

AvalonBay Communities, Inc.
Ballston Tower
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Arlington, Virginia 22203

EYA
4800 Hampden Lane
Suite 300
Bethesda, Maryland 20814

August 26, 2013

The Honorable Phyllis Marcuccio, Mayor
and Members of the Rockville City Council
111 Maryland Avenue, 2nd Floor
Rockville, Maryland 20850

Re: AvalonBay Twinbrook Station and EYA at Tower Oaks - Adequate Public Facilities Standards

Dear Mayor Marcuccio and Members of the Council:

As you are aware, AvalonBay Communities, Inc. ("AvalonBay") is the owner and developer of the Avalon at Twinbrook project, a high-quality multi-family community adjacent to the Twinbrook Metro station and EYA is pursuing a distinct, for-sale residential project with a mix of detached houses, townhouses and condominium units, including Moderately Priced Dwelling Units ("MPDU's"), in the Tower Oaks Planned Development on Preserve Parkway. Both projects are in the Richard Montgomery School Cluster, and neither can move forward because of the on-going residential moratorium in the cluster, coupled with inconsistencies in the Adequate Public Facilities Standards ("APFS") that result in the unintended consequence of creating and prolonging the inability of projects to proceed. For this reason, we support the decision of the Mayor and Council to continue its discussion on the Adequate Public Facilities Ordinance ("APFO") and APFS, on September 9th and to hold a public hearing on these important issues on September 30th.

As you move forward, we ask that you consider four amendments to the APFS, which are discussed below and shown in Attachment "1" to this letter as specific amendments to the text of Section II.C "Waiver Standards" and Section III.B(i) "Schools, Level of Service" of the APFS. These amendments will allow the APFS to be applied in a fair and reasonable manner so that quality residential projects that advance the City's planning and economic development goals, such as Avalon at Twinbrook and EYA at Tower Oaks, can move forward.

Briefly, by way of background, AvalonBay purchased the Twinbrook Station property in 2004. In 2009, following the adoption of the Twinbrook Neighborhood Plan and the end of the

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moratorium on development applications pending the completion of the RORZOR process, AvalonBay submitted an application with the City for a 240-unit, multi-family development on the property. The Twinbrook Station project is proposed as a high-quality, transit oriented development that is consistent with the Twinbrook Master Plan and supported by the surrounding community. The project has not proceeded as planned because just after AvalonBay filed its application, a residential moratorium was imposed on the Richard Montgomery Cluster because of over-capacity projections for the Twinbrook Elementary and Julius West Middle Schools.

EYA is considering a high-quality, for-sale, residential development on approximately 40 acres of land owned by Boston Properties in the Tower Oaks planned development. EYA's plan proposes approximately 300-350 homeownership housing units, including large condominium units, detached patio homes, townhouses, and MPDU's with significant community amenities for a target market of empty nesters and professionals. As with the Twinbrook Station project, EYA's plan for Tower Oaks cannot be approved at this time or in the immediate future because of the current residential moratorium in the Richard Montgomery Cluster and inconsistencies in the APFS.

These two projects represent AvalonBay's and EYA's vision to bring high-quality residential options to the City that advance the City's planning and economic development goals, add to the City's affordable housing stock, increase funding for public schools through school impact taxes, and increase the City's tax base. However, as we have testified at recent hearings, unless the APFS is revised, the Richard Montgomery Cluster will remain in a residential moratorium for the foreseeable future and neither EYA nor AvalonBay can move forward with these projects. This outcome is contrary to both the intent and purpose of the APFS and the rationale for the funding of a fifth elementary school in the cluster ("ES No. 5") and improvements to Julius West Middle School. Further, it is clear in the APFS that capacity resulting from new or improved facilities can be counted within two years from the date of delivery but the MCPS boundary survey for ES No. 5 is preventing this plain language from the APFS from being enacted.

To address this problem, we request that you consider four amendments to the APFS (summarized below and shown in Attachment "1"). The first three amendments are clarifications and/or address inconsistencies that will give staff and the development community clarity on how to proceed on projects and result in a fair application of the law. The fourth amendment gives the Mayor and Council or other approving authority the ability, on a case by case basis, to waive any requirements of the APFS for residential projects that are consistent with the Master Plan and applicable Neighborhood Plan and promote the development goals of the City.

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- Add a provision that if one or two school clusters have adequate capacity at the time of conditional project approval, or at any point after conditional approval, then these school levels will have capacity reserved for the project at that time and not be retested when capacity becomes available in the remaining school levels. We believe that a reasonable reading of the current APFS shows that this is the intent of the APFS, but clarification is necessary for staff to apply the standards this way.
- Clearly state that only the adequacy in the second year following a project approval must be reviewed, not two consecutive years following project approval. This clarification reflects a reasonable reading of the intent of the current APFS. Given the length of the entitlement and construction process for most residential projects, students are not likely to be generated from a project for at least 18-24 months following approval, if not longer, and even then the full build out and occupancy of the project will take some time.
- Allow the capacity from the planned ES No. 5 to be counted in capacity projections for the four existing elementary schools in the cluster without the initiation or completion of a boundary survey. This school is scheduled for opening in the fall of 2017 and, given its location, it will clearly serve Rockville residents. A boundary survey will not be likely be completed until as late as the Spring of 2017, which is approximately 2 years after the APFS provides that this school should be available for capacity purposes (July 1, 2105). Because capacity constraints are projected at Richard Montgomery High School beginning in 2017, delaying counting the capacity for ES No. 5 until 2017 may effectively extend the residential moratorium indefinitely. Such a delay is contrary to the APFS and imposes an unintended and continued residential moratorium in the cluster.
- Amend the Waiver Provisions to allow the Mayor and Council, or other applicable approving authority, at its sole discretion, to waive any APF standard for residential projects that are consistent with the goals and objectives of the City's Master Plan or applicable Neighborhood Plan and promote the City's development goals. Such a waiver provision will provide the City the flexibility to administer the APFS in a fair and reasonable manner and avoid the detrimental consequences that occur when the strict application of the APFS prevents good residential projects that will benefit the City from going forward.

These amendments are modest and reasonable and would result in a fair application of core tenets of the APFS, as we believe was originally intended.

We appreciate your willingness to continue your consideration of the issues regarding the City's APFO and APFS on September 9th and at the public hearing to follow on September 30th, and we

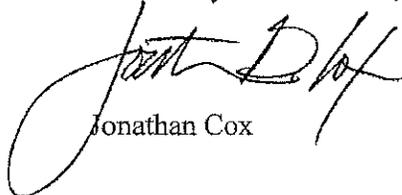
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ask that you include the modifications to the APFS discussed above and in Attachment "1" in any required notices of the public hearing as necessary.

If you have any questions regarding this letter, please do not hesitate to contact us at 703- 317-4619 for Jon Cox (AvalonBay) or 301- 634-8600 for Aakash Thakkar (EYA). Thank you again for your attention to this matter.

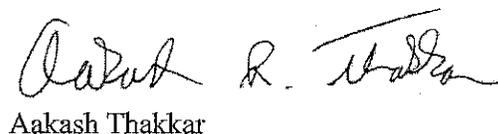
Very truly yours,

AvalonBay Communities, Inc.



Jonathan Cox

EYA



Aakash Thakkar

cc: Debra Daniel, Esq.
Ms. Barbara Matthews
Ms. Susan Swift
Mr. James Wasilak
Mr. Deane Mellander
Barbara A. Sears, Esq.
Scott C. Wallace, Esq.
Samantha L. Mazo, Esq.

Attachment "1"**Draft Amendment to "Schools, Levels of Service" at pages 8-9 of the APF Standards
Approved and Adopted on July 6, 2011 by Resolution 15-11**

New text underlined; deleted text shown with strikeout

III.B.Schools

School demand is based on actual student census in the most recent complete academic year, adjusted for the following: demographic changes, changes in district boundaries and other changes anticipated by planners with Montgomery County Public Schools; additional demand from approved development; additional demand from the specific development being considered for approval. Developers may be required to obtain current certification of school capacities for individual clusters, because the annual figures reported to the Board of Education can rapidly be outdated.

(i) Levels of Service

Except for development applications filed during the pendency of a related annexation petition, a determination of the adequacy of public school capacity is based on the following principles:

- The program capacities determined annually by the Superintendent of Montgomery County Public Schools, as reported to the Board of Education, shall be used as the capacity basis for the APFO program, based on 110 percent of program capacity at all school levels; in the second test year after the applicable Initial APFO Approval or Detailed APFO Approval for the development application, as defined in Table 1, including a conditional approval pursuant to Section 25.20.02(d) of the APFO;
- Within the City, capacity is based on a cluster of schools, using the clusters already established by the Montgomery County Public Schools; however "borrowing" of capacity from adjacent clusters will not be counted towards the adequacy of school capacity within the City. "Borrowing" of capacity within a cluster will not be counted towards adequacy of school capacity;
- Capacity temporarily taken off-line for rehabilitation and remodeling in accordance with the Montgomery County Public Schools Capital Improvements Program shall be considered available;
- Facilities shown on an adopted Capital Improvements Program with identified sources of funding and planned for completion within 2 years or less shall be considered available; Any new school shown on an adopted Capital Improvements Program with identified sources of funding and planned for completion within 2 years or less shall be considered available, and projected capacity from such new school allocated in equal proportions to the capacity of each school in the same

school level in the cluster without the requirement that a boundary survey be initiated or completed;

- If at the time of conditional approval of a development application pursuant to Section 25.20.02(d) of the APFO, or at any time following such conditional approval, there is adequate capacity at one or two school levels but inadequate capacity at the other applicable school level(s), then a final determination of adequacy will be made for school level(s) with adequate capacity and the capacity at such school level(s) will be reserved for the development application and will not be retested when adequate capacity is deemed available at the inadequate school level(s).

**Draft Amendment to “Waiver Provisions” at pages 4-5 of the APF Standards Approved
and Adopted on July 6, 2011 by Resolution 15-11**

New text underlined

II.C. Waiver Provisions¹

Certain classes of uses are deemed to have little or no impact on public facilities or are necessary to implement the City’s economic development goals and master and/or neighborhood plans. As such, the deciding body may waive full compliance with the APFO provisions if it finds that there will be minimal adverse impact resulting from such a waiver. Such a waiver does not exclude any project from the final adequacy check for water and sewer service, if needed for the project.

The following uses or classes of uses are eligible for a waiver from the APFO requirements:

- Accessory Apartments
- Houses of Worship
- Personal Living Quarters
- Wireless Communications Facility
- Nursing Homes (no waiver from the Fire and Emergency Service Protection provision)
- Housing for the Elderly and Physically Handicapped, or for other age-restricted residential uses (no waiver from the Fire and Emergency Service Protection provision)
- Publicly-owned or publicly operated uses (Note: the addition of portable classrooms to existing schools are excluded from the APFO requirements)
- Minor subdivisions (up to 3 residential lots)
- Residential projects that satisfy either of the following: (i) development applications were filed before [the date of adoption of this amendment], are consistent with the applicable master or neighborhood plans, transit-oriented and promote the City’s economic development goals, or (ii) amendments to an approved Planned Development that are consistent with the applicable master or neighborhood plans and the City’s economic development goals.

¹ Section 25.20.01.b of the City’s Zoning Ordinance provides the following: “A waiver of the requirement to comply with one or more of the Adequate Public Facilities Standards may be granted only upon a super-majority of the Approving Authority. For purposes of this Article, a super-majority vote shall be 3 votes for the Board of Appeals, 5 votes for the Planning Commission, and 4 votes for the Mayor and Council. The Chief of Planning may not grant a waiver.”