

**January 14, 2022**

**To:** Arlington County Board; Arlington Department of Community Planning, Housing & Development; Plan Langston Boulevard Planning Team; and the Langston Boulevard Alliance

**Subject:** Plan Langston Boulevard Process, the Affordable Housing Master Plan, and the County's Duty to Affirmatively Further Fair Housing

I hope all is well. My name is Michael A. Spotts, and I am an Arlington resident; housing and community development policy research professional; and former Vice-Chair of the Affordable Housing Master Plan (AHMP) Working Group.<sup>1</sup> This letter provides public comments on the issue of fair housing as it relates to potential zoning and land use initiatives, in particular the Plan Langston Boulevard process. This letter expands upon my May 2021 comment letter on that process. A brief summary of the key comments/recommendations from that letter is appended to the end of this document. ***Today's letter emphasizes the pressing need for action to support more affordable and attainable housing options in the Langston Boulevard corridor to avoid violating the letter and spirit of the Fair Housing Act. Failure to do so could potentially open the county to punitive legal/regulatory measures.***

## **The Fair Housing Act and the duty to Affirmatively Further Fair Housing**

Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) prohibits active discrimination and policies that lead to disparate impacts in housing. Combatting this type of discrimination is often the focus of Fair Housing evaluations and activities. However, when the baseline conditions prior to passage of the Fair Housing Act included rampant de facto and de jure discrimination and segregation, simply eliminating those actions (which society has decidedly not achieved) without some sort of restitution or remedy for the harms created would perpetuate disadvantage for people of color and African-Americans in particular. As such, the Fair Housing Act established an obligation to affirmatively further fair housing and require recipients of HUD funds "to take meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics."<sup>2</sup> Regrettably, HUD has not robustly enforced this obligation throughout much of the law's history. However, starting with the Obama Administration, HUD has taken steps to create a more robust regulatory framework around this obligation. The Trump Administration subsequently reversed these actions, but the Biden Administration has reinstated many of the Obama-era provisions and has signaled that it would be more closely focused on the issue. Consequences for the failure to adhere to Fair Housing Act provisions include the forfeiture of federal housing resources allocated to the recipient, among other potential actions.

## **Affirmatively Furthering Fair Housing in the Arlington Context**

The final regulatory form and specific actions required by HUD are not yet finalized (and are subject to further rulemaking). As such, it is unclear at this time what actions HUD will definitively consider as

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<sup>1</sup> Disclosure: I am a volunteer member of the Board of Directors for both the Arlington Partnership for Affordable Housing and Northern Virginia Affordable Housing Alliance. These comments are my own, and do not represent the perspective of those organizations.

<sup>2</sup> [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/affh](https://www.hud.gov/program_offices/fair_housing_equal_opp/affh)

affirmatively furthering fair housing, and what actions would prompt action from the HUD Office of Fair Housing Enforcement.<sup>3</sup> However, given the specifics of the [interim final rule](#) and the [Biden Administration's stated focus on eliminating exclusionary zoning](#), it would be prudent for Arlington County to consider any action that reinforces or creates exclusionary zoning barriers to be suspect and potentially increase the risk of legal and regulatory action from HUD.

Furthermore, the obligation to affirmatively further fair housing has existed since 1968. ***Given the County's vision of being "a diverse and inclusive world-class urban community," Arlington should hold itself to a standard of ethics and practice that advances this goal, independent of specific federal regulatory requirements.***

## **The Importance of Plan Langston Boulevard to Affirmatively Furthering Fair Housing**

Increasing housing supply and diversity in the Langston Boulevard corridor is also critically important to achieving the specific goals of the Affordable Housing Master Plan (AHMP), which is now under 5-year review. During that process, the County and the AHMP Working Group identified considerable challenges related to the geographic distribution of affordable housing, with attainable housing opportunities (and Committed Affordable Units) more constrained in North Arlington and north of Langston Boulevard in particular. To meet the County's goals for affordable housing by 2040, the Langston Boulevard/East Falls Church corridor would need an increase of nearly 2,000 units affordable up to 60% AMI. Regrettably, the final targets projected a 50 unit loss of units in the nearby Westover neighborhood over the same time period.

***The development opportunities brought on by the Plan Langston Boulevard process represent a critical opportunity for achieving a more balanced housing distribution and meeting (or hopefully, exceeding) the distribution targets established in the AHMP.*** Failure to leverage this opportunity will only exacerbate a cycle in which market-rate housing becomes increasingly out-of-reach and rising land/property values reduce the impact of County affordable housing subsidies, widening discrepancies in income, wealth and opportunity (or put more bluntly, intensifying socioeconomic segregation).

Neighborhood change can be controversial, and the County has acknowledged the concerns that some nearby residents have regarding increased development and potential densification along Langston Boulevard. In some cases (particularly the historically African-American neighborhood of Halls Hill) those concerns warrant particular attention, given the County's legacy of segregation and its fair housing obligations. However, the County also conducted an extensive community engagement process in the development of the AHMP, during which highly imbalanced geographic distribution of housing opportunities was raised as a critical consideration. This community engagement must also be considered a part of the Plan Langston Boulevard equation.

Furthermore, the County has taken robust action to expand and preserve affordable housing opportunities in in the Rosslyn-Ballston corridor and in South Arlington. Notable examples include the affordability incentives embedded in the Columbia Pike Neighborhoods Plan and Form-Based Code, and the recent investment in preserving the affordability of the Barcroft Apartments. To be clear, these

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<sup>3</sup> Though I follow the issue of Fair Housing closely from a policy perspective, I am not a fair housing lawyer and this letter does not constitute legal advice.

actions are warranted, necessary, and consistent with the principles of equity and fair housing. ***However, to affirmatively further fair housing it is critically necessary to show similar commitment to affordability everywhere in the County.*** The County has established a pattern in which it is willing to invest resources in areas that are already socioeconomically diverse and has made case-specific investments in certain higher-income neighborhoods. ***However, it has not established the same level of commitment to affirmatively confronting exclusionary zoning and taking proactive steps through zoning changes and financial investments to desegregating neighborhoods. If the County is to comply with the spirit (and potentially the letter) of the Fair Housing Act, it cannot commit to one-for-one preservation/replacement of affordable units along Columbia Pike, but plan for a loss of affordable units in Westover. It cannot abandon the commitment to affordability along Langston Boulevard established in the AHMP because of the concerns of opponents hoping to preserve low density in the County's wealthiest and least diverse neighborhoods. This is particularly important when placed in the context of the commitments made (and neighborhood change facilitated) along in the Columbia Pike corridor.*** Failure to prioritize housing affordability and diversity would at a minimum expose as hollow the County's stated commitment to equity. At a maximum, it could potentially and justifiably lead to regulatory action and litigation if HUD begins robust enforcement of the Affirmatively Furthering Fair Housing obligation.

### **The Path Forward**

Recently, Arlington County took the step of changing the name of the Route 29 Corridor from Lee Highway to Langston Boulevard in order to move forward from the racist policies and practices of the past. This was a positive first step, but to make true progress the County must take action to remove concrete barriers to opportunity and improve the material conditions of those that have experienced discrimination and/or are economically struggling. To live up to its ideals and its obligations under the Fair Housing Act, Arlington County must commit to a plan for Langston Boulevard that provides the tools necessary to meet or exceed affordable housing targets established in the AHMP. It should also revisit land use policies and other housing incentives in order to encourage housing affordability and housing stock diversity in other predominantly high-income neighborhoods (such as single-family exclusive zones) and/or rapidly gentrifying neighborhoods (such as Westover). Given the unique nature of each neighborhood, the plans, tools, and incentives used in North Arlington may differ from past efforts in other parts of the County. However, the County must seize the opportunity today and commit to taking whatever actions are necessary to deconstruct exclusionary barriers. Otherwise, future generations will look back at the renaming process as a purely symbolic gesture of a community not truly committed to expanding opportunity for all.

Thank you for considering these comments. As always, please feel free to contact me if I can volunteer time and information in support of developing sound and effective policies, programs, and tools to accomplish the goals discussed in this letter.

Sincerely,

Michael A. Spotts  
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## Summary of Comments from May 2021 Plan Langston Boulevard Comment Letter

See full letter at: <https://www.neighborhoodfundamentals.com/news/2021/5/20/comments-in-response-to-plan-lee-highway-community-engagement-effort>

- Arlington will be hard-pressed to achieve its goals related to diversity, equity, and housing attainability (including compliance with MWCOG housing targets) without adopting a strong, forward-looking policy and planning framework for the Langston Boulevard corridor.
- Most importantly, policies resulting from the Plan Lee Highway process should ensure that there is sufficient height, density, and form flexibility to make affordable housing (and other prioritized community benefits) economically feasible.
- The County should reconsider its approach to the Arlington East Falls Church neighborhood. The East Falls Church neighborhood has access to what is perhaps the corridor's best transportation asset – a Metro station that allows for a “one-seat ride” to critical centers such as Tysons, the Rosslyn-Ballston Corridor (and downtown Washington, DC), and the emerging node at Dunn Loring/Mosaic District. Prioritizing low-density housing (and thus making more attainable housing development less feasible) in an area where property values are boosted by the region's investment in transit constitutes a wealth transfer from the tax-paying public to a small number of private property owners. This investment will be substantially more effective if more people have access to the neighborhood, which only can be accomplished through more housing units and more diverse housing types.
- Open space and environmental requirements should prioritize contiguous areas and public space. Environmental research suggests that contiguous (particularly forested) natural space yields the best outcomes for stormwater retention, habitat preservation, and tree cover maintenance. While private yards/open space may be better than impervious cover in many cases, they do not offer the same benefits and are subject to change by private property owners.
- Neighborhoods (like ecosystems) are complex, interactive, and evolve by nature. Planning is an imperfect science. As such plans should avoid the tendency to micromanage and account for every scenario, and embrace flexibility and experimentation.