgage went a long way to increasing affordability (Willmann, 1979). Eligibility for the mortgages was separate from MPDU eligibility, but the income qualifications for each were quite similar. It is not known how many MPDU purchasers used the program to obtain mortgages.

In 1980, the MPDU law was modified to include the cost of financing when calculating the income limits for the program. Rising interest rates meant that most of the eligible households on

the county's waiting list would not have met the criteria set out by the mortgage lenders. In addition, the law was modified to remove a linkage between MPDU limits and the Section 8 very low-income limits. Before the MPDU law was amended, the MPDU limits were not allowed to exceed 2 times the Section 8 limit (1980a). By severing the connection, the county was free to adjust the MPDU criteria to maximize the number of eligible families who could take advantage of the opportunities created by the MPDU law. Obviously, there is a tradeoff in raising the income limits. On one hand, it increases the program's placement rate, as the majority of participants would meet lenders' criteria. On the other hand, it has the potential to create a gap between programs if households earn too much for Section 8 and too little to buy an MPDU. It should be noted, however, that MPDU rental units would remain a possibility for program participants who could not secure mortgages. In the first years of the program, only about 20 percent of the units were rentals (Montgomery County Department of Park and Planning, 2004b).

## **SHARING THE COSTS**

Every set of regulations has costs and benefits associated with it. Some of the benefits accrue to society at large in ways that are not easily quantifiable. Other benefits accrue in very quantifiable ways, primarily to the moderate-income households who are able to buy or rent the MPDUs. The costs of providing the units is potentially distributed across the land owners, developers, and buyers of subdivisions with MPDUs. The costs are passed along in several ways. Homebuyers in new subdivisions with MPDUs may be paying slightly more per acre, as they are consuming less land at a fixed price. The majority of the costs, however, are borne by developers in the form of forgone profits on units that would have sold at market rates but must be sold at a fixed price well below market, assuming the cost per unit is the same irrespective of price. In practice, this is not the case, as the zoning ordinance allows attached housing in detached subdivisions. MPDU cost per unit tends to be much less due to smaller size and lower levels of finish. This also assumes the density bonus renders the land beneath the MPDUs effectively free. Where the density bonus cannot be claimed, however, the cost of providing the MPDUs shifts to buyers of market rate units as follows: Assume the land is priced to allow X by-right units. If the site does not allow for additional density,

only 0.875X market-rate units can be provided. Assuming the cost of MPDU construction equals the sales price, the cost of the land beneath the MPDUs must be realized elsewhere.

Since 1982, only 8 percent of the MPDUs constructed were single-family detached (SFD) homes.<sup>2</sup> There is no consistency to the pattern of SFD construction. The two strongest years were 1987 and 1986, with 58 and 59, respectively, but since then production slipped into the single digits. The absence of SFDs should not come as a surprise. Montgomery County's land use regulations allow townhouse or other attached units to be built in areas zoned for detached housing. Depending on the zoning, up to 60 percent of the units in a detached subdivision may be built as attached. Part of the purpose of the flexibility in the zoning is to accommodate the density bonuses that come with the MPDUs. A side benefit for the purchasers is a lower maintenance cost. Developers have taken advantage of the flexibility by building multifamily housing in a shell that looks like a single family home. These buildings are architecturally similar to their neighbors and hide the fact that more than one family is in residence by placing entrance doors to the individual units on separate sides of the structure. Nevertheless, even with clever architecture and flexible zoning, developers do not always use their density bonus.

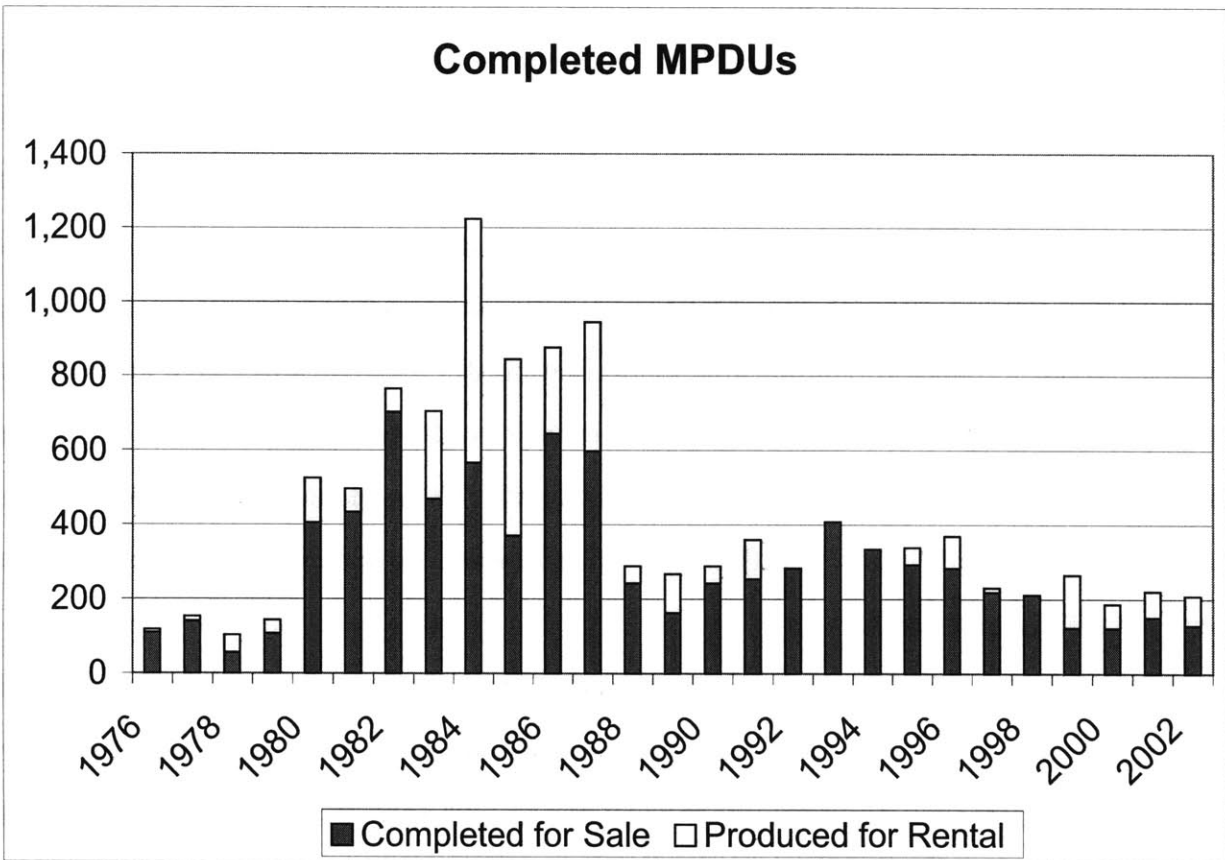
In practice, the development community was split over who bore the cost. According to one major developer, "Theoretically, yes, there is no land cost, but what happens frequently is that the site won't allow for the full density bonus and you end up with fewer market-rate units. And that costs." Another large developer disagreed, saying "We have not passed on the cost to any of the other units. . . . We do make a profit on the units. It's not the same as it would be on a single-family home, but we sell four of them instead of one" (Swallow, 1984).

Concern over the limited ability to make use of the density bonus led developers to lobby the county for a reduction in the number of MPDUs required. In 1981, the County Council approved a change in the law to cut the MPDU share of the total to 12.5 percent, down from the original 15 percent. In 1988, the law was modified again to link increased levels of density to increased numbers of MPDUs.

As currently enacted, the requirement to build 12.5 percent affordable units exists even before a density bonus is calculated. The density bonus kicks in once 12.5 percent affordability has been reached. The density bonus allows additional 1 percent market rate units for every tenth of a

percent affordable unit produced in the development. The density bonus increments in 1 percent/0.1 percent steps up to 14.5 percent, which corresponds to a 20 percent density bonus. To reach a full 22 percent bonus, 15 percent of the units must be MPDUs (1988). In many cases where no density bonus is claimed, site constraints prevent developing the site to greater densities. Another explanation

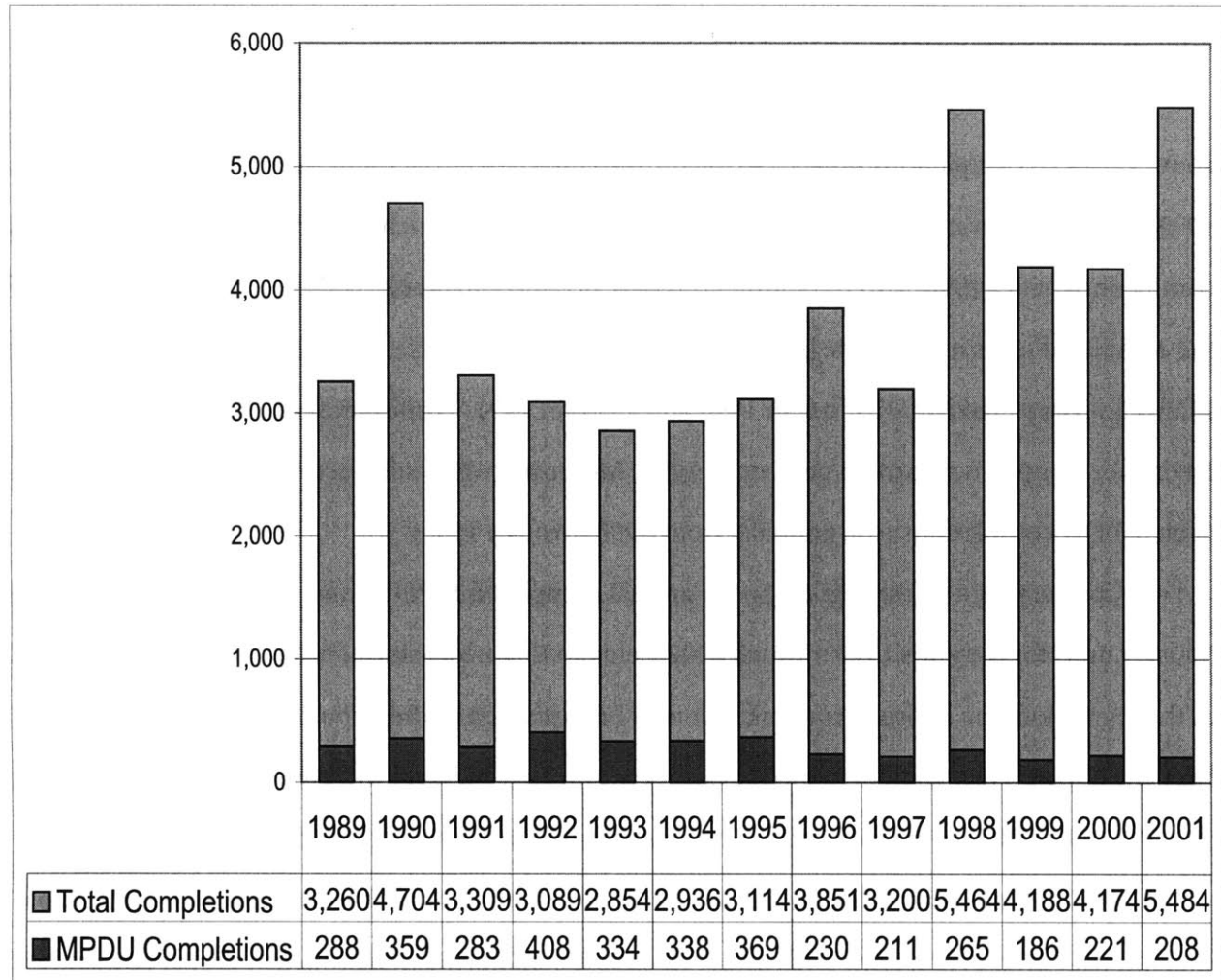
*Chart 1: Completed MPDUs, 1976–2004*



Source: Montgomery County Department of Park and Planning

offered for the large number of developments without any density bonuses is developers' desires for larger lots and a certain feel to their communities. Developers who do provide MPDUs but do not claim a density bonus are able to get a seven-year property-tax break (Larsen, 2004). An analysis by the Department of Park and Planning revealed that in just over half the site plans approved since 1989, a density bonus of less than 5 percent was achieved. On the other hand, in roughly a quarter of the cases, the full 22 percent bonus was attained (Trombka et al., 2004). Given the concerns at the time the law was passed that the new regulations would be considered taking, it is surprising to find that so few developers take advantage of the density bonus, although the property-tax break may explain part of the reason.

Chart 2: Completed Housing Units in Montgomery County



Source: Montgomery County Department of Park and Planning

## UNIT DELIVERY

As indicated in chart (1), the delivery of affordable units has been decidedly inconsistent over time. When market-rate housing is not being built, affordable units are not likely to be constructed. We should not expect a constant and regular delivery of MPDUs unless the market is equally steady in its delivery of new units. The end of the sewer moratorium is quite obvious, as the number of MPDUs delivered tripled between 1979 and 1980. Assuming away any regulatory constraints on development, the cyclicity of the real estate market should affect the delivery of new homes. Because demand for MPDUs is not directly affected by real estate cycles, the MPDU requirement has been used by developers to keep construction workers busy during slow periods by building the MPDUs while the market lags. The evidence for using MPDUs to pick up slack makes sense on

its face and is supported by anecdotal evidence (Larsen, 2004), but the data on completed housing units are somewhat mixed.

To wit, during the recession and weak real estate market of the early 1990s (see chart (2), above), MPDU completions ranged between 7.6 and 8.8 percent of total county completions. From 1993 to 1996, however, MPDUs ranged from 11.5 percent to as much as 14.3 percent of the county's completions. Since 1996, MPDU completions have declined markedly, falling as low as 3.8 percent of the completed units in 2002, the last year for which data is available. On the other hand, the annual change in completed MPDUs rose in 1990 and again in 1991. While completions of MPDUs fell in 1992, they jumped a record 44 percent in 1993. Moreover, when subtracting rental units from the data, MPDU completions rose annually from 1990 through 1993.

Conducting a linear regression on annual completed MPDUs and annual total completed housing units for the years 1990 through 2002 yields an R-square value of just 0.2. The negative slope of the regression line is also surprising, but may be explained as the opposite of what we have seen happens during a lag. High demand for homes means that builders will produce market rate units rather than MPDUs, as margins on market rate units are much higher. While there is a limit to how long a developer can wait before building the mandatory MPDUs—MPDUs must be built before or along with market rate units and “must reasonably coincide with the construction of market rate units” according to the Montgomery County Code—we can reasonably expect that the flexibility within the legislation may explain the low R-square value.

## **EQUAL DISTRIBUTION**

The MPDU legislation relies on the private sector to provide affordable units. Reasonable fluctuation of delivery over time is expected given changing market forces. The low correlation between total completion and MPDU completions indicates that the market is not providing affordable units in a predictable manner; high levels of market-rate activity do not translate into additional affordable units being provided.<sup>3</sup> Moreover continuing pressure to build new units may also mean large numbers of units have been built in parts of the county not subject to MPDU construction. Areas not supplied with municipal sewer coverage are not able to support high densities. In 1999, up to half of the new SFDs were built in parts of the county that may not have required MPDUs due to large lot zoning.



In addition, there is evidence that as the developable parts of the county have been getting built out, fewer subdivisions have met the 50-unit threshold above which MPDUs are mandatory. In response to the shrinking size of subdivisions, the county changed the threshold size above which MPDUs must be built to 35 units. The county made this change in 2002.

Development in areas of the county not subject to MPDU provision is not a new phenomenon, however. A 1974 zoning decision to maintain large lots (5+ acres) in most parts of the county's periphery effectively priced out "blacks, young couples, and anyone making under \$25,000 a year [telling them] to stay in their apartments or move out of the county" (Conley, 1974). Thirty years later, the county is still grappling with the competing policy goals of dispersing affordable housing throughout the county and the land use goals of low-density residential wedges:

Applying the MPDU law would generate a modest increase in MPDU production and advance the objective of dispersing affordable housing to all geographic areas of the county. However, building an MPDU on a one- or two-acre lot that is both economically viable and compatible with surrounding development may be difficult to achieve. (Trombka et al., 2004)

The county's recently completed study of the MPDU law included a recommendation that the requirement be extended to areas of the county where the approved master plan includes an extension of the sewer system. Sewer access will allow cluster-type development that is sufficiently dense to allow MPDUs that meet the dual criteria of economic viability and compatibility with adjacent uses.

## **AVENEL**

Avenel is a master-planned community in Potomac that hosts the Kemper Open, an annual professional golf tournament. The community was designed around the existing golf course and features extensive landscaping and communal amenities. It has a total of 805 homes, of which, by law 107 would be MPDUs. After discussions with the county, the requirement was lowered to 60 units. In mid-1990, the developer proposed a \$4 million payment to the county in lieu of building the MPDUs. The money would have gone towards a low-income rental apartment development in downtown Bethesda. That complex would have had 90–110 units in it; it also would have been very close to shops, offices, and transportation. The \$4 million buyout offer was the first significant test

of the 1988 change to the MPDU legislation that gave the county leeway in approving alternative means of meeting the MPDU requirement.

The developer's offer moved the potentially conflicting goals of equal distribution, affordability, and unit maximization from the realm of the hypothetical into actuality. On one hand, much of Potomac is zoned with large lots that are exempt from the MPDU law. As such, very few MPDU units have been built there. Avenel provided an opportunity to get a greater distribution of units across the county. Critics of the proposal charged that if the county accepted the offer, it would become clear "a transparent double standard . . . exists in the application' of the county's affordable housing policy. If no moderately priced housing is built in the Potomac development, residents [along Columbia Pike, in the southeastern part of the county], "will be justifiably livid and will press for the abolition of a county program riddled with inconsistency if not outright favoritism" (Mariano and Kaiman, 1990). On the other hand, the lack of transportation near Avenel and the opportunity to provide more units in a better location than if the homes were built in Avenel was appealing to many members of the County Council. The county executive acknowledged the dilemma noting that the MPDU law intended to prevent ghettos of high-income and low-income residents but at the same time might also increase low-income residents' feeling of isolation (Mariano, 1991).

One of the reasons the buyout was considered was the high community fee in Avenel. Just as the first units delivered under the MPDU program were no longer affordable to many eligible families because of financing difficulties, there was real concern that community fees of \$170 per month would be too much for the program's participants. The fees were roughly equal to one-third of the mortgage payments, assuming a \$60,000 loan at 10 percent. Moreover, the community fees would rise over time while the mortgage was fixed.

In the end, despite a recognition that the opportunity to provide more units in Bethesda was very appealing, the county was worried about setting a bad precedent in allowing high priced communities to be exempt from locating MPDUs on site. The county's director of the Department of Housing and Community Development felt "putting the units in Bethesda rather than Avenel was a good idea and that the objections 'were all based on . . . appearances, rather than substance' and what appeared to be the 'unfairness . . . of a wealthy developer in Potomac being able to buy his way out'" (Mariano, 1991). Even though the benefits might have been greater in had the units been

built in Bethesda, concern about the long-term effects of opening a potential loophole outweighed the particulars of the Avenel case.

Since the MPDU law was changed in 1988, the buyout option has been approved by the county 19 times, with nine of those times coming since 2000. In most cases, the high cost of development was a key factor in allowing the buyout. Most buyouts included a smaller number of units (usually half the requirement) with a disproportionate mix of smaller units in addition to the cash payments. There has been no consistency in the prices paid per unit. In some cases, the developers have paid the county their cost of the undeveloped land. The price per units has ranged from \$14,000 to as much as \$100,000 (Trombka et al., 2004). The high development costs are due to the fact that these buildings are all high-rise apartments. As more development takes place in denser parts of the county, the question of handling high development costs becomes pressing. A proposal currently sits before the County Council to allow building heights to be raised to accommodate the required number of MPDUs (2003).

## **SPATIAL DISTRIBUTION OF MPDUS**

Issues raised by opponents of allowing Avenel to avoid MPDUs cuts to the heart of the distribution question. Many parts of the county, particularly inside the Beltway, were mostly built out before the MPDU legislation went into effect. Other parts of the county have been designated for low-density development and have likewise been excluded. Even within the areas of the county potentially eligible for new MPDU construction, there are no assurances that the distribution of units will be equal. MPDU development follows market-rate construction. If the market does not perceive an opportunity or value in developing in certain sections of the county, no MPDUs will be built there, regardless of the demand for affordable housing there. In a market where the gap between market rate and affordable units were much smaller, one could potentially argue that areas with less development are more likely to be affordable, but in Montgomery County, we have already seen evidence that few to no for-sale units on the market meet the criteria for affordability.

With this in mind, we now turn to look at the actual distribution of units over the past 30 years. The results of the mapping of all MPDU units can be found in Map (1). (For details on the methodologies used to map the MPDUs, see Appendix II.) Most of the units ever built under the

program are located in and around Germantown and Gaithersburg. Those units make up 48.4 percent of all units ever built and 52.8 percent of the current units. There are also significant concentrations of units in the eastern part of the county along Columbia Pike (whose residents voiced strong opposition to allowing the Avenel buyout, above) and mid-county, nestled between Bethesda and Rockville. There are no units in the western, rural part of the county. Most of the land in the rural parts of the county is excluded from participation in the MPDU requirements, as it is not connected to county water and sewer and is zoned for one-acre lots and above.

In the recent study reviewing the MPDU program that the county conducted, they found that there were MPDUs in every planning area in the county. The relative absence of MPDUs in Silver Spring is accounted for by the fact that it was

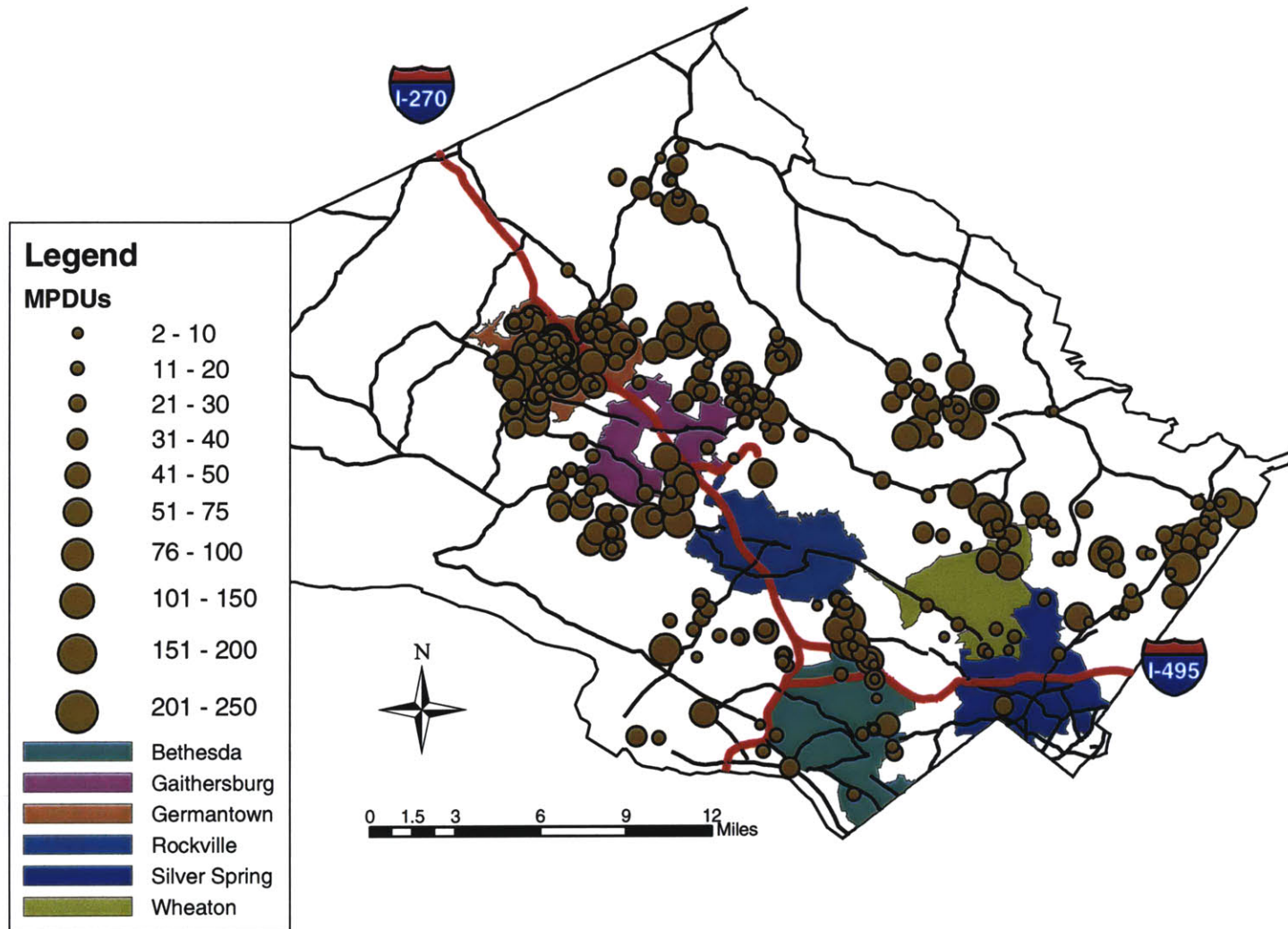
mostly built out before the MPDU law was enacted. . . . Nonetheless, these [Silver Spring and Wheaton] and other areas host significant supplies of naturally occurring market rate affordable housing. These and other areas also host subsidized affordable housing provided by the Housing Opportunities Commission and other non-profit organizations. (Trombka et al., 2004).

Only ten MPDUs were ever built in Silver Spring/Takoma Park, and they have already passed out of the program. As indicated above, the comparison between MPDUs and HOC units with regard to employment access will be one measure of the MPDU program's success. The prevalence of HOC units in areas with large employment bases sets a high standard for access for the MPDUs. The comparative analysis may be found below.

In 1980 (see Map (2)),<sup>4</sup> most of the units were in zip code 20886, which corresponds to the Montgomery Village part of Gaithersburg. That zip code contained 441 MPDUs, more than four times as many as second place 20879, which is also in Gaithersburg. As indicated on the 1980 map, several other zip codes had a handful of MPDUs, but there were almost no units inside the Beltway or west of I-270. The concentration of units in Gaithersburg translates into a below average distribution in most of the county's zip codes.

By 1985 (see Map (3)), the greatest concentration had shifted to the west of I-270, to Germantown (zip code 20874). A second significant concentration sprung up in zip code 20904, located in the Silver Spring–Colesville corridor. Many of the initial units in Montgomery Village had passed out of the control period by 1985, which explains the net decrease in units in Gaithersburg.

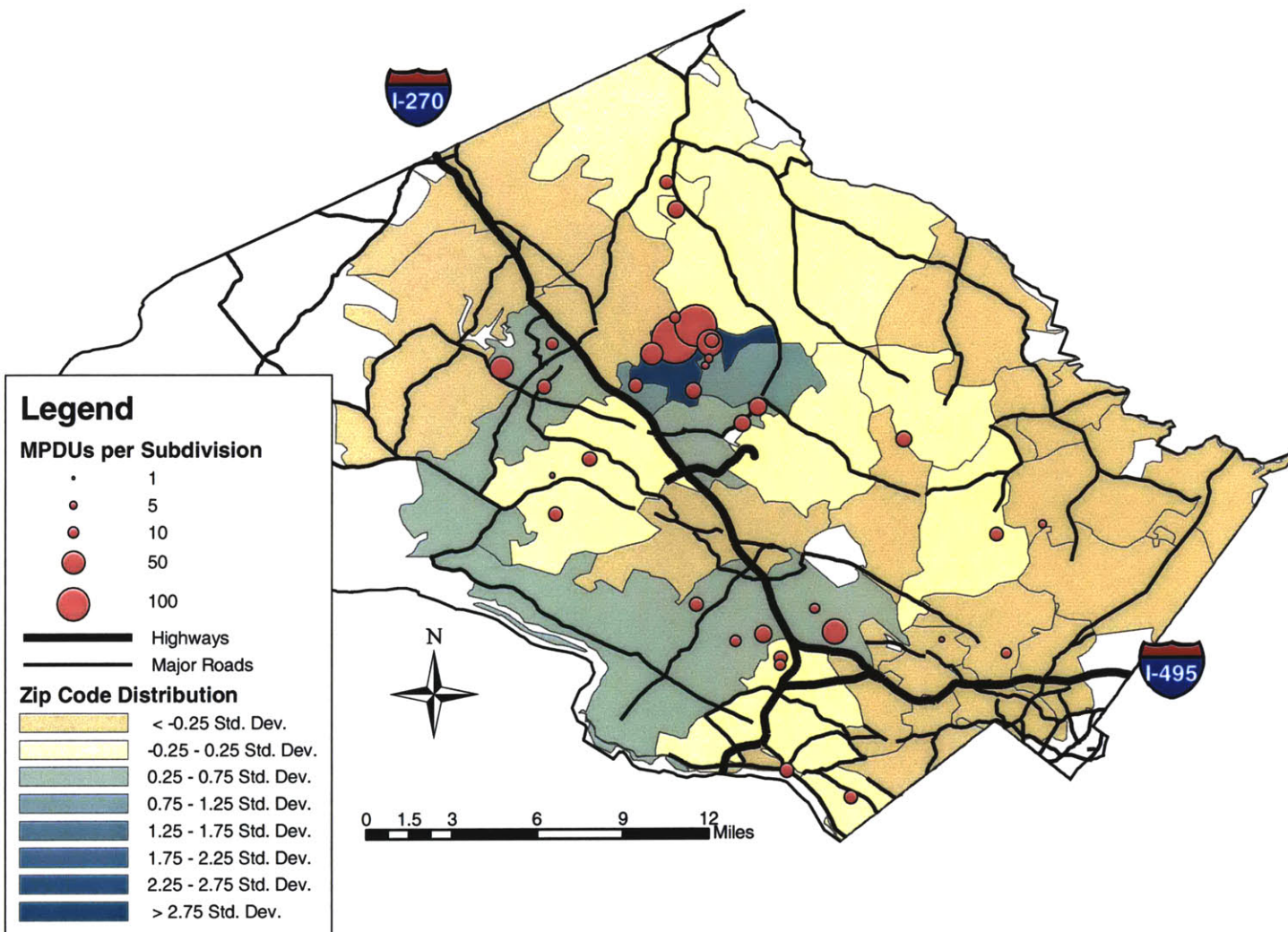
# All MPDUs by Units per Subdivision



Source: Andrew Jakobovics, based on data from US Census and Montgomery County



# 1980 MPDUs by Units per Subdivision and Zip Code

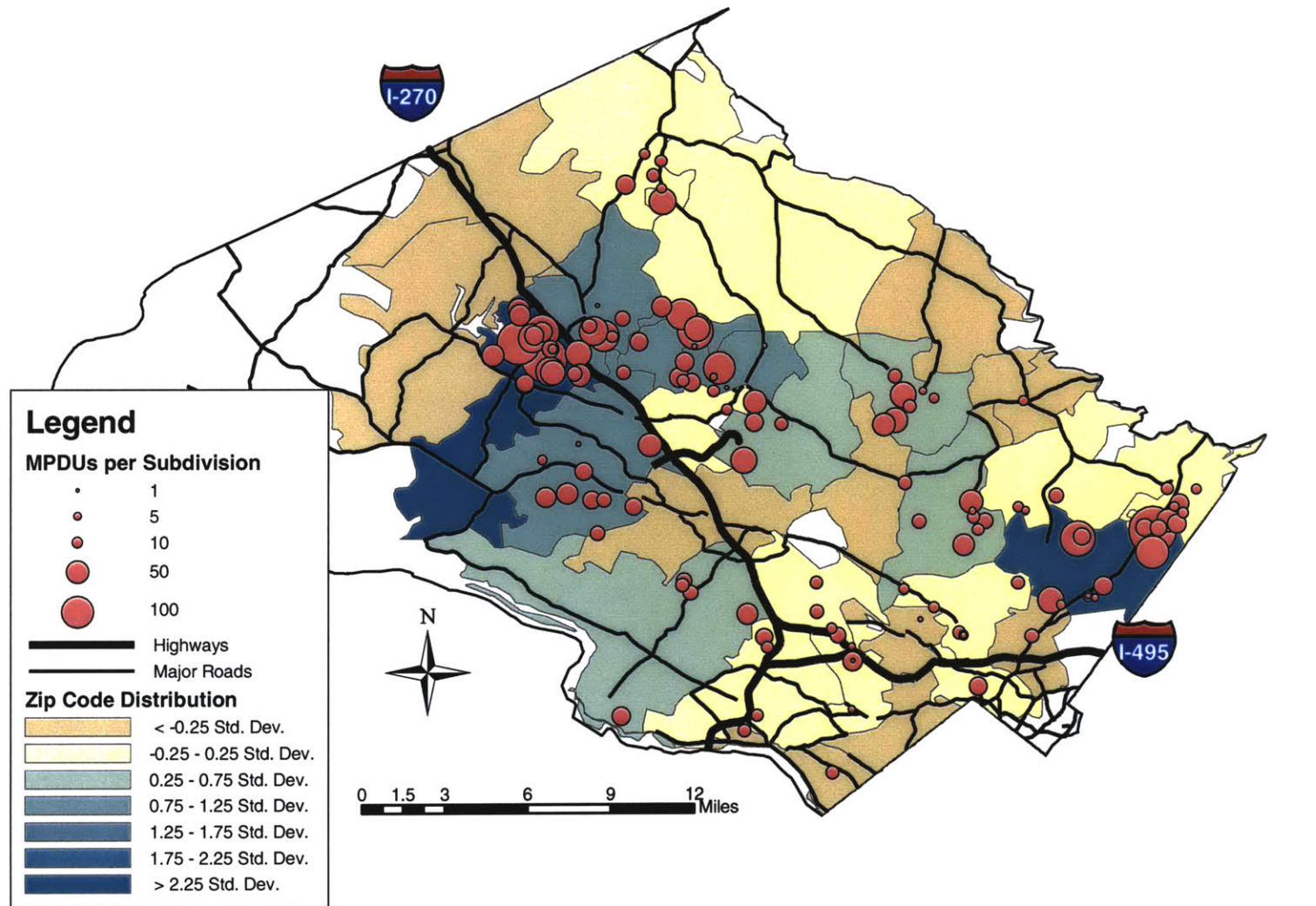


Source: Andrew Jakabovics, based on data from US Census and Montgomery County





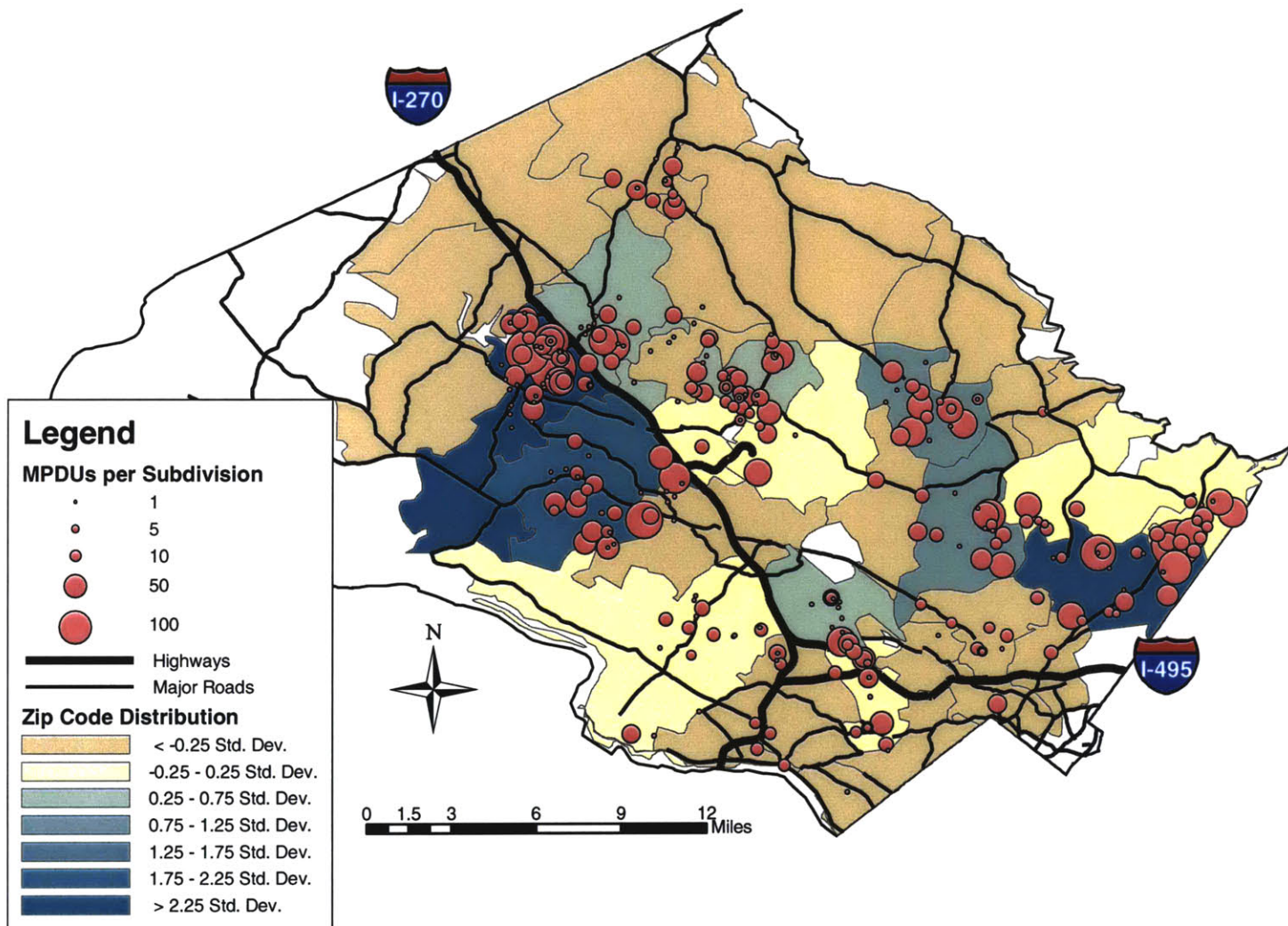
# 1985 MPDUs by Units per Subdivision and Zip Code



Source: Andrew Jakobovics, based on data from US Census and Montgomery County



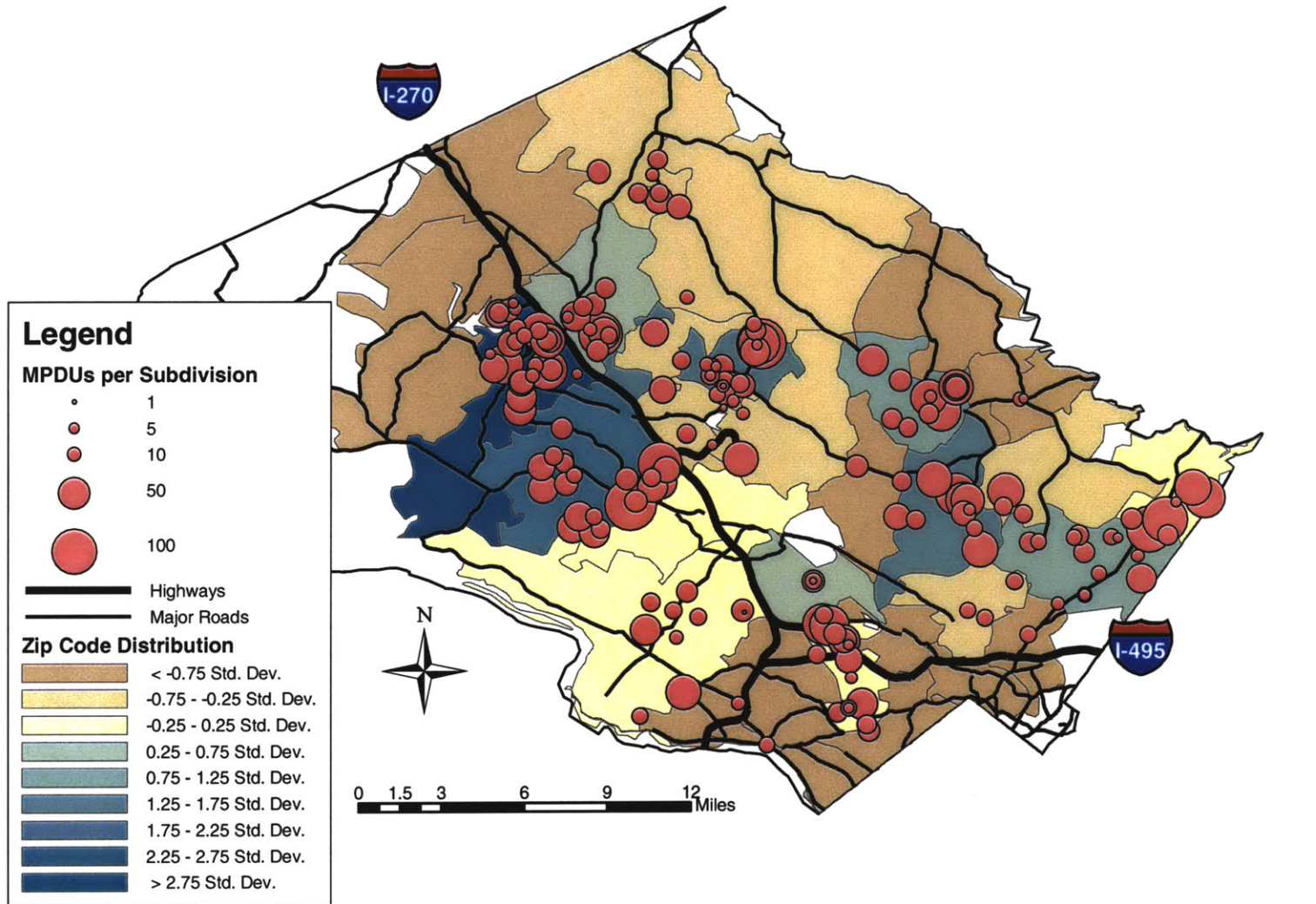
# 1990 MPDUs by Units per Subdivision and Zip Code



Source: Andrew Jakobovics, based on data from US Census and Montgomery County



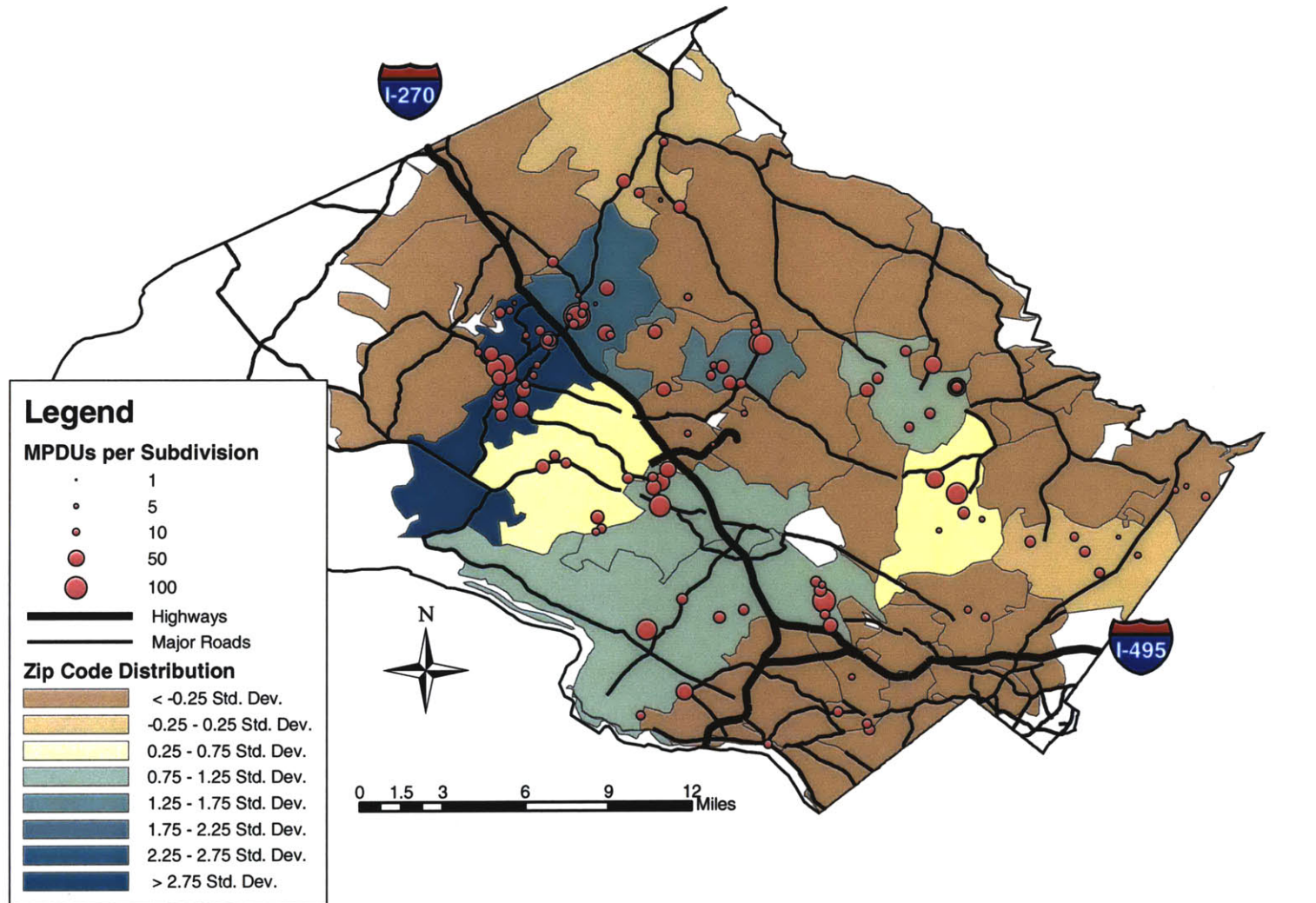
# 1995 MPDUs by Units per Subdivision and Zip Code



Source: Andrew Jakabovics, based on data from US Census and Montgomery County



# 2000 MPDUs by Units per Subdivision and Zip Code

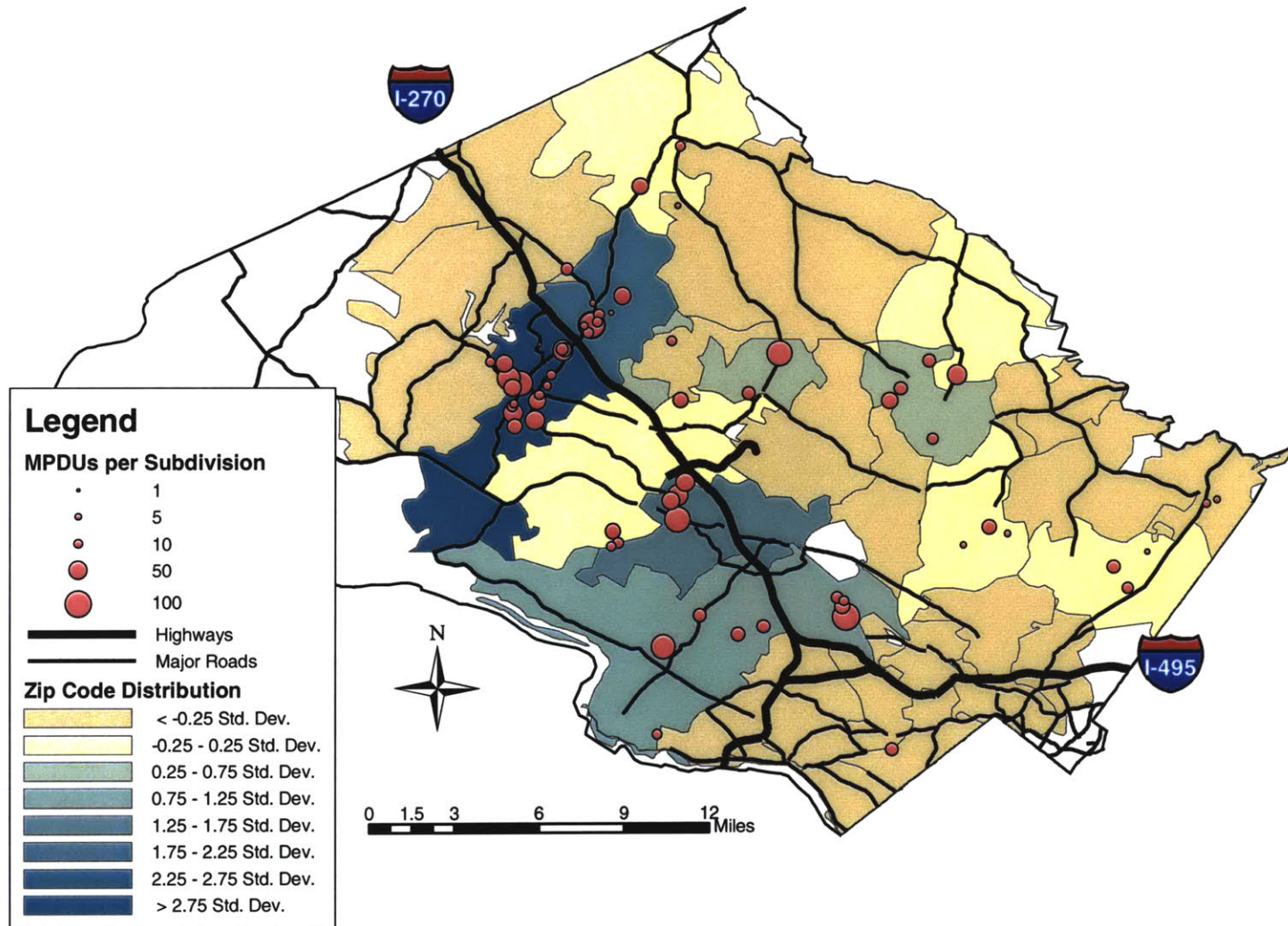


Source: Andrew Jakobovics, based on data from US Census and Montgomery County





# 2004 MPDUs by Units per Subdivision and Zip Code



Source: Andrew Jakobovics, based on data from US Census and Montgomery County



Gaithersburg still contained more MPDUs than average, but the 232 units in 20886 represented less than one standard deviation above the mean number of MPDUs per zip code.

Most noticeable in the 1990 map (see Map (4)) is the proliferation of many subdivisions with a small number of MPDUs. In 1990, the median number of MPDUs per subdivision was only 18. The mean was 29, indicating a right-skewed distribution with several very large subdivisions and a preponderance of smaller subdivisions. As in 1985, the areas of greatest concentration were west of I-270 and along the Silver Spring–Colesville corridor. Despite a cluster of new subdivisions near Damascus, in the northeastern part of the county, the northern and far eastern parts of the county had fewer than average units. Olney, in the middle of the eastern part of the county, had a concentration of MPDUs about one standard deviation above the mean.

The county reached its peak number of controlled units in 1992 with 6,016 MPDUs. By 1995, however, the number had fallen by nearly one-quarter to 4,650. Note that Montgomery Village (20886), in which the first MPDUs were built, had fallen more than one-half of a standard deviation below the county mean by 1995. (See Map (5).) Germantown continued to have the greatest concentration of units (802) of any zip code, but it, too, was down about 33 percent from 1990. 1995 had the most equal distribution of units out of the six years examined; only four zip codes had more than one standard deviation of MPDUs above the mean.

By 2000 (see Map (6)) and 2004 (see Map (7)), the number of units had fallen precipitously. Germantown continued to have the greatest concentration of units, but almost no units remained inside the Beltway or in the eastern part of the county. In many ways, the map of MPDUs in 2004 is quite similar to the 1980 map. The distribution of units across the county may meet the policy goal of “assur[ing] that moderately priced housing is dispersed within the County consistent with the general plan and area master plans (1972),” but it is readily apparent that the current state of MPDUs falls short of the charge to “provide for low- and moderate-income housing to meet existing and anticipated future employment needs in the County (1972).”

Recognizing the limitations of the market to equitably distribute MPDUs, the county has used the housing fund and other incentives to encourage affordable housing development in areas with few MPDUs. It should be noted, however, that most of the HOC programs and projects are targeted at very low- and low-income households. There is little being done by the county outside

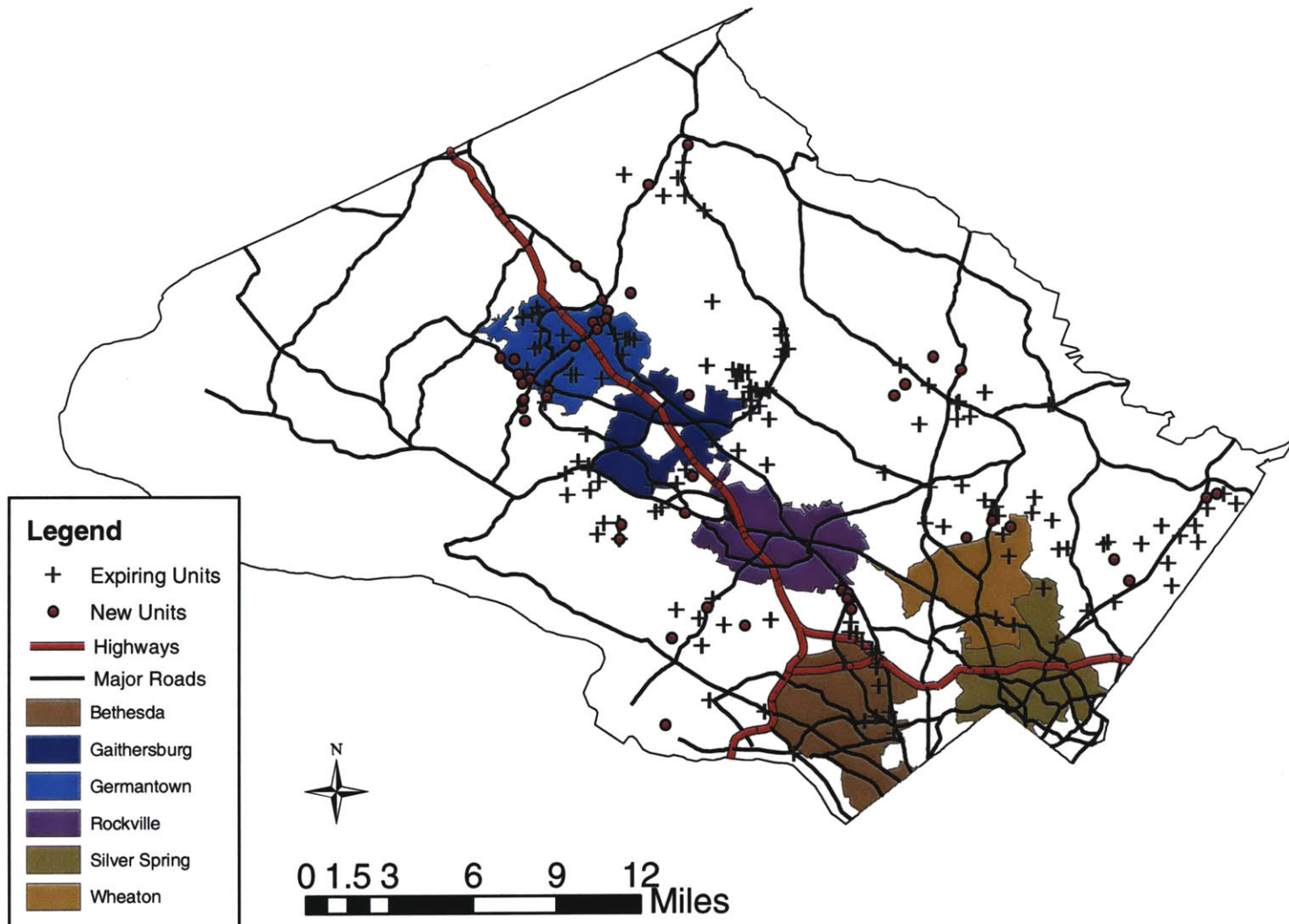
of the MPDU program that is targeted at moderate-income households. While the county may be putting all its proverbial eggs in one proverbial basket, it has been and continues to be vigilant about modifying the MPDU program to achieve the stated goals even as the county matures and begins to fill out.

## **CHECKING THE EXPIRATION DATE**

The relatively large number of rental MPDUs delivered in 1978 (47 out of a total of 102 units) was an indication of a potential loophole or at least shortcoming in the law. The initial legislation did not stipulate the tenure type of the MPDUs. What was happening was developers were building units that were the same as the market rate units in for-sale developments and calling them MPDUs. They intended to lease them out for five years in accordance with the MPDU control period. Once the control period would expire, the developers intended to offer the units for sale at the market price. Recognizing that adherence to the letter of the law certainly seemed to be a violation of its spirit, the county changed the MPDU ordinance to require that the percentage of MPDUs for sale in a development must not be less than the percentage of all units for sale (Trombka et al., 2004). The county moved surprisingly quickly to close the loophole. The rental units delivered some time in 1978 were permitted in 1977, and Bill 30-77, which closed the loophole, was introduced in October 1977 and went into effect in February of the following year. (A similar loophole was closed later in 1978 when the county required MPDU buyers to certify that the unit would be their primary home. Although the change did not outright ban renting units, it narrowed the conditions under which it could occur.)

Housing stock is durable, so a complete picture of the stock in any given year must include not only newly completed units (as in charts (1) and (2), above) but also those homes that are still controlled by the county. In the first years of the program, the control period was five years. Recognizing the rapid increase in sales prices in the county meant that MPDUs nearing the end of the control period would not be affordable once the controls expired, in 1981, the County Council doubled the control period from five years from the date of the first purchase to ten years for all MPDUs (1980b).

# MPDUs That Expired 1995-2004 with MPDUs Built Since 1995

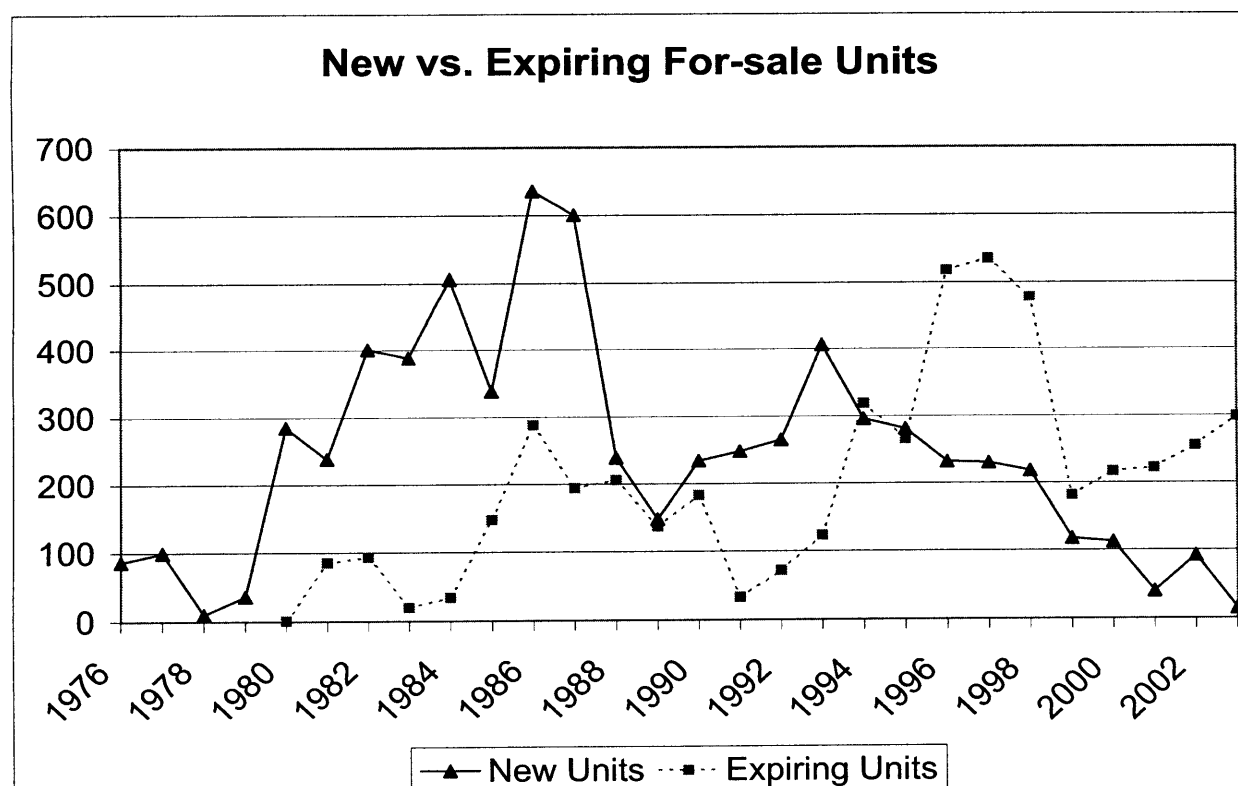




Even after the change went into effect, it took several years until all the MPDUs permitted under the old regulation were built. By the end of 1986, all the for-sale MPDUs being constructed had ten-year controls. Expiring units are not replaced at a one-to-one ratio, although there is no expectation that would be the case; MPDU production is tied to the general development environment in the county, and there is little reason to expect that the factors that encourage or discourage housing construction would remain constant over time. Nevertheless, between 1990 and 1998, the number of new units each year as a percentage of the total number of controlled units was very close to the percentage of new units expected if annual MPDU construction were held constant. Through 1993, the number of new owner-occupied MPDUs consistently exceeded the number of expiring units. Since 1996, however, production has lagged behind expiration. See chart (3) for a comparison of the numbers of for-sale units delivered and expiring in each year. (The data is taken from the county's MPDU database described in Appendix I.)

While the County rightly takes great pride in having delivered over 11,000 MPDUs over the past 30 years (as well as having done so at no direct expense to the taxpayers), there is considerable

Chart (3) New vs. Expiring For-sale Units, 1976–2002



Source: Author, based on data from Montgomery County MPDU Program

concern that the program's efficacy is decreasing as the county reaches build-out in the areas where MPDUs are required. Although the proposal in 1980 that led to a doubling of the control period from five to 10 years initially called for a 99-year control on both for-sale and rental units, it was felt at the time that that would have been too long.

The MPDU law was emended in 1988 to double the rental period from 10 to 20 years because the county felt that a 10-year control on rental units did not provide sufficient public benefit compared to the for-sale units. At 10 years, the control period on for-sale units remains the shortest in the nation; most common is a 30-year control period. (Cambridge, Massachusetts, controls its affordable units in perpetuity.) Extending the control period has the tautologically obvious benefit of delaying the expiration of the units. On the other hand, since homeownership is considered the greatest wealth-creation vehicle available to American households, constraining a household's ability to realize a profit limits the possibility of moderate-income families to build wealth. In 1988, along with the change in the rental control period, the county instituted a policy that would split windfall profits for the first sale of a unit after the end of the control period between the seller and the county.<sup>5</sup> This was seen as the best alternative to controlling prices in perpetuity, as it allowed MPDU owners to realize at least modest returns on their equity (MPDUs sold after the control period tend to be priced below the county's median sales price but do appreciate well above the initial sales price) rather than penalize them for participating in the MPDU program. The county's share of the profits would go into the Housing Initiative Fund (HIF). The HIF is a fund maintained by the county drawn down by the HOC and non-profits for building low-income (or potentially moderate-income) housing (Hankin, 1988; Trombka et al., 2004).

The 1988 change to the MPDU law also gave the HOC the right of first refusal at the end of the control period. Previously, it only could do so when the units first went up for sale. This change to the law may have the greatest impact. While privately owned units are subject to expiration, HOC units are effectively controlled in perpetuity. As fewer new units are built and existing units age out of their control periods, only the HOC units will remain. While the permanence of HOC units means the pool of affordable housing will at the very least plateau, if not grow as more MPDUs and HOC units are built, the HOC's target population is quite different from the moderate-income families benefiting from the MPDUs. Unless MPDUs remain in the system longer or a substantive



changes are made to the MPDU requirements (such as the proposal to obligate cluster developments in more rural parts of the county), the number of affordable units available to moderate-income households will shrink to nothingness.

## CONCLUSION

After the externally imposed constraints on building ended, the MPDU program demonstrated that inclusionary zoning was an efficacious method of providing affordable units at no direct cost to the county. The number of MPDUs under control increased annually through 1992 before beginning a dramatic decline. In many ways, the county is back where it started, insofar as new development is taking place that is not currently subject to MPDU regulation either because of location or because of excessive construction costs. A potentially dangerous trend with respect to moderate-income housing is the shift back towards public provision of affordable units as a result of HOC purchases of expiring units and funds from MPDU buyouts being used to build low-income units. Nevertheless, there is an indication that the entrepreneurialism that created the MPDU law and the allowed the county to modify it while remaining true to the original goals still exists in Montgomery County. A recurring theme in the recommendations offered by the the 30-year review of the program is a tighter relationship between land use plans and the need to continue producing MPDUs. Along those lines are the inclusion of areas with large-lot zoning scheduled to receive sewer service in the MPDU requirement and the loosening of height restrictions in denser areas to allow additional floors to make MPDUs economically feasible.

## NOTES

1 The story of the internecine battles between Montgomery and Prince George's Counties is quite interesting and continues for several more years with a battle over a sludge plant that ended up in Federal court. That, however, is even further removed from the affordable housing issue than the resolution of the short-term permitting crisis of the late 1970s.

2 See Appendix I for more information on the data set used in these calculations.

3 Insofar as the gap between affordability and market-rate units is very wide, additional supply provided does not lead to drops in price that are even remotely close to the magnitude needed to generate market-rate units that naturally meet the affordability criterion.

4 In all of the maps depicting the distribution of units within subdivisions and aggregated at the zip-code level, the western part of the county was not included in the calculation for standard deviation of units per zip code. Much of the western part of the county is classified as rural and has large-lot zoning that is not subject to MPDU regulation. Other unshaded parts of the county are zip codes where no MPDUs have ever been constructed. Those areas were either entirely built out by the time the MPDU law went into effect or new development in those areas never met the threshold number of units.

5 Windfall profits were calculated by taking the current MPDU sale price and adding capital improvements and broker's commission and subtracting that sum from the actual sales price. (1988, Moderately Priced Dwelling Units, Montgomery County Code. Montgomery County Council.)

## APPENDIX I: DATA SET

The Montgomery County Moderately Priced Dwelling Unit (MPDU) program is administered under the Division of Housing and Code Enforcement. It is responsible for monitoring the supply of affordable units controlled by the county and maintaining the list of applicants for the housing lotteries conducted for the individual units. Units built in compliance with the MPDU regulation are controlled for a period of ten years.<sup>1</sup> The MPDU division has provided me with a copy of their database of units. Since the program's inception, 11,482 units have been built. Of these, 8,109 were for sale and 3,373 were rental units. Slightly more than 1,900 units are currently controlled, as relatively few units have been built in the county in the last decade. The data set in my possession includes both currently controlled units and those units whose controls have expired.<sup>2</sup>

The data I have for the specific units includes date of offering, sale, and expiration of the controls. In addition, I have the exact address of each unit, including the subdivision, unit type, number of bedrooms, and purchase price. For a large number of units, most of which were constructed in the last decade, I have information on the buyer's race, single head of household status, residency in the county, and whether the buyer worked in the county at the time of the purchase.

In addition to the data on for-sale units, I have subdivision-level data for all the units including those built as rentals. Income limits for rental units are currently the same as those for the for-sale units. The populations targeted for both types of units therefore have some overlap. It should be noted that the management company on site handles the process of renting the units in compliance with county regulations. The county is not directly involved in the leasing process. The control period for rental units is currently 20 years, up from five years at the beginning and then ten years after 1981. The data I have for the units at the subdivision level comes from a separate county spreadsheet that includes location, number of units, year offered, and unit type.

The large database of units has only 68 rental units in it. Of this small sample of units, 39 (57.4 percent) are located in zip code 20874, which covers parts of Germantown and Darnestown. The distribution of rental units in the large database does not accurately reflect the location of rental

MPDUs in the county. Since the county does not actively participate in the leasing process, there is no need for it to maintain the same detailed data as for the for-sale units.

One percent of the homes in the database are rental units. There are rental MPDUs in high-rise buildings, but they are not included in the large database. Rental units tend to be smaller than for-sale units, as the MPDU regulations allow efficiencies and one-bedroom units in multifamily developments, whereas two-bedroom units are the smallest allowed in single-family developments. Because the sample of rental units is non-representative of the universe, I have excluded them from the unit-level analysis, leaving 6,795 owner-occupied units in the data set. The descriptive statistics below are limited to single-family construction (both attached and detached). This analysis does not, therefore, consider how the supply of affordable rental units, either with respect to numbers of units delivered or their size and type, has changed over the life of the program. The locations of the rental units are, however, included in the spatial analyses below, as those buildings are included in the subdivision spreadsheet provided by the county.

## APPENDIX II: MAPPING METHODOLOGY

To be able to analyze one of the stated goals of the MPDU program, “achieving geographic dispersion of affordable housing,” (Trombka, Faden et al. 2004) it is necessary to study the distribution of units across space. To do that effectively, I shifted data sources from the unit-level to the subdivision-level database.

The most prevalent way for people to identify a housing unit in space is to use its address. Mapping software, in this case ESRI’s ArcMap, does not natively store data by address. It uses the coordinate system of latitude and longitude. The process of converting street addresses to latitude and longitude is known as geocoding, and it requires constructing a database that has both map coordinates and streets. The street file I used to build my geocoding service is the TIGER line file for Montgomery County (U.S. Census Bureau 2002). Rather than create a record in the database for every address, the geocoding service has fields for the starting and ending points of each road segment (of which there are 35,290). Those points correspond to the first and last building number on each side of the street. If an address falls within the range indicated by the house numbers, it is matched proportionally along the length of the segment and given latitude and longitude coordinates that are used to map the address. For further accuracy, the zip code is also checked. The geocoding process has a certain degree of flexibility with regard to spelling and abbreviations, but there are always addresses that it cannot find. When this happens, the user has the option of manually matching the address to one of the addresses presented by the program as its best approximation.

There are two reasons why an address may not be matched to a high enough degree of certainty (usually a score of 80, but this may be raised or lowered depending on the sensitivity the user desires). It may not be able to find the address along the street or it may not find the street at all. When the program cannot find the address but can locate the street, it will present the user with all the road segments and allow the user to select the optimal segment. It is not uncommon for street numbers to be included for one side of the street but not the other. This creates a situation where an even number would be matched perfectly but an odd number would not be found. In these cases, I assumed that the numbering system followed the standard convention in the Washington area (among other places) with every block having 100 potential numbers and evens and odds spread

evenly along opposite sides of the street. Similarly, in cases where a number was slightly above or below a known range (*exemplia gratis*: 11405 Main Street cannot be found, but 11301–11399 Main Street appears), I matched the given address to the range that ends at the other side of the intersection. It is in cases where specific addresses cannot be found by streets are located that zip codes serve to limit the set of potential matches.<sup>3</sup>

There are two reasons a street may not be found in the database. First is due to a discrepancy in naming. The street may be present in the TIGER file, but its name may not match. For example, I-270 appears as Dwight D. Eisenhower Hwy. Likewise, East West Highway, the major traffic corridor linking Bethesda to Silver Spring, appears in the TIGER file as “E. West Hwy.” While the abbreviation may appear trivial, prefix direction and street name are two separate data fields. While we would parse “E. West” no differently than “East West,” the geocoding service tries to match “West” against the list of streets. Subordinate to the street name comes the prefix direction. Once the idiosyncrasies of the naming conventions are clarified, many of the addresses can be mapped.

The second reason an address may not be matched in the geocoding process is somewhat more difficult to reconcile: The street does not exist at all in the TIGER file. There is a remedy for this, but a small degree of accuracy is sacrificed. All major streets are in the TIGER file as are most older, minor streets. Absent, however, is a plurality of new streets in new subdivisions. Fortunately, ArcMap offers a workaround. It can assign coordinates to the intersection of two roads. While I could potentially locate the intersection of roads that appear in the TIGER file that is nearest to each of the several thousand MPDUs not automatically matched, the process would take a very, very long time. Instead of matching every unit from the MPDU database, I turned instead to the spreadsheet that contains the 303 subdivisions where MPDUs have been built. Admittedly, some small degree of accuracy was lost in the process relative to absolute mapping of the individual units, but if the closest I could come would be to have six houses in a row all mapped to a single nearby intersection, I have essentially lost nothing by analyzing distances at the subdivision level.

Matching the subdivisions to coordinates was a multistage process. First, I scanned the spreadsheet, which I only had in hard copy, into Excel using the MIT Department of Urban Studies and Planning’s Epson scanner with optical character recognition.<sup>4</sup> The spreadsheet contained 548 records, as separate phases in subdivisions with different offering years were recorded separately. Of

these records, 263 had entries for the field “ADC map coordinates.” These entries were names of streets without house numbers. Where possible, I used those streets to geocode. For the remaining entries, I entered data into that field based on the map coordinates provided in the list of subdivisions in the *Street Map Book’s* index (ADC 2003). In those cases, I used my judgment as to the best street name to enter. As it turns out, not all streets I selected appeared in the TIGER file, so in those instances, I resorted to using the aforementioned techniques to match the subdivisions to latitudinal and longitudinal coordinates.

The subdivision spreadsheet includes the offering year, number of for-sale and rental units, unit type, and planning area in addition to the subdivision name and map coordinates. In most cases, the planning area was left blank. Unit types for older units were also often excluded. To be able to map the location of MPDUs over time, I made several calculations based on the data. First, I added columns to the Excel spreadsheet that corresponded to the years 1976–2004. Based on the offering year, I calculated whether units in a given subdivision were in their control period for every year from the start of the program through the present. This database, unlike to unit-level database, does not tell me exactly when the units were offered. I only know the year. Since I am analyzing the MPDU stock on an annual basis, if a unit were controlled for any part of a year, it was counted for that year.<sup>5</sup> Therefore, MPDUs controlled for ten years will appear as controlled in 11 of the years. I then converted to the Excel spreadsheet into an Access database. This allowed me to build a query that would condense the 548 records into 303 subdivisions. By calculating the presence of MPDUs for each year for each record prior to running the summarizing query, I was able to account for changing numbers of MPDUs over time in each subdivision. Had I simply aggregated the total number of units before breaking the data out by year, I would not have been able to handle the phases accurately.

## NOTES

<sup>1</sup> The law was amended in 2001 to restart the control period if the unit is sold during the first ten years. Before then, the 10-year control period began with the date of the original sale.

<sup>2</sup> The data set does not include all 11,482 units, as not all units were successfully copied into the current database when the county migrated to Microsoft Access from a WANG database. Based on summary

documents from the county that indicate MPDU production per annum, I have calculated that the data set in my possession includes, for the years 1984-2000, over 90% of the universe of constructed units. A large number of units produced in the past few years are not yet in the database. I have a sense that some of the units produced may not have closed, and as such, they will not appear in the database.

<sup>3</sup> This presumes that the zip codes provided for the addresses in hand are correct. The retail database, described below, was not always as accurate. When mapping the location of malls, I often discounted the zip code and relied on the names of the two streets forming the intersection where the mall is located based on the list of shopping centers in the ADC *Street Map Book* (ADC (2003). Street Map Book: Montgomery County, Maryland. Alexandria, VA, ADC.).

<sup>4</sup> The Epson has since been replaced by a Fujitsu scanner with an automatic document feeder, which would have speeded up the process considerably. (Alas.)

<sup>5</sup> I recognize this is a departure from the temporal counting principle of *miktzat hayom k'kulo* (part of the day is like an entire day) found in Jewish legal texts. I justify the departure on the grounds that the principle is invoked to minimize the time something is prohibited. For example, the seven days of mourning end the morning of the seventh day, regardless of when the burial took place the first day (Maimonides, Moses *Hilkhos Avel* (Laws of the Mourner). Mishneh Torah. 7:3.). While one could argue that including any year of which the control is in place extends the calculation of the period in which a sale at the market rate is prohibited. I would counter that the purpose of the legislation is to extend rather than contract the supply of units moderate-income families can purchase. By excluding units from the count we increase the length of time those units are effectively prohibited to moderate-income households.



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## BIOGRAPHY

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