COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2016, Legislative Day No. 17

Bill No. 73-16

Councilmembers Almond & Marks

By the County Council, October 3, 2016

A BILL
ENTITLED

AN ACT concerning
Open Space

FOR the purpose of repealing the requirements for the provision of local open space and the authorization to pay a fee in lieu of providing such open space, and enacting new requirements; defining terms; requiring a minimum amount of open space to be provided in a residential development; authorizing the location of open space on-site or off-site; specifying the calculation and use of a fee to be paid in lieu of providing on-site or off-site open space, if neither can be provided feasibly; providing for a fee structure to be established and reviewed at certain times; providing for the adoption of the fees on a periodic basis; providing for the time of payment of the fees; requiring an annual report on the amount of open space provided, the fees collected, the projects funded with the fees, and the use of the fees; requiring the Open Space Manual to be updated; providing for the application of the Act; and generally relating to open space.

EXPLANATION:
CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
Strike-out indicates matter stricken from bill.
Underlining indicates amendments to bill.
BY repealing Sections 32-1-101(e) and 32-4-101(cc) and 32-4-411 Article 32 - Planning, Zoning, and Subdivision Control Baltimore County Code 2015

BY repealing Section 32-6-108 Article 32 - Planning, Zoning, and Subdivision Control Title 6 - Adequate Public Facilities Baltimore County Code 2015

BY adding Section 32-4-101 (cc) Article 32 - Planning, Zoning, and Subdivision Control Title 4 – Development Baltimore County Code 2015

BY adding Section 32-6-108 Article 32 – Planning, Zoning and Subdivision Control Title 6 – Adequate Public Facilities Baltimore County Code 2015

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Sections 32-1-101(e) and 32-4-101(cc) and 32-4-411 of Article 32 of the Baltimore County Code be and they are hereby repealed.
SECTION 2. AND BE IT FURTHER ENACTED, that Section 32-6-108 of Article 32, Title 6 of the Baltimore County Code be and it is hereby repealed.

SECTION 3. AND BE IT FURTHER ENACTED, that Section 32-4-101(cc) be and it is hereby added to Article 32, Title 4 of the Baltimore County Code, to read as follows:

§32-4-101. DEFINITIONS.

(cc) “OPEN SPACE” HAS THE MEANING STATED IN SECTION 32-6-108(A) (5).

SECTION 4. AND BE IT FURTHER ENACTED, that Section 32-6-108 be and it is hereby added to Article 32, Title 6 of the Baltimore County Code, to read as follows:

§32-6-108. OPEN SPACE.

(A) DEFINITIONS.

(1) IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “AMENITY” MEANS AN OUTDOOR SPACE A FEATURE, EQUIPMENT, FACILITY, INSTALLATION, OR STRUCTURE THAT CONTRIBUTES TO THE ENJOYMENT OF AREA RESIDENTS AND VISITORS. THE TERM INCLUDES ACTIVE OUTDOOR USES SUCH AS A PLAYGROUND, DOG PARK, PLAZA, PUTTING GREEN, COMMUNITY GARDEN, A PERGOLA THAT PROVIDES SHADE, OR COMMUNITY PIER, AND INDOOR USES SUCH AS A POOL, TENNIS COURT, INDOOR PLAYING FIELD, GYM, EXERCISE TRACK, LOUNGE AREA, OR GAME ROOM. AND THE TERM ALSO INCLUDES OTHER USES LISTED IN THE BALTIMORE COUNTY OPEN SPACE MANUAL.

(3) “ENVIRONMENTALLY CONSTRAINED AREA” INCLUDES:

(I) A CRITICAL AREA BUFFER, FOREST AND STREAM BUFFER, FOREST
CONSERVATION EASEMENT, WILDLIFE HABITAT, FLOODPLAIN, AND WETLAND; AND

(II) A STORMWATER MANAGEMENT AREA.

(4) “OFF SITE” MEANS PROPERTY OWNED OR CONTROLLED BY:

(I) BALTIMORE COUNTY, THE STATE OF MARYLAND, OR THE UNITED STATES;

(II) THE BALTIMORE COUNTY PUBLIC SCHOOL SYSTEM;

(III) A HOMEOWNERS ASSOCIATION OR CONDOMINIUM ASSOCIATION ESTABLISHED AND MAINTAINED IN ACCORDANCE WITH STATE LAW;

(IV) NEIGHBORSPACE OF BALTIMORE COUNTY, INC.; OR

(V) A REGISTERED 501(C)(3) ORGANIZATION.

(5) “OPEN SPACE” MEANS A PARCEL OR PARCELS OF LAND THAT IS AN A MINIMUM AVERAGE OF 75 FEET WIDE OR HAS AN AVERAGE GRADE OF NO MORE THAN 15 PERCENT, EXCEPT THE MINIMUM WIDTH AND MAXIMUM GRADE IS NOT REQUIRED IN ORDER TO ACCOMMODATE GREENSWAYS THAT WILL ALLOW CONNECTIVITY IN AND THROUGHOUT THE GREATER TOWSON AREA; AND

(I) IS UNIMPROVED; OR

(II) CONTAINS ONE OR MORE AMENITIES.

(6) “OPEN SPACE” MAY INCLUDE AN ENVIRONMENTALLY CONSTRAINED AREA.

(7) “RESIDENTIAL DEVELOPMENT UNIT” MEANS:

(I) ONE SINGLE-FAMILY DETACHED, SEMI-DETACHED AND DUPLEX DWELLING;
(II) ONE SINGLE-FAMILY ATTACHED DWELLING;

(III) ONE MULTI-FAMILY, RENTED OR OWNED, UNIT; OR

(IV) ONE STUDENT DORMITORY UNIT, FOR PURPOSES OF THIS DEFINITION, WITH EVERY FOUR BEDS IN A STUDENT DORMITORY BUILDING EQUALS EQUAL TO ONE STUDENT DORMITORY UNIT; OR

(V) HOUSING FOR THE ELDERLY UNIT.

(B) SCOPE.

(1) THIS SECTION APPLIES ONLY TO RESIDENTIAL DEVELOPMENT, INCLUDING A MIXED USE PROJECT AND A TRANSIT ORIENTED DEVELOPMENT.

(2) THIS SECTION DOES NOT APPLY TO A MINOR SUBDIVISION.

(C) MINIMUM REQUIREMENT.

(1) AN APPLICANT SHALL PROVIDE A MINIMUM OF 1000 SQUARE FEET OF OPEN SPACE PER RESIDENTIAL DWELLING UNIT.

(2) IN A C.T., D.T., OR C.C.C. DISTRICT AND A R.A.E. ZONE, AN APPLICANT SHALL MEET THE OPEN SPACE REQUIREMENTS IN THE BALTIMORE COUNTY ZONING REGULATIONS, AND THE OPEN SPACE PROVIDED SHALL BE DEDUCTED FROM THE REQUIREMENT OF THIS SECTION.

(D) USEABLE OPEN SPACE.

THE DIRECTORS OF RECREATION AND PARKS AND PERMITS, APPROVALS AND INSPECTIONS SHALL DETERMINE THAT AN ENVIRONMENTALLY
CONSTRAINED AREA, A RESIDENTIAL TRANSITION AREA, OR AN AREA ENCUMBERED BY AN ENVIRONMENTAL, STORMWATER MANAGEMENT, OR STORM DRAIN UTILITY EASEMENT QUALIFIES AS OPEN SPACE IF IT IS IMPROVED WITH TRAILS OR OTHER AMENITIES THAT MEET THE OPEN SPACE REQUIREMENT OF SUBSECTION (C), AND IF THEY DETERMINE THAT THE AMENITIES ARE PART OF THE OVERALL DESIGN OF THE OPEN SPACE AND RECREATIONAL SYSTEM AND THE AREA OR EASEMENT MAY BE SAFELY USED FOR PUBLIC PROVIDES USEABLE OPEN SPACE.

(E) LOCATION OF OPEN SPACE.

(1) THE APPLICANT SHALL MEET THE OPEN SPACE REQUIREMENT ON-SITE OR OFF-SITE.

(2) THE APPLICANT SHALL PROVIDE A DESIGN, LAYOUT AND, IF PAYING A FEE, THE APPLICABLE COST ESTIMATE FOR THE OPEN SPACE AT AMENITY WITH THE DEVELOPMENT PLAN MEETING CONCEPT PLAN SUBMISSION.

(3) (I) ANY PROPOSED OFF-SITE OPEN SPACE SHOULD BE LOCATED IN THE COUNCILMANIC DISTRICT OF THE PROPOSED DEVELOPMENT SITE. IF AN OFF-SITE OPEN SPACE PROPOSAL IS NOT LOCATED IN THE COUNCILMANIC DISTRICT, THE PROPOSAL IS SUBJECT TO THE APPROVAL OF THE COUNCILPERSON IN WHOSE DISTRICT THE PROPOSED DEVELOPMENT IS LOCATED.

(II) OFF-SITE OPEN SPACE FOR DEVELOPMENTS IN THE DOWNTOWN TOWSON DISTRICT SHOULD BE PROVIDED WITHIN THE DOWNTOWN DISTRICT OR WITHIN ONE MILE OF THE DOWNTOWN DISTRICT.
(F) PAYMENT OF FEE.

(1) IF IT IS NOT FEASIBLE TO MEET THE OPEN SPACE REQUIREMENT ON-SITE OR OFF-SITE, THE APPLICANT SHALL SUBMIT A FEE IN LIEU PROPOSAL AND PAY A FEE TO BALTIMORE COUNTY.

(2) THE FEE SHALL BE USED IN THE SAME COUNCILMANIC DISTRICT WHERE THE PROPERTY IS LOCATED. FEES IN LIEU OF OPEN SPACE FOR DEVELOPMENTS IN THE DOWNTOWN TOWSON DISTRICT SHOULD BE USED IN THE DOWNTOWN DISTRICT OR WITHIN ONE MILE OF THE DOWNTOWN DISTRICT.

(3) THE DIRECTOR SHALL ALLOCATE 20 PERCENT OF ANY CASH FEE COLLECTED UNDER THIS SECTION TO NEIGHBORSSPACE OF BALTIMORE COUNTY, INC. NEIGHBORSSPACE MAY USE 30% OF THE ALLOCATED FUNDS FOR OPERATING COSTS, AT THE DISCRETION OF THE NEIGHBORSSPACE BOARD OF DIRECTORS. NEIGHBORSSPACE SHALL FILE AN ANNUAL REPORT WITH THE COUNTY AUDITOR DETAILING THE USE OF THE FUNDS ALLOCATED TO THE CORPORATION.

(4) THE FEE SHALL BE ESTABLISHED IN ACCORDANCE WITH SUBSECTION (I).

(G) MAINTENANCE OF DEDICATED OPEN SPACE.

(1) THE APPLICANT OR THE APPLICANT'S SUCCESSORS AND ASSIGNS SHALL MAINTAIN AN OPEN SPACE DEDICATION UNTIL THE OPEN SPACE IS ACCEPTED BY THE COUNTY UNDER ARTICLE 3, TITLE 9, SUBTITLE 1 OF THE CODE.

(2) THE COUNTY MAY CONDITION ITS ACCEPTANCE OF THE DEDICATED OPEN SPACE UPON THE CONTINUING OBLIGATION OF THE APPLICANT OR THE APPLICANT'S SUCCESSORS AND ASSIGNS TO MAINTAIN THE DEDICATED OPEN SPACE.
(H) OPEN SPACE MANUAL. IF THE PROVISIONS OF THE OPEN SPACE MANUAL
CONFLICT WITH THE PROVISIONS OF THIS SECTION, THE PROVISIONS OF THIS
SECTION SHALL CONTROL.

(I) FEES.

(1) (I) THE COUNTY ADMINISTRATIVE OFFICER SHALL ESTABLISH
PROPOSE TO THE COUNTY COUNCIL THE FEES PAYABLE UNDER THIS SECTION
AFTER CONSULTATION WITH THE DEPARTMENT OF RECREATION AND PARKS, THE
OFFICE OF BUDGET AND FINANCE, AND THE DEPARTMENT OF PERMITS, APPROVALS
AND INSPECTIONS.

(II) THE COUNTY ADMINISTRATIVE OFFICER SHALL REVIEW THE
FEES ESTABLISHED UNDER THIS SECTION AT LEAST ONCE EVERY TWO YEARS.

(III) THE FEES SHALL BE ESTABLISHED BASED UPON THE NEED FOR
OPEN SPACE AND THE COST OF CREATING OPEN SPACE.

(IV) THE FEE STRUCTURE SHALL BE BASED UPON THE PROJECT
LOCATION AND THE TYPE OF DEVELOPMENT UNIT PROPOSED AND SHALL INCLUDE
SEPARATE RATES PER RESIDENTIAL DEVELOPMENT UNIT FOR:

A. TIER 1: PROJECTS OUTSIDE THE URBAN RURAL
DEMACARTION LINE;

B. TIER 2: SINGLE FAMILY OR TOWNHOUSE DETACHED, SEMI-
DETACHED, AND DUPLEX DWELLING AND SINGLE FAMILY ATTACHED DWELLING
PROJECTS INSIDE THE URBAN RURAL DEMARCATION LINE;

C. TIER 3: COMMERCIAL, TOWN CENTER CORE (CT)
PROJECTS, RESIDENTIAL, APARTMENT, ELEVATOR (RAE) PROJECTS, AND TRANSIT-
ORIENTED DEVELOPMENT (TOD) PROJECTS INSIDE THE URBAN RURAL DEMARCATION LINE;

D. TIER 4: MULTI-FAMILY PROJECTS NOT IN TIER 3 INSIDE THE URBAN RURAL DEMARCATION LINE;

E. TIER 5: STUDENT DORMITORIES AND AFFORDABLE HOUSING, INCLUDING HOUSING FOR THE ELDERLY AS DEFINED IN THE ZONING REGULATIONS; AND

F. TIER 6: THE DOWNTOWN TOWSON DISTRICT.

(2) (I) THE FEE SHALL BE PAID ONLY IF IT IS NOT FEASIBLE FOR THE APPLICANT TO SATISFY THE OPEN SPACE REQUIREMENT ON-SITE OR OFF-SITE.

(II) IF THE APPLICANT PARTIALLY SATISFIES THE OPEN SPACE REQUIREMENT ON-SITE OR OFF-SITE, THE FEE SHALL BE REDUCED BY THE PERCENTAGE OF THE MINIMUM REQUIREMENT, AS DEFINED BY SUBSECTION (C), THAT IS PROVIDED ON-SITE OR OFF-SITE.

(III) THE FEE SHALL BE FURTHER REDUCED BY 100 PERCENT OF THE VERIFIED COSTS COST OF ANY OUTDOOR PUBLIC AMENITIES AMENITY PROVIDED ON-SITE AND OR OFF-SITE AND 70 PERCENT OF THE VERIFIED COSTS COST OF ANY OUTDOOR PRIVATE AMENITIES AMENITY PROVIDED ON-SITE AND OR OFF-SITE. THE FEE MAY NOT BE REDUCED FOR ANY INDOOR AMENITY PROVIDED ON-SITE OR OFF-SITE.

(3) FOR A PLANNED UNIT DEVELOPMENT, A FEE SHALL BE ASSESSED BASED ON THE TIER(S) INTO WHICH ITS RESIDENTIAL COMPONENT FALLS.

(4)(I) THE FEES SHALL BE ADOPTE[d ESTABLISHED BY THE COUNTY
COUNCIL BY RESOLUTION. EXCEPT AS PROVIDED IN PARAGRAPH (2) FOR A REDUCTION OF A FEE, FEES MAY NOT BE REDUCED BELOW THE AMOUNTS ESTABLISHED BY THE RESOLUTION.

(II) THE FEE SCHEDULE SHALL BE POSTED ON THE COUNTY’S INTERNET WEBSITE AND SHALL INCLUDE A DESCRIPTION OF ANY DOCUMENTATION USED IN CALCULATING THE FEES.

(5) THE FEE SHALL BE PAID UPON THE ISSUANCE OF A BUILDING PERMIT BEFORE THE RECORDATION OF THE RECORD PLAT. ANY SECURITY NECESSARY FOR THE ON-SITE OR OFF-SITE AMENITIES PROVIDED SHALL BE POSTED PRIOR TO THE ISSUANCE OF THE BUILDING PERMIT.

(J) REPORTING.

(1) BEGINNING JULY 1, 2016 AND EVERY YEAR THEREAFTER, THE COUNTY ADMINISTRATIVE OFFICER SHALL PROVIDE AN ANNUAL REPORT TO THE COUNTY COUNCIL OF:

(I) OPEN SPACE PROVIDED;

(II) FEES IN LIEU OF PROVIDING OPEN SPACE THAT ARE ASSESSED OR COLLECTED; AND

(III) THE SPECIFIC LOCAL OPEN SPACE PROJECTS FUNDED WITH FEES IN LIEU.

(2) THE REPORT SHALL INCLUDE:

(I) THE NAME OF EACH DEVELOPMENT PROJECT;
(II) THE ADDRESS AND COUNCILMANIC DISTRICT IN WHICH THE

PROJECT IS LOCATED;

(III) THE NUMBER AND TYPE OF DEVELOPMENT UNITS TO BE

CONSTRUCTED;

(IV) THE AMOUNT AND LOCATION OF OPEN SPACE PROVIDED;

(V) THE WAIVERS REQUESTED, GRANTED OR DENIED, INCLUDING THE

RATIONALE FOR THE GRANT OR DENIAL, AND THE DATE OF THE ASSESSMENT OR

COLLECTION OF ANY FEE IN LIEU;

(VI) AN ACCOUNTING OF THE REDUCTION OF THE FEE GRANTED UNDER THIS

SECTION FOR ANY OUTDOOR PUBLIC OR PRIVATE AMENITY PROVIDED ON-SITE OR

OFF-SITE; AND

(VI) (VII) THE COST OF OPEN SPACE PROJECTS FUNDED WITH FEE IN LIEU

REVENUES.

(3) THE REPORT SHALL BE POSTED ON THE COUNTY COUNCIL

INTERNET WEBSITE.

SECTION 5. AND BE IT FURTHER ENACTED, that the provisions of this Act shall not

apply to a development site for which a development plan was filed prior to the effective date of this

Act October 1, 2016, or for which a PUD Resolution was adopted prior to that date if the Resolution

specifically addressed local open space requirements. Such sites are subject to the laws, regulations,

and fees in effect at the time of plan submittal and are subject to the fees established by Resolutions

13-00, 63-00, 29-04, 58-06, 9-08, 43-13, and 90-15, and 87-16, as applicable. Notwithstanding the

provisions of this paragraph, an applicant with a development plan approved prior to the effective date

may elect to proceed under the provisions of this Act.
SECTION 6. AND BE IT FURTHER ENACTED, that pursuant to Section 32-4-404 of the County Code, the Department of Planning and the Planning Board shall revise the Baltimore County Open Space Manual in order to conform its provisions to the requirements of Bill 73-16. The manual shall contain a list of acceptable amenities. The revised manual shall be submitted to the County Council for approval on or before April 1, 2017.

SECTION 7. AND BE IT FURTHER ENACTED, that this Act, having been passed by the affirmative vote of five members of the County Council, shall take effect on November 21, 2016.