

Ordinance No. 826-24

An Ordinance Amending Article VII of the Development Regulations
in Chapter 165 of the Bel Air Town Code

WHEREAS, the Board of Town Commissioners is required, under the Land Use Article of the Annotated Code of Maryland, to maintain consistency between the Development Regulations and the Town of Bel Air Comprehensive Plan; and

WHEREAS, the Land Use Article of the Annotated Code of Maryland provides the authority for the Board of Town Commissioners to adopt planning and zoning controls; and

WHEREAS, the Bel Air Board of Town Commissioners wish to update the Development Regulations to respond to public input regarding provision of open space; and

WHEREAS, the Board of Town Commissioners has reviewed the required provision of open space in the Town regarding provision of fee-in-lieu and wishes to amend this portion of the code in certain zoning districts; and

WHEREAS, the Bel Air Board of Town Commissioners wish to update the Development Regulations regarding the calculation of fee-in-lieu for the provision of open space; and

NOW, THEREFORE, BE IT ORDAINED by the Board of Town Commissioners that amendments to the Town of Bel Air Development Regulations, Chapter 165, Ordinance No. 826-24, provided for below is hereby adopted.

§ 165-52 Open space and recreation.

Residential subdivision or residential site developments in Bel Air shall be required to provide open space and to dedicate land necessary for completion of the pedestrian trail network adjacent to newly developed properties as described in Articles IV and V of the Town of Bel Air Comprehensive Plan. Developed or active open space shall be designed to provide active recreational facilities to serve the residents of the development. Undeveloped or passive open space shall be designed to preserve important site amenities and environmentally sensitive areas.

~~In addition, or in lieu of provision of open space, and if approved by the Board of Town Commissioners, the applicant may contribute to the Town Open Space Recreation Fund.~~

A. Minimum requirements.

- (1) Amount of open space required. A minimum of 15% of the project area shall be set aside for total (active and passive) open space.
- (2) Size of open space parcels. To qualify as part of the required open space, areas shall be

lawn, landscape or natural vegetation with a minimum of 500 square feet and have a width of no less than 10 feet. Active open space shall be a minimum of 40% of the required total open space area. This open space area shall be usable for active recreation as outlined below. Water bodies shall not exceed 15% of the required open space area. Active recreation space shall be dry, reasonably flat and accessible. The land shall not exceed a grade of 3%. Land must be configured to provide adequate space for active recreation facilities, as determined necessary by the Planning Commission. **[Amended 4-2-2018 by Ord. No. 783-18]**

(3) Location of open space parcels.

- (a) Active open space. Active recreation occurring on level or gently sloping land designed to provide individual or group activities of a dynamic nature including, but not limited to, sports fields, court games, hiker/biker trails, fitness courses, swimming pools, children's play areas, golf courses, and community gardening.

[1] The Planning Commission may require the installation of recreational facilities, taking into consideration:

[a] The character of the open space land;

[b] The estimated age and the recreation needs of persons likely to reside in the development;

[c] Proximity, nature, and excess capacity of existing municipal recreation facilities; and

[d] The cost of the recreational facilities.

[2] The Planning Commission shall determine specific open space and/or recreation requirements based upon needs as assessed by the Town of Bel Air Comprehensive Plan. **[Amended 4-3-2017 by Ord. No. 780-17]**

[3] Accessibility; open space. Recreation sites must be accessible in terms of safety, as well as distance traveled by users.

- (b) Passive open space. As a general principle, undeveloped open space should be left in its natural state. A developer may make certain improvements, such as forest conservation, landscape buffering or the provision of picnic areas, etc. In addition, the Planning Commission may require a developer to make other improvements, including but not limited to removing dead or diseased trees, thinning trees or other vegetation to encourage more desirable growth and grading and seeding.

- B. Maintenance and ownership. Open space and recreation facilities shall include provisions for maintenance and ownership as stipulated in Part 4, § 165-118E(2), of the Town of Bel Air Development Regulations. Should use or ownership of property upon which the open space is located change, open space requirements shall be reevaluated. [Amended 4-3-2017 by Ord. No. 780-17]
- C. Fee in lieu of open space.
- (1) **In the B2 zoning district**, the Planning Commission may permit the open space requirements to be satisfied through the payment of a fee in lieu of on-site **open space recreation** areas when provision of on-site open space is impractical due to site conditions. ~~Fees shall be determined by statute based upon a per-acre cost for active and passive recreational open space.~~ **Fees shall be determined at a rate of 110% of the State Department of Assessment and Taxation land value on the applicable property and acreage which would otherwise be required.**
 - (2) **In the B2A, B3 and B3A zoning districts, the Planning Commission may permit the open space requirements to be satisfied through the payment of a fee in lieu of on-site open space areas to a maximum of 35% of the total required when provision of on-site open space is impractical due to site conditions. Fees shall be determined at a rate of 150% of the State Department of Assessment and Taxation land value on the applicable property and acreage which would otherwise be required.**
 - (3) **R1, R2, R3, RO, B1 and M1 are not eligible for fee-in-lieu of open space.**
 - 4(2) Open space fee-in-lieu payments shall be used for development of recreational space/facilities through the Town's **Open Space Recreational Open Space** Fund. If not used within 15 years for acquisition and/or development of passive or active open space, the funds shall be rebated to the property owner.

BE IT ORDAINED If any provision of this Ordinance shall be held violative of any applicable law or unenforceable for any reason or *ultra vires*, the invalidity or unenforceability of any such provision shall not invalidate or render unenforceable any other provision hereof, which shall remain in full force and effect.

BE IT FURTHER ORDAINED that this Ordinance shall not be applicable to any project which has obtained Open Space Fee in Lieu approval from the Planning Commission prior to the effective date of this Ordinance.

BE IT FURTHER ORDAINED that this Ordinance shall become effective on the twenty-first (21st) day after passage unless petitioned to referendum.

INTRODUCTION:

PUBLIC HEARING:

ENACTMENT:

EFFECTIVE:

AYES:

NAYS:

ABSENT:

Paula Etting, Chair
Board of Town Commissioners

Michael L. Krantz, Town Clerk