

Ordinance No. 826-24

DRAFT

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 with regard to fee-in-lieu and wishes to remove this option from the developer requirements; 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 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 a 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 B-2 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 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) 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.

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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

ORD – Elimination of Fee-in-Lieu for open space in all zones except B2 (Central Business)

The proposed legislation would prohibit the allowance of a payment in lieu of provision of required open space except for B2.

- Havre de Grace does not allow fee-in-lieu for open space. However, Havre de Grace does not require open space to be provided for most developments.
- Aberdeen does not allow for open space fee-in-lieu.
- Harford County allows for open space fee-in-lieu at 110% of the cost of raw land or off-site improvements when both the developer and County agree.
- Mt. Airy allows fee-in-lieu in a similar fashion to Bel Air
- Laurel allows fee-in-lieu
- Easton allow fee-in-lieu for PUD's only
- Frederick does not allow fee-in-lieu
- Westminster allows fee-in-lieu for Planned Developments and high-density residential

A provision of fee-in-lieu for development related requirements such as stormwater management, forest conservation, parking, etc. benefits urban communities where properties are smaller, and development is dense. Fee-in-Lieu provides flexibility for development which may be proposed in areas of high land values or physically constrained sites that make the provision of open space difficult or impractical.

Over the years, the Town of Bel Air has strengthened its open space requirements by including area and width minimums and placing limits on what can be considered 'active' open space.

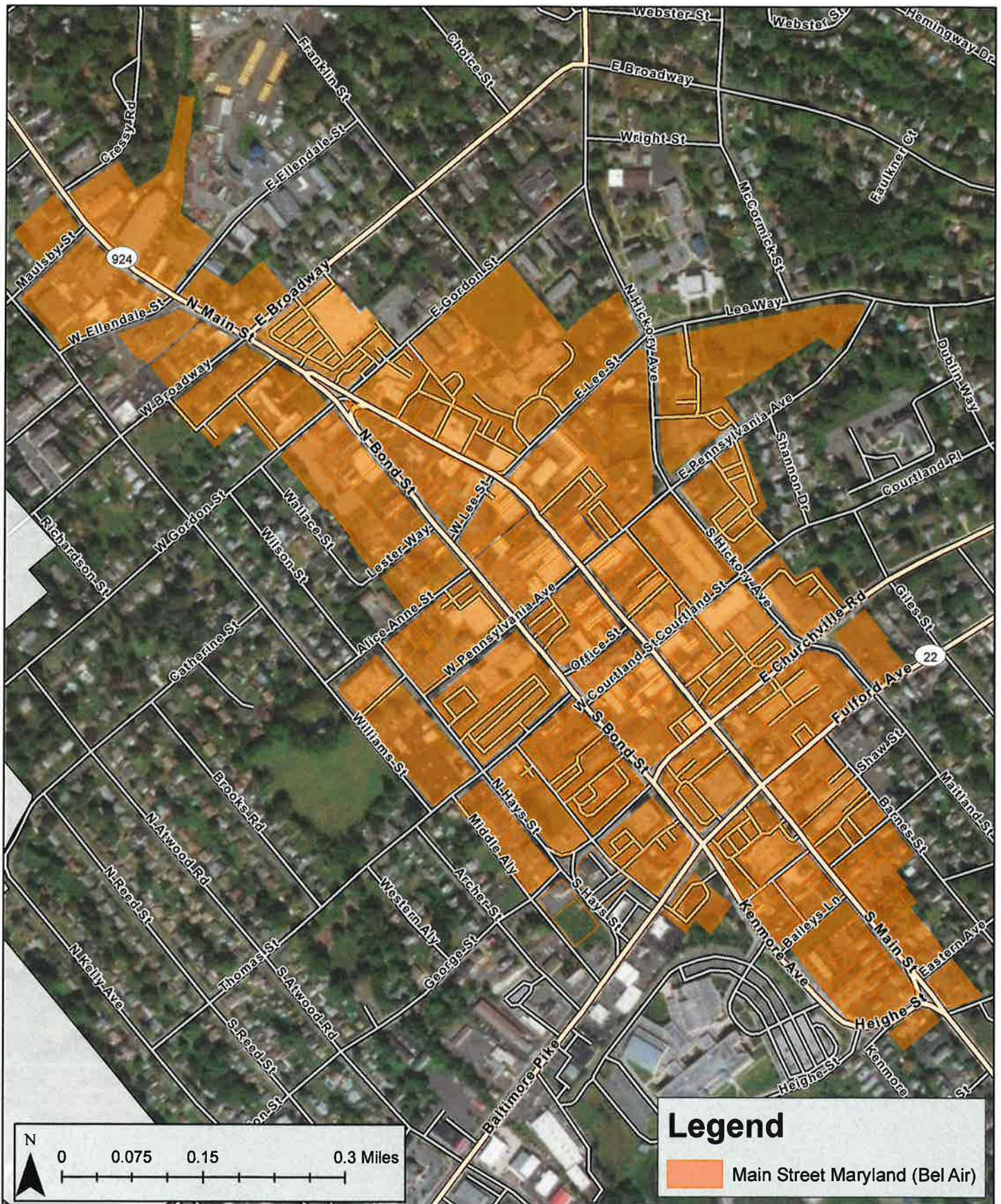
The Town requires a minimum of 500 square feet and a minimum of 10-foot width for any area to qualify as open space. Active open space is limited in the current code to exterior applications such as ballfields, play courts, playgrounds, walking trails, etc.

Potential interior applications such as fitness rooms and gathering spaces are not specifically addressed although these have been permitted in the past. In addition, there is no specific allowance for a developer to provide off-site improvements to a nearby local park or public property to satisfy active open space needs. Phasing the implementation of open space is permitted in Fifty-five and over housing but does not appear elsewhere in the code.

The fee-in-lieu allowance is a provision shared with the County, but not other local municipalities. The County applies a different method to calculate open space by tying it to 110% of the value of the land which has been adopted in the proposed amendment.

Potential Recommendation Options – Fee-in-Lieu may be recommended to remain as currently applied. However, if permitting a fee to replace the provision of open space is not desired, flexibility in how an open space amenity can be defined or provided may be appropriate by applying one or more of the following:

- 1. Expand the allowance of 110% of the assessed area of raw land as the standard for the fee-in-lieu calculation for both active and passive open space by allowing off-site open space (active or passive) with Planning Commission approval to enhance a local park, trail or other public amenity. Both the developer and Town would need to agree in writing to the conditions of this type of in-kind provision of open space.**
- 2. Allow phased implementation of open space with a bond to insure the entire open space obligation is implemented.**
- 3. Allow for a wider variety of amenities that are interior to the development such as fitness rooms, indoor courts, community rooms, etc. This would be limited to only active open space with the developer still meeting passive open space requirements.**
- 4. Revise the definition of open space to allow for smaller areas of land to qualify as passive open space – 6-foot-wide areas of property (instead of 10-foot wide) or 300 square feet (instead of 500-square feet).**
- 5. Adjust the area that fee-in-lieu may be applied to a boundary that encompasses more of the downtown district beyond the B2 district such as the Main Street Maryland designated area (map attached).**



Economic Development

Main Street Maryland Area

