

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

Bill No. 73-16

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Councilmembers Almond & Marks

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By the County Council, October 3, 2016

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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.

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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.

1 BY repealing

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3 Sections 32-1-101(e) and 32-4-101(cc) and 32-4-411  
4 Article 32 - Planning, Zoning, and Subdivision Control  
5 Baltimore County Code 2015

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7 BY repealing

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9 Section 32-6-108  
10 Article 32 - Planning, Zoning, and Subdivision Control  
11 Title 6 - Adequate Public Facilities  
12 Baltimore County Code 2015

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14

15 BY adding

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17 Section 32-4-101 (cc)  
18 Article 32 - Planning, Zoning, and Subdivision Control  
19 Title 4 – Development  
20 Baltimore County Code 2015

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23 BY adding

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25 Section 32-6-108  
26 Article 32 – Planning, Zoning and Subdivision Control  
27 Title 6 – Adequate Public Facilities  
28 Baltimore County Code 2015

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31 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY,  
32 MARYLAND, that Sections 32-1-101(e) and 32-4-101(cc) and 32-4-411 of Article 32 of the Baltimore  
33 County Code be and they are hereby repealed.

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1 SECTION 2. AND BE IT FURTHER ENACTED, that Section 32-6-108 of Article 32, Title  
2 6 of the Baltimore County Code be and it is hereby repealed.

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

5 §32-4-101. DEFINITIONS.

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

7

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

10 §32-6-108. OPEN SPACE.

11 (A) DEFINITIONS.

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

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

22 (3) "ENVIRONMENTALLY CONSTRAINED AREA" INCLUDES:

23 (I) A CRITICAL AREA BUFFER, FOREST AND STREAM BUFFER, FOREST

1 CONSERVATION EASEMENT, WILDLIFE HABITAT, FLOODPLAIN, AND WETLAND; AND

2 (II) A STORMWATER MANAGEMENT AREA.

3 (4) "OFF SITE" MEANS PROPERTY OWNED OR CONTROLLED BY:

4

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

7 (II) THE BALTIMORE COUNTY PUBLIC SCHOOL SYSTEM;

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

10 (IV) NEIGHBORSPLACE OF BALTIMORE COUNTY, INC.; OR

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

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

17 (I) IS UNIMPROVED; OR

18 (II) CONTAINS ONE OR MORE AMENITIES.

19 (6) "OPEN SPACE" MAY INCLUDE AN ENVIRONMENTALLY  
20 CONSTRAINED AREA.

21 (7) "RESIDENTIAL DEVELOPMENT UNIT" MEANS:

22 (I) ONE SINGLE-FAMILY DETACHED, SEMI-DETACHED AND DUPLEX  
23 DWELLING;

1 (II) ONE SINGLE-FAMILY ATTACHED DWELLING;

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

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

6 (V) HOUSING FOR THE ELDERLY UNIT.

7  
8 (B) SCOPE.

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

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

12  
13 (C) MINIMUM REQUIREMENT.

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

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

20  
21 (D) USEABLE OPEN SPACE.

22 THE DIRECTORS OF RECREATION AND PARKS AND PERMITS, APPROVALS  
23 AND INSPECTIONS SHALL DETERMINE THAT AN ENVIRONMENTALLY

1 CONSTRAINED AREA, A RESIDENTIAL TRANSITION AREA, OR AN AREA ENCUMBERED  
2 BY AN ENVIRONMENTAL, STORMWATER MANAGEMENT, OR ~~STORM DRAIN~~ UTILITY  
3 EASEMENT QUALIFIES AS OPEN SPACE IF IT IS IMPROVED WITH TRAILS OR OTHER  
4 AMENITIES THAT MEET THE OPEN SPACE REQUIREMENT OF SUBSECTION (C), AND IF  
5 THEY DETERMINE THAT THE AMENITIES ARE PART OF THE OVERALL DESIGN OF THE OPEN  
6 SPACE AND RECREATIONAL SYSTEM AND THE AREA OR EASEMENT ~~MAY BE SAFELY~~  
7 ~~USED FOR PUBLIC~~ PROVIDES USEABLE OPEN SPACE.

8

9 (E) LOCATION OF OPEN SPACE.

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

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

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

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

23

1 (F) PAYMENT OF FEE.

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

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

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

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

16 (G) MAINTENANCE OF DEDICATED OPEN SPACE.

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

20 (2) THE COUNTY MAY CONDITION ITS ACCEPTANCE OF THE DEDICATED OPEN  
21 SPACE UPON THE CONTINUING OBLIGATION OF THE APPLICANT OR THE APPLICANT'S  
22 SUCCESSORS AND ASSIGNS TO MAINTAIN THE DEDICATED  
23 OPEN SPACE.

1 (H) OPEN SPACE MANUAL. IF THE PROVISIONS OF THE OPEN SPACE MANUAL  
2 CONFLICT WITH THE PROVISIONS OF THIS SECTION, THE PROVISIONS OF THIS  
3 SECTION SHALL CONTROL.

4 (I) FEES.

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

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

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

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

17 A. TIER 1: PROJECTS OUTSIDE THE URBAN RURAL  
18 DEMARCATION LINE;

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

22 C. TIER 3: COMMERCIAL, TOWN CENTER CORE (CT)  
23 PROJECTS, RESIDENTIAL, APARTMENT, ELEVATOR (RAE) PROJECTS, AND TRANSIT-



1 ORIENTED DEVELOPMENT (TOD) PROJECTS INSIDE THE URBAN  
2 RURAL DEMARCATION LINE;

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

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

8 F. TIER 6: THE DOWNTOWN TOWSON DISTRICT.

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

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

15 (III) THE FEE SHALL BE FURTHER REDUCED BY 100 PERCENT OF THE  
16 VERIFIED ~~COSTS~~ COST OF ~~ALL ANY OUTDOOR PUBLIC AMENITIES~~ AMENITY  
17 PROVIDED ON-SITE ~~AND OR~~ OR OFF-SITE AND ~~70~~ 60 PERCENT OF THE VERIFIED ~~COSTS~~  
18 COST OF ALL ANY OUTDOOR PRIVATE AMENITIES AMENITY PROVIDED ON-SITE ~~AND~~  
19 OR OFF-SITE. THE FEE MAY NOT BE REDUCED FOR ANY INDOOR AMENITY PROVIDED  
20 ON-SITE OR OFF-SITE.

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

23 (4)(I) THE FEES SHALL BE ~~ADOPTED~~ ESTABLISHED BY THE COUNTY

1 COUNCIL BY RESOLUTION. EXCEPT AS PROVIDED IN PARAGRAPH (2) FOR A  
2 REDUCTION OF A FEE, FEES MAY NOT BE REDUCED BELOW THE AMOUNTS  
3 ESTABLISHED BY THE RESOLUTION.

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

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

11 ~~(H)~~ (J) REPORTING.

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

15 (I) OPEN SPACE PROVIDED;

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

18  
19 (III) THE SPECIFIC LOCAL OPEN SPACE PROJECTS FUNDED WITH FEES IN  
20 LIEU.

21 (2) THE REPORT SHALL INCLUDE:

22 (I) THE NAME OF EACH DEVELOPMENT PROJECT;

1 (II) THE ADDRESS AND COUNCILMANIC DISTRICT IN WHICH THE  
2 PROJECT IS LOCATED;

3 (III) THE NUMBER AND TYPE OF DEVELOPMENT UNITS TO BE  
4 CONSTRUCTED;

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

6 (V) THE WAIVERS REQUESTED, GRANTED OR DENIED, INCLUDING THE  
7 RATIONALE FOR THE GRANT OR DENIAL, AND THE DATE OF THE ASSESSMENT OR  
8 COLLECTION OF ANY FEE IN LIEU;

9 (VI) AN ACCOUNTING OF THE REDUCTION OF THE FEE GRANTED UNDER THIS  
10 SECTION FOR ANY OUTDOOR PUBLIC OR PRIVATE AMENITY PROVIDED ON-SITE OR  
11 OFF-SITE; AND

12 ~~(VI)~~ (VII) THE COST OF OPEN SPACE PROJECTS FUNDED WITH FEE IN LIEU  
13 REVENUES.

14 (3) THE REPORT SHALL BE POSTED ON THE COUNTY COUNCIL  
15 INTERNET WEBSITE.

16

17 SECTION 5. AND BE IT FURTHER ENACTED, that the provisions of this Act shall not  
18 apply to a development site for which a development plan was filed prior to ~~the effective date of this~~  
19 Act October 1, 2016, or for which a PUD Resolution was adopted prior to that date if the Resolution  
20 specifically addressed local open space requirements. Such sites are subject to the laws, regulations,  
21 and fees in effect at the time of plan submittal and are subject to the fees established by Resolutions  
22 13-00, 63-00, 29-04, 58-06, 9-08, 43-13, ~~and~~ 90-15, and 87-16, as applicable. Notwithstanding the  
23 provisions of this paragraph, an applicant with a development plan approved prior to the effective date  
24 may elect to proceed under the provisions of this Act.

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

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