Agenda Item 5A
February 6, 2018
Action

MEMORANDUM

February 2, 2018

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst

SUBJECT: **Action:** Expedited Bill 36-17, Taxation – Development Impact Tax – Exemptions – Amendments

Government Operations and Fiscal Policy Committee recommendation (3-0): enact Bill with the following amendments:

1) Replace the phrase "If an approved development is amended to include additional dwellings...." to read "If development approved before October 22, 2015 is amended any time thereafter to include additional units." (Lines 10-11)
2) Add an additional provision as follows:
If the relevant preliminary subdivision plan was approved before January 1, 2008, Sections 52–41(g)(5) and 52–54(c) apply to building permit applications for the unbuilt portion of the development.
(Lines 16-18)
3) Replace "this Act took effect" in subsection (a) with "October 22, 2015", which was the date the Act took effect.

Introduction and Public Hearing

Expedited Bill 36-17, Taxation – Development Impact Tax – Exemptions - Amendments, sponsored by Lead Sponsor Councilmember Floreen, was introduced on October 31, 2017. The primary goal of Bill 36-17 is to reduce the tax burden on projects that provide at least 25% affordable housing. The Bill would allow a development that increases the number of dwelling units previously approved to take advantage of the development tax exemption for projects with 25% affordable housing. As proposed, a development that provides 25% affordable units by increasing the number of units in proposed development would qualify for the exemption.

A public hearing was held on December 5, 2017 at which a representative of the Sandy Spring Friend's House spoke in favor of the amendment. The Friend's House recently received a special exception amendment to increase the number of units on the property. The speaker indicated the fact that the number of units being increased distinguished it from other previously approved projects in the pipeline. A second speaker also supported the Bill but requested an amendment to exempt "some" previously approved development. A Government Operations and Fiscal Policy Committee worksession was held on January 18.

Background

There is a long legislative history on this topic. On December 6, 2011, Bill 39-11, Development Impact Tax – Exemptions, was introduced to exempt market-rate rental dwelling units in any development which included at least 25% affordable units from all impacts taxes. That Bill was brought to the Council with a recommendation to enact with expanding amendments from the GO Committee. There were signifiant concerns by the Council for the Bill's fiscal impact.[1] The Bill was tabled and expired without enactment on December 1, 2014.

On February 3, 2015 Bill 8-15, Development Impact Tax – Exemptions, was introduced with essentially the same purpose as Bill 39-11; however, the applicability section excluded some 21,000 dwelling units that had previously received approval. As enacted, the Bill was expanded to include all for sale AND rental units within its scope but the exclusion of previously approved projects was retained. It allowed projects with at least 25% affordable units that received a zoning benefit (an exclusion in the Bill as introduced) to also eliminate impact taxes. In enacting Bill 8-15, the Council rejected the idea of accomplishing the goal of increasing the number of affordable units by a grant program instead of a "tax expenditure".[2] It also rejected the idea of placing a cap on the "lost" impact taxes.

When enacting Bill 8-15, the Council considered and rejected the idea to allow older projects in the pipeline to get an impact tax exemptions for 25% affordable projects. The memorandum for Council action included the following concerning the exclusion of pipeline projects:

> **Should pipeline projects be excluded?**
>
> Reducing the number of potential projects that may earn an exemption is a means of reducing the fiscal impact of Bill 8-15. There are more than 21,000 multifamily units in the pipeline.[3] Dropping those projects that have preliminary plan or site plan from the proposed exemption evolved from the following narrative:
>
>> The intent of Bill 8-15 is to make the economics of affordable housing a little bit better. The fee relief would never fully make-up for lower rents. Projects that have paid for processing costs for preliminary plan or site plan approval do not need that extra boost.

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[1] The "cost" of the provision was then calculated as $80,000 in lost impact fees collected for each additional MPDU. The 2015 OMB study estimate the cost at $76,619 per additional affordable unit; in 2013, staff estimated that same cost to be $81,600 in Metro Station Policy Areas and $111,520 outside of those areas where multifamily construction is less likely.

[2] "Tax expenditures" are subsidies delivered through the tax code as deductions, exclusions, and other tax references. Tax expenditures reduce the amount of tax that households or corporations owe. To benefit from a tax expenditure, a taxpayer must undertake certain actions or meet certain criteria.

[3] 21,439 units in mixed use projects - May 2015 Planning Staff Pipeline Report. Even though the development pipeline has increased since then, only pre-2015 approved subdivisions may not get relief from impact taxes by providing 25% affordable units.

In 2013 staff estimated that in addition to the approved pipeline, there was zoning capacity for 55,000 multi-family dwelling units. The new zoning code significantly increased that potential by allowing commercial floor area to be used for residential purposes. There is a large pool of potential beneficiaries of Bill 8-15 even when projects with preliminary plan or site plan approval are excluded.

The Committee recommended retaining Bill 8-15's exclusion of projects in the development pipeline from the proposed impact tax exemption. [The Council agreed with the Committee recommendation.]

Bill 36-17 would allow some previously approved projects to get relief from the imposition of impact taxes. It would decrease the amount of money available for infrastructure necessary to support the new development but would increase the supply of affordable housing.

The amount and rate of growth in certain policy areas places significant demands on the County for provision of major highways to support and accommodate that growth. The Council has determined that imposing a tax that requires new development to pay its pro-rata share of the costs of the improvements necessitated by that development in conjunction with other public funds is a reasonable method of raising funds.

What was the estimated economic impact of Bill 8-15?

The Department of Finance estimate a tax loss of $48.6 as a worst case from Bill 8-15 as introduced. The Department also assumed that the impact would start in FY19. The Council approved Bill expanded the scope of the Bill from what was introduced.

What has happened since the enactment of Bill 8-15?

Since the enactment of Bill 8-15, one development was approved with 25% affordable units. The project is called Bradford's Landing. It is located on Norbeck Road east of Georgia Avenue, across from Leisure World. The project consists of 244 dwelling units (222 townhouses and 22 single family detached units) including 61 MPDUs. In the absence of Bill 8-15, impact taxes would have been $22,097 for single family market rate units and $18,080 for townhouse market rate units. The tax expenditure for the 31 MPDUs that are not required by law is $7.8 million in fore gone impact taxes (approximately $255,900 for each additional affordable unit).

The site plan application for a second project, Dowden's Station is scheduled for Planning Board consideration in the very near future. This is a 105 unit development with (84 townhouses and 21 single-family detached units) with 27 MPDUs. The tax expenditure for the 14 affordable units that are not required by law is $3.36 million in fore gone impact taxes (approximately $240,000 for each additional affordable unit).

According to DHCA, two projects are considering providing at least 25% MPDUs. (As new approval, these projects would be unaffected by Bill 36-17.) The total tax expenditure for these projects would be $26.8 million for the benefit of 190 additional affordable units (approximately $141,000 for each additional affordable unit).

The total currently anticipated tax expenditure from Bill 8-15 is $37.9 million for 235 additional MPDUs (approximately $161,300 for each additional affordable unit).

What is the known effect of Bill 36-17?

One project with an older subdivision approval was allowed more dwelling units under an amendment to their special exception. This is a senior housing project with 236 market rate dwelling units and 76 affordable units. The underlying special exception was amended to include these new units. Bill 36-17 would exempt this project from impact taxes. Under Bill 36-17 a little over $1.5 million would be forgiven in transportation impact taxes (approximately $39,500 for each additional affordable unit).[4]

As introduced, the exemption allowed by Bill 36-17 is very narrow in scope. There are very few previously approved subdivisions that could increase the allowed number of dwelling units without exceeding the density allowed by zoning.

What reduction in impact tax is anticipated by the approval of Bill 36-17?

The Department of Finance estimated that the enactment of Bill 36-17 would reduce expected impact tax receipts by approximately $12.4 million over the next 3 fiscal years ($4.1 million per year).

The Council has been collecting about $60 million per year in impact taxes. A reduction of $4.1 million per year would reduce those revenues by 6.8%.

The estimated impact of Bill 36-17 is very high, in staff's opinion. The exemption in Bill 36-17 only applies to the increase in the number of units from the prior approval, not the entire project. The Department of Finance estimated that 400 single-family units (those with the highest impact taxes) would take advantage of Bill 36-17. Single-family developments are very likely to be at their maximum density and would lack the ability to expand. The use of Bill 36-17 by multi-family units or senior housing projects would reduce the tax expenditure.

What revision was proposed by testimony?

One developer representative requested an expansion of Bill 36-17 to allow some (up to 500 units per year) of previously approved projects (before 2008) to take advantage of the exemption for providing at least 25% affordable units. Specifically, the additional exemption would be as follows:

> If the relevant preliminary subdivision plan was approved before January 1, 2008, Sections 52–41(g)(5) and 52–54(c) apply to building permit applications, up to a maximum of 500 dwelling units in any 12 month period, for the unbuilt portion of the development.

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[4] There is no school impact tax for senior housing. The Transportation is $4,017 per unit. A market rate non-age restricted low rise dwelling would be $33,996 per unit ($14,059 transportation and $19,937 school).

The Committee recommended this change to the Bill as introduced.

What would the effect be of expanding Bill 36-17 to allow up to 500 units per year to revise their older plans and being exempt from impact taxes by providing more affordable units?

One project (at Century Boulevard and Cloverleaf Center Drive in Germantown) is considering amending a prior approval to provide 25% MPDUs. This is a 488 unit project (243 high-rise, 28 low rise and 156 townhouses currently with 61 MPDUs). The MPDUs would double to a total of 122 MPDUs at a tax expenditure of $8.6 million (approximately $141,000 for each additional affordable unit).[5]

The Department of Finance has not given a fiscal impact of the expansion proposed by testimony. Staff can ask that question at the Committee's request. There are 2 limiting factors in the proposed amendment: 1) it only applies to the pre-2008 portion of the development pipeline (about 2,000 units of the 20,000 units currently excluded from the exemption provision) and; 2) there is a maximum number of units that could take advantage of the provision in any given year (500). The maximum allowed exemption could reduce impact tax revenue by about $12.5 million per year for 4 years, if every project with the potential to take advantage of this provision did so.[6]

The Council has been collecting about $60 million per year in impact taxes. A reduction of $12.5 million per year would reduce those revenues by $20.8%.

Should there be any revision to Bill 36-17 for clarification?

On October 22, 2015 the original exemption that Bill 36-17 is revising became effective. Developments approved before that date were not permitted use of the exemption as originally enacted. The Committee wanted to avoid confusion on which developments could use the new provision and when amendments could occur to the development. To that end, the Committee recommended replacing "this act took effect" with <u>October 22, 2015 in subsection</u> (a). and revising subsection (b) as follows:

> If [[an approved]] <u>a</u> development approved <u>before October 22, 2015</u> is amended <u>any time thereafter</u> to include additional dwelling units....

This packet contains:	Circle #
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Fiscal and Economic Impact statement	4
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[5] The exemption under the proposed amendment would apply to all market rate units in the project. The new exemption proposed in Bill 36-17 as introduced only applies to the increase number of dwelling units from the original approval.

[6] The reduced impact tax revenue would depend upon the location of the project and the dwelling unit type.

Expedited Bill No. 36-17
Concerning: Taxation – Development Impact Tax – Exemptions - Amendments
Revised: October 31, 2017 Draft No. 5
Introduced: October 31, 2017
Expires: May 1, 2019
Enacted: [date]
Executive: [date signed]
Effective: [date takes effect]
Sunset Date: None
Ch. [#], Laws of Mont. Co. [year]

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Floreen

AN EXPEDITED ACT to:
(1) amend the applicability provision of certain development impact taxes; and
(2) generally amend the law governing development impact taxes.

By amending
2015 Laws of Montgomery County, Chapter 37

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets**]**	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets**]]**	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 2 of Chapter 37 of the 2015 Laws of Montgomery County is amended as follows:

Sec. 2. Applicability.

(a) Except as provided in paragraph (b), County Code Section 52-41(g)(5), formerly 52-49(g)(5), and Section 52-54(c)(5), formerly 52-89(c)(5), both inserted by Section 1 of this Act, do not apply to any development which received preliminary subdivision plan approval or site plan approval (or a similar approval in a municipality) before this Act took effect.

(b) If an approved development is amended to include additional dwelling units and at least 25% of the additional dwelling units are exempt under paragraph (1), (2), (3), or (4) of Section 52-54(c), or any combination of them, then Section 52-41(g)(5) and Section 52-54(c)(5), apply to the additional units.

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on the date on which it becomes law.

Approved:

____

Roger Berliner, President, County Council Date

Approved:

____

Isiah Leggett, County Executive Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 36-17
Taxation – Development Impact Tax – Exemptions Applicability

DESCRIPTION: Expedited Bill 36-17 would reduce the tax burden on previously approved projects that provide additional dwelling units with at least 25% affordable housing in the addition. The reduced tax burden would only apply to the additional units.

PROBLEM: The current applicability provision for an impact tax exemption in current law does not allow a development that increases the number of dwelling units previously approved to take advantage of the development tax exemption for projects with 25% affordable housing.

GOALS AND OBJECTIVES: The primary goal of Bill 36-17 is to encourage the provision of affordable housing units beyond the percentage required by law. The objective is to reduce impact taxes on projects providing a significant percentage of affordable dwelling units.

COORDINATION: County Attorney's Office

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Jeff Zyontz, Senior Legislative Analyst, 240-777-7896

APPLICATION WITHIN MUNICIPALITIES: To be researched.

PENALTIES: None.

ROCKVILLE, MARYLAND

MEMORANDUM

December 4, 2017

TO: Roger Berliner, President, County Council

FROM: for Jennifer A. Hughes, Director, Office of Management and Budget
FOR Alexandre A. Espinosa, Director, Department of Finance

SUBJECT: FEIS for Expedited Bill 36-17, Taxation - Development Impact Tax - Exemptions - Amendments

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
David Platt, Department of Finance
Dennis Hetman, Department of Finance
Jennifer Nordin, Office of Management and Budget
Felicia Zhang, Office of Management and Budget

Fiscal Impact Statement
BILL 36-17
Taxation – Development Impact Tax – Exemptions - Amendments

1. Bill Summary

   Bill 36-17 reduces the impact tax burden on previously approved development projects that provide additional affordable dwelling units and meet the 25% affordable housing requirement through the additional units. The reduced tax burden applies only to the additional units.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

   The Department of Finance estimates a reduction in impact tax revenues by $12.4 million over a three-year period (FY19-FY21) (See Economic Impact Statement).

   There are no estimated expenditures.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

	FY18	FY19	FY20	FY21	FY22	FY23
Impact Tax Revenues	$0	-$4,133,000	-$4,133,000	-$4,133,000	TBD*	TBD*
Expenditures	$0	$0	$0	$0	$0	$0

   *Department of Finance estimates are not available for FY22-23.

4. An actuarial analysis through the entire amortization period for each bill/regulation that would affect retiree pension or group insurance costs.

   Not applicable.

5. Later actions that may affect future revenue and expenditures if the bill/regulation authorizes future spending.

   Not applicable.

6. An estimate of the staff time needed to implement the bill/regulation.

   Not applicable.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

   Not applicable.

8. An estimate of costs when an additional appropriation is needed.
Not applicable.

9. A description of any variable that could affect revenue and cost estimates.
Not applicable.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.
Not applicable.

11. If a Bill is likely to have no fiscal impact, why that is the case.
See #2.

12. Other fiscal impacts or comments.
Not applicable.

13. The following contributed to and concurred with this analysis:
Barb Suter, DPS
Tim Goetzinger, DHCA
Jennifer Nordin, OMB

JAHughes
Jennifer A. Hughes, Director
Office of Management and Budget

12/4/17
Date

Economic Impact Statement
Bill 36-17 Taxation - Development Impact Tax – Exemptions - Amendments

Background:

Expedited Bill 36-17 would reduce the tax burden on previously approved projects that provide additional dwelling units with at least 25% affordable housing in the addition. The reduced tax burden would only apply to the additional units. The current applicability provision for an impact tax exemption in current law does not allow a development that increases the number of dwelling units previously approved to take advantage of the development tax exemption for projects with 25% affordable housing. The primary goal of Bill 36-17 is to encourage the provision of affordable housing units beyond the percentage required by law. The objective is to reduce impact taxes on projects providing a significant percentage of affordable dwelling units.

1. The sources of information, assumptions, and methodologies used.

- Department of Finance, School and Transportation Impact Tax forecasting model
- Department of Housing and Community Affairs
- Montgomery County Park and Planning Rental Housing Study with RKG Associates Inc., August 2016

2. A description of any variable that could affect the economic impact estimates.

The primary variable affecting economic impact estimates is amendments for approved developments that are adding units. The bill would not apply to developments in which the total number of units is unchanged, but instead the Bill requires that the percentage of moderately priced dwelling units (MPDUs) is increased from the regular requirement (12.5% to 15%) to 25%. According to the Department of Housing and Community Affairs (DHCA), the types of developments most likely to seek the exemption would be single-family detached or single-family attached developments in yellow or green policy areas, because these types of units have the highest impact taxes. The impact tax requirement for a market-rate unit in such a development would be around $45,000. Because many large developments in these areas including Clarksburg Town Center, Clarksburg Village, and Cabin Branch have already been approved over the past several years and are partly or mostly built out, the expectation is that the additional units qualifying for the impact tax exemption under this bill will be limited.

Using current data provided by DHCA, 400 additional units are likely to be added in total over a three-year time horizon. Yellow and green policy areas have less density than the orange and red areas however they are larger geographically and are expected to have a greater incentive to take advantage of the proposed exemptions given their higher impact tax rates. An average combined school and transportation impact tax across the four main dwelling types likely to be affected (including single-family detached, single-family attached, multifamily low rise, and multifamily high rise) is approximately $31,000 per unit.

Economic Impact Statement
Bill 36-17 Taxation - Development Impact Tax – Exemptions - Amendments

3. **The Bill's positive or negative effect, if any on employment, spending, savings, investment, incomes, and property values in the County.**

   By qualifying for the bill's proposed exemption, the estimated 400 additional units would reduce revenues to the County by roughly $12.4 million in combined school and transportation impact taxes over the three-year time horizon. The estimated reduction in impact taxes would directly impact spending for Montgomery County Public Schools and capital improvement infrastructure projects as they equally divide a 50 percent share of the total annual impact tax collections.

   A recent study completed by the State of New York[1] indicates that the primary economic benefit of additional affordable housing occurs during the construction period of the properties. During this phase, affordable housing development produces direct job opportunities for construction workers and spinoff jobs from indirect and induced spending, stimulating the local and regional economies. Upon completion, affordable housing projects help stabilize distressed neighborhoods, drive local retail spending, and support permanent jobs to service residents and operate and maintain the housing developments. Given the legislation only applies to current inventory of previously approved projects, there is minimal expectation for additional construction as a result.

   The primary positive economic effects that additional affordable housing could have on employment, spending, savings, investment, incomes, or property values are expected to be minimal as the bill is not designed to encourage supplementary infrastructure construction. The County would need to find additional sources of revenue or cut expenditures to match dollar-for-dollar the estimated $12.4 million-dollar reduction in impact tax revenues for schools and capital improvement projects likely to result from this bill over a three-year time horizon.

4. **If a Bill is likely to have no economic impact, why is that the case?**

   See number 3.

5. **The following contributed to or concurred with this analysis:**

   David Platt, Dennis Hetman, and Robert Hagedoorn, Finance.

FOR Alexandre A. Espinosa, Director
Department of Finance

12/4/17
Date

- [1] New York State Association for Affordable Housing, "Economic Impacts of Affordable Housing on New York State's Economy" HR&A Advisors, Inc. February 10, 2017

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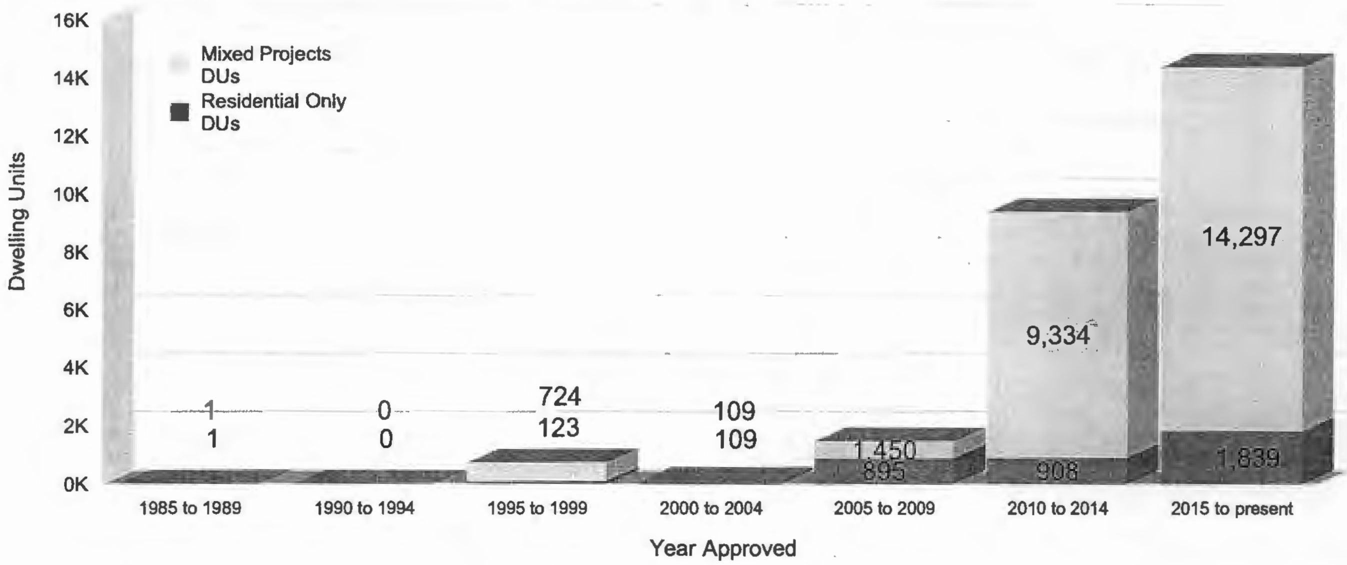
September 2017 Pipeline*

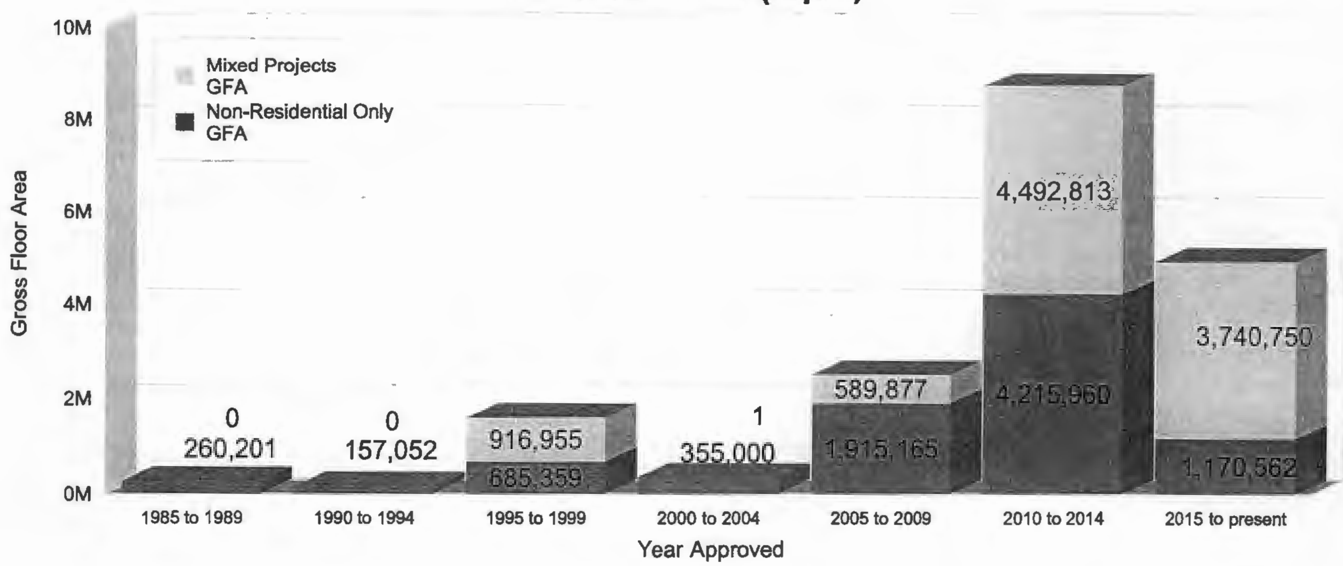
	# of Plans	Residential Unbuilt DUs	Mixed Unbuilt DUs	NonResidental Unbuilt GFA	Mixed Unbuilt GFA
1985 to 1989	3	1	0	260201	0
1990 to 1994	1	0	0	157052	0
1995 to 1999	21	123	601	685359	916955
2000 to 2004	32	109	0	355000	1
2005 to 2009	127	895	555	1915165	589877
2010 to 2014	106	908	8426	4215960	4492813
2015 to present	113	1839	12458	1170562	3740750
Total	403	3875	22040	8759299	9740396

Mixed developments contain residential DUs and non-residential GFA

Residential (dus)



Non-Residential (sq.ft.)



* does not include Laytonsville, Poolesville, Rockville or Gaithersburg Pipeline data
Source: Montgomery County Planning, Information Technology and Innovation Division