From:	Rogers, Elizabeth C.
To:	MCP-Chair
Cc:	Robins, Steven A.; Stern, Tanya; Riley, Mike; Coppola, Henry; Hisel-McCoy, Elza
Subject:	Testimony on Silver Spring Public Open Space Fee-in-Lieu Contribution (Agenda Item No. 8)
Date:	Wednesday, October 25, 2023 11:59:43 AM
Attachments:	Ltr to Planning Board - Downtown Silver Spring Off Site Public Open Space.pdf

Chair Harris and Members of the Planning Board,

Please find attached our written testimony on the proposed Silver Spring Public Open Space Fee-in-Lieu contribution, submitted on behalf of our client, Arlington Partnership for Affordable Housing. We appreciate the Board's consideration of these comments.

Thank you,
Liz Rogers
Steve Robins

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October 25, 2023

Mr. Artie Harris, Chair
And Members of the Montgomery County Planning Board
2425 Reedie Drive, 14th Floor
Wheaton, Maryland 20902

Re: Affordable Housing Exemption for Public Open Space Fee-In-Lieu Contribution for Silver Spring Downtown & Adjacent Communities Sector Plan

Dear Chair Harris and Members of the Planning Board:

On behalf of our client, Arlington Partnership for Affordable Housing ("APAH"), we are writing to request that the Planning Board exempt affordable housing from the Public Open Space Fee-in-Lieu contribution for the 2022 *Silver Spring Downtown & Adjacent Communities Sector Plan* (the "SSDAC Plan"). This exemption is necessary to promote the County's housing goals and is consistent with current County policy. For the reasons discussed below, we respectfully request that the Planning Board: **(1) exempt individual Moderately Priced Dwelling Units ("MPDUs") and other government regulated affordable units from the calculation of the Public Open Space Fee-in-Lieu, and (2) fully exempt projects that provide a minimum of 25% MPDUs, from making a Public Open Space Fee-in-Lieu payment.**

Among the goals of the SSDAC Plan is to "[p]romote the development of diverse housing types…" and "[m]ake housing affordable to low-, moderate-, and middle-income households a priority." (*See* pages 82 and 94). While we appreciate that Planning Staff has recognized that affordable housing requires financial relief from the Public Open Space Fee-in-Lieu, Staff's current suggestion for an "affordable housing discount" does not go far enough to promote the County's important policy goal of incentivizing the construction of new housing, particularly affordable housing, in Downtown Silver Spring. Staff's proposed "affordable housing discount" only provides an exemption for the MPDUs themselves in projects that provide 25% or more MPDUs. However, as is true for many affordable housing projects, even those that provide 100% affordable units, only a portion of those units are typically formally designated in the County's MPDU program (*e.g.* it is not uncommon for affordable projects to provide 25% MPDUs, with the remainder of the units affordable under the Low-Income Housing Tax Credit ("LIHTC") program). As currently written, the "affordable housing discount" does not provide financial relief for these "other affordable" units. In order to advance the County's housing policy goals, as expressed through the SSDAC Plan and Thrive 2050, the Planning Board should follow the County Council's previous policy decisions, and exempt both MPDUs <u>and</u> other government regulated affordable housing from the calculation of Public Open Space Fee-in-Lieu. This is consistent with the County's treatment of affordable units for purposes of the collection of Development Impact Taxes.[1]

Additionally, we request that the Planning Board fully exempt projects that provide a minimum of 25% MPDUs. This is similarly in line with past County policy decisions. The SSDAC Plan also recommends contributions to the Civic Improvement Fund ("CIF") for additional density necessary to reach the mapped maximum building height. (*See* Section 4.1.2). However, recognizing the importance of affordable housing, the Planning Board and County Council exempted developments that include at least 25% MPDUs from contributing to the CIF for Downtown Silver Spring Density (*See* Section 4.9.8.C.3.c). This same policy incentive should be applied to the calculation of the Public Open Space Fee-in-Lieu.

We understand that the County has a laudable goal of treating affordable housing developments similar to market-rate developments, to ensure that all residents have access to the same high-quality housing and amenities. However, affordable housing developments face unique financing challenges that must be considered. For example, LIHTC regulations may limit the amount of funding that can be appropriated to off-site "Fee-in-Lieu" obligations. This limitation would likely result in affordable housing developers seeking additional gap funding from the County, to cover these costs. Moreover, in this instance, the Public Open Space Fee-in-Lieu has the opposite effect – it requires affordable housing developers to invest in *off-site* public space, which diverts limited resources from *on-site* amenities that would directly serve future residents.

For all of these reasons, we request that the Planning Board:

(1) Exclude the following from the calculation of the Open Space Fee-in-Lieu:

- **a. MPDUs, and**
- **b. Any other affordable dwelling unit built under a government regulation or binding agreement; and**

(2) Exempt projects that provide a minimum of 25% MPDUs from making a Public Open Space Fee-in-Lieu Payment.

[1] Pursuant to Sections 52-41(g) and 52-54(d) of the County Code, Development Impact Taxes are not imposed on (1) MPDUs or (2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning less than 60% of the area median income, adjusted for family size.

Additionally, we request that the Planning Board clarify that the Public Open Space Fee-in-Lieu formula is calculated using the Mapped FAR. This is in line with Staff's methodology, which derived the $20 base rate from the Mapped FAR in Downtown Silver Spring. This is also fair, as projects are already required to make a Civic Improvement Fund contribution for that Downtown Silver Spring Density (*i.e.* density above the mapped FAR). As such, including the DSS Density within the Public Open Space Fee-in-Lieu would effectively double tax that density.

These adjustments are necessary to further the County's current housing goals, and are fully in-line with past County policy decisions aimed at achieving these important housing objectives.

Thank you for your time and consideration of our comments.

Sincerely,

Steven A. Robins

Elizabeth C. Rogers

Elizabeth Rogers

Cc: Ms. Tanya Stern
Mr. Mike Riley
Mr. Elza Hisel-McCoy
Mr. Henry Coppola

From:	Silber, Stacy P.
To:	Harris, Artie; Pedoeem, Mitra; Bartley, Shawn; Hedrick, James; Linden, Josh; MCP-Chair; Riley, Mike; Stern, Tanya; Hisel-McCoy, Elza; Coppola, Henry
Cc:	"88968_001_BURKE PARCEL__LLC_8700 GEORGIA AVENUE__Emails"
Subject:	Public Open Space Fee-in-Lieu Contribution: Agenda Item 8 [IMAN-IMANAGE.FID878108]
Date:	Wednesday, October 25, 2023 12:23:18 PM
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[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Please find attached our comments on the Public Open Space Fee-in-Lieu Contribution.

Thank you.

Stacy Silber

____

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October 25, 2023

Chair Artie Harris and
Members of the Montgomery County Planning Board
2425 Reedie Drive, 14th Floor
Wheaton, Maryland 20902

Re: 2022 *Silver Spring Downtown & Adjacent Communities Sector Plan* – Affordable Housing & MPDU Exemptions for Open Space Fee-In-Lieu Contribution

Dear Chair Harris and Members of the Planning Board:

Removing barriers to housing production is critical to incentivizing the construction of affordable housing in the County. In that vein, we are writing to request that the Planning Board exempt affordable housing from the Public Open Space Fee-in-lieu contributions, consistent with the County's affordable housing Development Impact tax exemption. While we appreciate Staff's suggested credit for projects with 25% or more MPDUs, the proposed formula does not account for: (1) affordable housing units that are provided outside of the MPDU program, (2) MPDUs that are included in mixed income communities, and (3) public open space provided on-site. Thus, the proposed credit does not go far enough to incentivize the production of affordable housing. In fact, without an additional credit for affordable housing units, the current formula for park contributions, in conjunction with various silo'd development fees, may limit park production because of reduced development in Silver Spring.

Specifically, we ask that the Planning Board consider the following exemptions/credits for affordable housing, which are detailed herein:

- **Exempt projects that provide a minimum of 25% MPDUs:** Like the County's Development Impact Tax Credit, fully exempt, from the fee-in-lieu payment, projects with 25% or more MPDUs.
- **Exclusion of MPDUs:** Like the County's Development Impact Tax Credit, exclude MPDUs from the fee-in-lieu calculation.
- **Credit for Public Open Space Provided On-Site:** The Planning Board and Staff should retain discretion to provide credits to projects, including meaningful on-site

public open space, as defined under Section 6.3.6.A.2 and Section 6.3.6.B, to avoid double charges.

I. <u>Background.</u>

As background, Section 4.1.12 of the 2022 *Silver Spring Downtown & Adjacent Communities Sector Plan* (the "SSDAC Plan") recommends that "For any Optional Method development project required to provide public open space on a site not recommended for a new public space in the Sector Plan, the Plan recommends that in lieu of on-site open space, applicants contribute to the creation of new and improvement of existing public parks recommended by the Sector Plan. . . ." The purpose of this policy was to prevent small, "postage stamp" sized public open space on more constrained sites. This concept did not contemplate medium and larger sites where meaningful public space would be necessitated by site geometry, design guidelines, community compatibility, project specific needs and/or neighborhood needs.

Staff currently suggests the following base formula for market-rate development and only a limited MPDU discount for projects providing 25% or greater MPDUs:

<u>Current Base Formula</u>

Square Feet of Required Public Open Space x (Normalized Base Rate x Approved FAR)**<u>*</u>**

<u>Current MPDU Discount</u>

Discounted Contribution = Contribution x ((100-MPDU %) / 100)

<u>*</u>Note: When Staff uses the term "Approved FAR" in the formula, it is our understanding that they mean the SSDAC Master Plan Approved Mapped FAR. We think this should be clarified to explicitly reference the "Mapped FAR," which is what Staff's analysis was based on. Using the "Mapped FAR" makes sense as it would ensure that the County is not double taxing the additional Downtown Silver Spring Density ("DSS"). Property owners are already obligated to make a contribution to the Civic Improvement Fund to pay for this DSS density.

As currently proposed, Staff's formula does not go far enough to acknowledge or incentivize new development of affordable housing within the SSDAC Plan Area. In order to advance *Thrive 2050* and SSDAC Plan's policy goals to provide new, high-quality affordable housing in close proximity to existing transit, job centers, and neighborhood-serving retail, the Planning Board should follow the County's Development Impact Tax policy by (1) fully exempting projects that include 25% or more MPDUs and (2) excluding MPDUs from Fee-in-Lieu payments. In tandem, these exemptions would serve to further the County's current affordable housing policy to incentivize new development of high-quality affordable housing in Downtown

Silver Spring, support the financial feasibility of these important projects, and advance critical General Plan and Sector Plan housing goals.

II. Exempt Projects that provide a minimum of 25% MPDUs from Fee-in-Lieu Payments.

The Planning Board should exempt projects that provide a minimum of 25% MPDUs from making a Public Open Space Fee-in-Lieu payment. As currently proposed, the formula does not acknowledge or credit affordable housing units that are not designated as MPDUs. Many affordable housing developments provide significant quantities of income-restricted housing outside of the County's MPDU program. Without an exemption for all-affordable housing developments, the suggested formula, in conjunction with all of the other existing County fees, significantly burdens new development of affordable housing in the SSDAC Plan Area. As proposed, the formula will pose another financial hurdle for new affordable housing development, making it increasingly challenging for developers to provide much-needed housing options for Downtown Silver Spring. Affordable housing developers are already operating within tight financing constraints considering various tax credit limitations, rising costs of capital and building materials, and separate layered development fees. Without an exemption, the proposed formula represents another significant pre-development cost that challenges financial feasibility.

To illustrate this point, consider the proposed redevelopment of Springvale Terrace. Here, Enterprise Community Development and Seabury Resources for Aging are proposing to replace the outdated Seabury senior living facility with a high-quality, all-affordable senior community. This project, which will create approximately 237 units of high-quality age-restricted affordable housing within the Adjacent Communities Plan Area, would be required to pay nearly $300,000 in off-site contributions. Although this development is 100% affordable, Staff's suggested exemption would only apply to the 25% MPDUs that are being provided on-site. This suggestion is in contrast with the County's Development Impact Tax policy, which exempts an entire project that has 25% or more MPDUs. **Even for the Development Impact Tax exemption, the policy provides a 100% exemption irrespective if the remaining 75% of the units are affordable or market rate units.**

Additionally, developments, like Enterprise's, that are being built on large sites, are subject to an outsized and redundant fee as a result of existing and/or programmed on-site open space. As proposed, the required fee is based on the square footage of required public open space. Larger sites, such as Springvale Terrace, containing significant land area and unique geometry would pay a substantial fee, while also setting aside large portions of site design as open space.

Currently, staff has suggested that they would only provide a credit for streetscape improvements that fall on private property and directly link to the main entrance of a new building. This does not account, however, for substantial programmed space that would benefit a community and neighborhood. To satisfy site conditions, unique project conditions/needs, and/or neighborhood needs, a significant investment in these spaces will be required, even if an applicant is paying into the off-site open space fund. Furthermore, this suggested limited carve out, also does not account for the County's current – much broader definition of what is considered public open space which is:

> "Public open space means space devoted to public use or enjoyment that attracts public appreciation due to its location and amenities." (*See* Code Section 6.3.6.A.2).[1]

By way of example, with the Springvale Terrace project, Enterprise and Seabury are proposing approximately 20% of the site as open space (even though under the Code only 10% is required). This proposed on-site public open space will remain, irrespective of any fee, as an essential element of the project's overall design to the benefit of Enterprise's senior residents and the surrounding community. Consequently, applicants proposing residential development for larger and/or uniquely configured lots would effectively be double charged in that they are both paying a fee and setting aside land area for public use. This overly burdens affordable housing developers who would be required to divert limited resources from on-site amenities to pay into off-site public space, instead of investing in on-site amenities to benefit future residents and the surrounding community. The Planning Board and staff should retain discretion to provide meaningful credits in certain circumstances (i.e., size of property, historic resource, and/or

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[1] Additionally, pursuant to Code Section 6.3.6.B.2, Public Open space, under an Optional Method of Development must:

> "a. abut a public sidewalk or other public pedestrian route;
> b. include space for pedestrian circulation, landscaping, seating, shade, water features, artwork, or recreation; and
> c. be in a contiguous space or spaces that abut other public open space or sidewalks or pedestrian routes and are not so fragmented and disconnected that they do not satisfy the intent of Division 6.3."

affordable housing), where on-site public open space meets the above referenced definition of public open space.

III. <u>Credits for MPDU density in Mixed Income projects.</u>

The Fee-in-lieu for Public Open Space requirement negatively impacts the viability of mixed-use and residential developments that include MPDUs. By way of example, consider the proposed high-rise mixed-use development at 8676 Georgia Avenue/8601 Cameron Street which includes up to 79 MPDUs, neighborhood-serving retail, and the preservation of the historic Tastee Diner. The Applicant is currently evaluating the financial viability of the project due to separate, layered County fees. Specifically, the total County fees for this project are approximately $10 million. This includes the following approximate fees: current proposed fee-in-lieu payment, based on Master Plan Mapped FAR ($346,300), DDS Fee towards the Civic Improvement Fund ($1.3 million), M-NCPPC, DOT and DPS fees ($2.6 million), transportation related GIP costs (approximately $3.2 million), and recordation taxes (approximately $2.8 million). Because of these high County fees, the Applicant has stalled paying its Park & Planning application filing fees as it evaluates the project's financial viability.

Like the Development Impact Tax exemption, we suggest that the Planning Board exempt MPDUs from the fee-in-lieu calculation. This targeted exemption will still result in substantial public open space contributions, but will also help balance the County's overarching commitment to encourage the development of housing and affordable housing. **By way of example, even with a carve out for MPDUs, the Applicant would still be required to pay approximately $226,480.** The calculation would be as follows:

<u>Required Fee without MPDU Credit – $346,300</u>

3,463 SF (SF of required public open space) x $20/SF (Normalized Base Rate) x 5.0 (Up to the Approved Mapped FAR) = $346,300

<u>Required Fee with MPDU Credit – $226,480.2</u>

3,463 SF (SF of required public open space) x $20/SF (Normalized Base Rate) x 5.0 (Up to the Approved Mapped FAR) – 1.73 (MPDU FAR) = $226,480

IV. <u>Conclusion</u>

The Planning Board has an opportunity to remove a barrier to housing production. As currently proposed, Staff's Public Open Space Fee-in-lieu Contribution formula does not go far enough to incentivize new development of affordable housing in Downtown Silver Spring. Consistent with the County's existing affordable housing policies and Development Impact Tax exemptions, we request that the Planning Board:

1. **Exempt projects that provide a minimum of 25% MPDUs from making a Public Open Space Payment.**

2. **Exclude MPDUs from the fee-in-lieu payment, and adopt the following formula *with a clarification that the formula uses Master Plan Approved Mapped FAR:***

   SF of required public open space x $20/SF (Normalized Base Rate) x (Up to the Approved Mapped FAR) - (MPDU FAR);

3. **Provide a Fee-in-Lieu credit for projects that provide public open space on-site.**

Through adoption of a fair, pro-housing formula that excludes affordable housing, the Planning Board has a meaningful opportunity to support new development of affordable housing in Downtown Silver Spring, as well as high-quality public open spaces throughout the SSDAC Plan Area.

Sincerely,

Stacy P. Silber

Vince Biase

Vince Biase

cc: Ms. Tanya Stern
Mr. Mike Riley
Mr. Elza Hisel-McCoy
Mr. Henry Coppola