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FOR  
HOWARD COUNTY

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CIRCUIT COURT  
FOR  
HOWARD COUNTY

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CIRCUIT COURT  
FOR  
HOWARD COUNTY



**PETITION FOR JUDICIAL REVIEW**

Petitioners, as listed in the above caption, by G. Randall Whittenberger and Miles & Stockbridge P.C., their attorneys, request judicial review of the *Decision and Order* of the County Board of Appeals of Howard County, in County Board Of Appeals Case Number 05-046C, a copy of which is attached hereto. The Petitioners were parties to the proceedings before the County Board of Appeals, own neighboring properties in the vicinity of the conditional use project, are taxpayers of Howard County, and/or are aggrieved by the Board of Appeals decision in their relation to the *conditional use plan* including their ownership of neighboring properties in the vicinity being effected.



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Attorneys for Petitioners

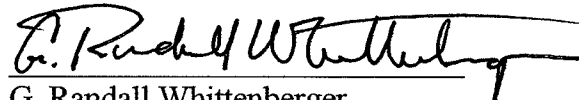
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FOR  
HOWARD COUNTY

**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that on this 1<sup>st</sup> day of March, 2007, a copy of the foregoing *Petition for Judicial Review* was sent, via first class mail, postage prepaid, to:

Howard L. Alderman, Jr., Esq.  
Levin & Gann, P.A.  
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Barry M. Sanders. Esq.  
Howard County Board of Appeals  
George Howard Building  
3430 Courthouse Drive  
Ellicott City, Maryland 21043

  
G. Randall Whittenberger

**IN THE MATTER OF  
ROBERT B. WILLIAMS, et al.**

Petitioners

: BEFORE THE  
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: HOWARD COUNTY  
:  
: BOARD OF APPEALS  
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: BA Case No. 05-046C  
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**DECISION AND ORDER**

The Howard County Board of Appeals (the "Board") convened on July 11, July 25, August 22, September 21, and October 11, 2006 to hear and deliberate the petition of Robert B. Williams, Joanna K. Benedict, Barbara B. Cusack, and William I. Slade, Jr., Petitioners, for a conditional use for age-restricted adult housing in an RR-DEO (Rural Residential- Density Exchange Option Overlay) Zoning District, filed pursuant to Section 131.N. 1 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. The Board members indicated that they had viewed the property as required by the Zoning Regulations. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

This case was conducted in accordance with Section 2.209 of the Board's Rules of Procedure. The Howard County Code, the Howard County Charter, the Howard County Zoning Regulations, the Department of Planning and Zoning Technical Staff Report dated February 22, 2006 recommending approval, the General Plan for Howard County, the General Plan of Highways, and the Petition and plat submitted by the Petitioners were incorporated into the record by reference. This case comes before the Board on a *de novo* appeal filed by the

Petitioners from the April 20, 2006 Decision and Order of the Howard County Hearing Examiner.

The Petitioners were represented by Howard L. Alderman, Jr., Esquire. The following persons testified on behalf of the Petitioners: Jacob Hikmat, Robert Sheesley, Joseph Caloggero, and Robert Williams.

The Opponents to the Petition were represented by their spokespersons, Marc Jordan, Ruy Garcia-Zamor and Rebecca Yoshitani. The following individuals testified in opposition to the petition: William Taylor, Murray Snyder, Steve Murphy, Robert Stephens, Matt Rodell, Allen Currano, Wayne Miles, Hugh Hill, Mindy Burstein, Renee Pripstein, Gene Cyprych, Katherine Murphy, Nina Stedman, and Robert Mentle.

As a preliminary matter, on July 11, 2006, the Petitioner submitted an amended petition and plan to the Board shown as Petitioner's Exhibit #1 (Greenberry- Conditional Use Petition- 3 pages). In accordance with Board Rules of Procedure 2.202 (b) and (c), the Board considered whether or not the amendments made to the petition and plan were substantive in nature. The Board found that the amendments were not substantive in nature and continued with the hearing.

#### **FINDINGS OF FACT**

Based upon the testimony and exhibits presented at the hearings, the Board makes the following Findings of Fact:

1. The Petitioners are the owners of the subject property, known as 13110 Greenberry Lane, which is located in the 5<sup>th</sup> Election District on the east side of Greenberry Lane, northeast of Linden Church Road and east of Maryland Route 32 in Clarksville (the "Property"). The Property is referenced on Tax Map 28, Grid 9 as part of Parcel 48.

2. The Property is roughly pentagonal in shape and consists of about 50 acres. The Property is currently unimproved open crop land with some narrow perimeter vegetation and wooded areas in the westernmost portion. The Property is moderately sloped with the highest area in the east-central portion and the lowest in the west. A 50' wide Columbia Gas easement runs from south to northeast through the site. The Property has about 1,200 feet of frontage on Linden Church Road on the south and southeast sides, and about 700 feet of frontage on Greenberry Lane on the southwest side. Greenberry Lane bisects the Property on the west side where it turns and runs north.

3. All vicinal properties are similarly zoned RR-DEO and include the following:

(a) To the north is the remainder of Parcel 48, an area of 77 acres improved with a dwelling and farm buildings.

(b) To the northeast is Parcel 414, which contains an existing single-family detached dwelling accessed by a driveway that runs from Linden Church Road along the east boundary of the Property. To the east of the Property is the Twelve Hills subdivision of 3-acre lots improved with various sizes of single-family detached homes. These homes back to the Property and are accessed from Twelve Hills Road. Adjoining the site to the southeast is Parcel 162, a triangular shaped 2.2 acre lot that is improved with a one-story single-family detached dwelling and detached two-car garage fronting on Linden Church road. To the southeast across Linden Church Road is Parcel 189, an unimproved 5-acre lot.

(c) To the south across Linden Church Road are Parcels 175 and 176, two 5 acre lots containing single-family detached dwellings fronting on Linden Church Road. West of Parcel 175 is Broadwater Lane.

(d) To the west of the Site are Greenberry Lane and Maryland Route 32. To the northwest are Parcels 78 and 79 which contain a gas pipeline transmission facility, an electric utility facility, and a communications tower.

4. The Petitioner requests a conditional use for an age-restricted adult housing development on the Property. The proposed development will be constructed under a condominium regime without individual lots. The proposal is for 50 single-family detached dwelling units with attached garages. The proposed units will be located on both sides of an elongated U-shaped internal road. The western portion of the road extends about 1,150 square feet and ends at a cul-de-sac about 200 feet from the east lot line and 400 feet from the north lot line; the eastern portion of the road is about 1,100 feet long and ends in a cul-de-sac about 275 feet from the north lot line. The proposed elongated U-shaped pattern will keep the proposed dwelling units to the west and east of a 50 foot wide gas easement which runs diagonally through the Site.

The dwellings proposed on the subject property will be single and double-story and will range in size from 1,800 square feet to 6,000 square feet. Schematic footprints and elevations of four types of dwellings ranging in size from 1,800 square feet are depicted on sheet 3 of 3 of Petitioners' Exhibit No. 1. The units will stand approximately 30 feet in height (measured to the peak of the roof) and will be approximately 20 feet apart. Each unit will include a driveway with parking space for two vehicles. The units will contain universal design features as well as optional features associated with the age-restricted homes proposed (see Petitioners' Exhibit No. 1 Note 17, and page 3; and Petitioners' Exhibit No. 3). Five of the units would be Moderate Income Housing Units. The development is to occur in a single phase and without the necessity

of any variances being requested under the Zoning Regulations. Trash removal will be by private contractors using standard household containers at each unit.

A 1,000 square foot community building will be located on the west side of the western road. A swimming pool will be situated adjacent to the northwest corner of the community center and tennis courts will be installed southwest of the community center. A 6 foot wide paved path/exercise trail will extend from the community center and run around much of the perimeter of the site.

The parking for the development would be provided with two garage parking spaces and two driveway parking spaces for each dwelling unit for a total of 200 parking spaces. The development will provide a 23-space parking lot in front of the community center. Access to the Property will be gained via a wide entrance road with an optional gate from Greenberry Road in the southwest portion of the Property. A 4.5 acre septic easement is reserved for the northwest portion of the Property. A stormwater management facility will be located in the western portion of the site. Much of the perimeter of the site is designated as a forest conservation easement. A Type "C" (heavy buffer) will also be planted along the perimeter in those areas not designated forest conservation easements (see Petitioners' Exhibit No. 1). The Petitioners conditional use plan provides that 34 acres or 68% of the Property will be open space.

5. The 2000 General Plan designates the Property as a "Rural Residential Area" land use. The Property will be served by private community water and septic facilities. Greenberry Lane is a local road with two travel lanes and wide paved shoulders within a variable width right-of-way. Visibility from the proposed entrance road is about 500 feet to the south and 300 feet to the north. Linden Church Road is also a local road with two travel lanes and 22 foot wide

pavement width within a variable width right-of-way. The speed limit on Linden Church Road is 25 mph.

6. Jacob Hikmat, a professional engineer, testified in detail that the proposed conditional use will comply in all respects with the general standards required for approval set forth in the Zoning Regulations section 131.B. and the specific criteria set forth in section 131.N.1. of the Zoning Regulations for approval of an age-restricted adult housing project. Mr. Hikmat testified that the number of bedrooms proposed for each unit will be 2 to 4, however, the maximum number of bedrooms will be based upon the Health Department's determination of septic capacity. Mr. Hikmat stated that market conditions would determine the actual sizes of the proposed dwellings.

Mr. Hikmat testified in detail regarding the safe ingress and egress the proposed use would have with only one single point of access which would go directly to Maryland Route 32. Mr. Hikmat concluded that the proposed use at this location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with age-restricted adult housing. Mr. Hikmat stated that the RR zoning district essentially follows the Maryland Route 32 corridor. Mr. Hikmat acknowledged that there will be additional approvals, designs and permits which must be obtained in the future for this proposed conditional use if it is approved. The Petitioners have not submitted a detailed lighting plan with their conditional use proposal, however, Mr. Hikmat testified that any outdoor lighting such as future street lighting would comply with Howard County regulations. (See note 12 on Petitioners' Exhibit No. 1.)

7. Robert Sheesley, an environmental consultant and analyst, testified in detail regarding the methods employed in soil evaluation and analysis in the area of the proposed septic reserve area on the conditional use plan. A total of fifty soil evaluation tests were conducted

within the septic reserve area and the soil profiles were observed and evaluated to a depth of between 13 and 15 feet. Of those tests, only one failed to pass state and county requirements. Mr. Sheesley opined that the "soil profiles are excellent compared to other areas of the county." Additional testing will be conducted of ground water levels as part of the required groundwater discharge permit process. Only thereafter will the actual sewage system be designed to ensure required vertical separation from the ground water and only in soils capable of treating the sewage flow. The ultimate design of the system will dictate the total number of bedrooms that can be created in the development. That limit on bedroom creation will be enforced by the State of Maryland (MDE- Maryland Department of the Environment) and Howard County, pursuant to permit limitations, as well as privately, pursuant to the restrictions under the condominium declaration of covenants, conditions and restrictions.

Mr. Sheesley further testified that there will be a central water supply for all of the proposed dwelling units. Mr. Sheesley has received a Water Appropriation Permit package from the MDE. There remains one part left for analysis of the water supply, the seventy-two hour pump test to ensure sufficient water availability and recharge such that there will not be any impact on water wells in the area. The water supply on the Property will be subject to MDE's testing and regulations, unlike the wells of neighbors to the Property which were constructed before new regulations were enacted.

Mr. Sheesley stated that neither the septic reserve area and attendant septic system nor the water supply system can be turned over by the developer to the condominium association until both are found to be fully operational, meeting all state and local requirements. Thereafter, the condominium association will be responsible for maintenance and repair of both systems.

8. Joseph Caloggero, a traffic engineer, testified as to the expected traffic to be generated by the proposed conditional use. Using trip-generation data from the Institute of Traffic Engineers (ITE) for the category of age-restricted adult housing based upon detached single family homes, Mr. Caloggero testified that the proposed type of use would generate 15 trips in/out between the peak morning hours of 7:00 a.m. and 9:00 a.m. Mr. Caloggero also stated that there would be 30 trips generated in/out during the evening peak hours of between 4:00 p.m. and 6:00 p.m. During rebuttal testimony, Mr. Caloggero dismissed the protestants' conclusions of estimated traffic generation for the proposed use as not in accord with accepted data regarding senior housing traffic generation and the fact that the protestants' survey involved persons living in dissimilar housing, i.e., non age-restricted adult housing.

Mr. Caloggero also noted that the proposed access from Greenberry Lane may be relocated to meet the potential future alignment of Greenberry Lane at the time of implementation of Maryland Route 32 improvements. Mr. Caloggero testified that Maryland Route 32 along its length, and not just in the vicinity of the Property, was operating at a level of Service F, which indicates heavy flow, frequent stoppage and slow speeds.

9. William Taylor testified in opposition to the petition. Mr. Taylor testified that he calculated that the proposed conditional use would generate an additional 665 daily round trips by the residents and thus further add to the existing traffic congestion and safety problems of Maryland Route 32. Mr. Taylor stated that Maryland Route 32 is a very congested and dangerous highway and noted that the intersection of Linden Church Road and Route 32 is operating at a level of Service F. Mr. Taylor further stated that the intersection at Maryland Route 32 and Linden Church Road is not a typical "T" intersection and that this intersection creates hazards to drivers unfamiliar with this intersection.

10. Murray Snyder, an engineer and instructor, testified in opposition and stated that he reviewed documents filed by Petitioners regarding well and septic issues and that, due to the limited information, the documents are insufficient to evaluate the effects of the proposed well and septic systems.

11. Other protestants alleged that the proposed homes are out of character with the neighborhood. Others expressed concern that there is not public water or septic in the neighborhood. Others were concerned that the proposed development will decrease the water supply available to their homes.

12. Many protestants testified that the proposed conditional use would not be in harmony with either the neighborhood or the General Plan in that the proposed two-story structures will be inconsistent with the idea of down-sizing expressed in the General Plan.

13. Other protestants were concerned that the proposed conditional use, if granted, would lower their own property values.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

#### **I. General Criteria for Conditional Uses (Section 131.B).**

A. Harmony with the General Plan: Section 131.B.1 of the Zoning Regulations requires that a conditional use plan will be in harmony with the land uses and policies indicated in the General Plan for the district in which it is located. The Maryland Court of Special Appeals has said that the term “in harmony with” is not synonymous with “in conformity with,” “consistent with,” or “in compliance with.” Rather, “in harmony with” is a more flexible standard which requires the hearing authority to determine whether a particular use would be “so

inimical or injurious to the announced objectives and goals of the comprehensive development plan so as not to be able to co-exist with the plan's recommendations." Richmarr Holly Hills, Inc., v. American PCS, L.P., 117 Md. App. 607, 656, 701 A.2d 879, 903 (1997). Indeed, the proposed use would have to frustrate or preempt achievement of the plan's recommendation before a finding of non-harmony would be justifiable. This approach is consistent with the legal nature of a conditional use, which is presumed to be valid and correct absent any fact or circumstance negating the presumption. *Id.*

The Howard County 2000 General Plan designates the area in which the Property is located as a "Rural Residential Area." The proposed age-restricted adult housing developments are commonly found in residential areas and are presumptively considered compatible with residential land uses. The proposed use will be of relatively low intensity, given the age restrictions required by the use. The use will be a low density residential development within a residential area. It is located on a 50 acre parcel and has access to a local road which will access a major arterial, Maryland Route 32. The proposed use also furthers the goal of ensuring an adequate housing supply for the elderly, disabled and special populations (see Policy 4.3, page 84).

The opposition contends that the proposed development is not in harmony with the General Plan because while the General Plan advocates the development of housing for the active senior market, it also recommends "in order to supplement the congregate and apartment housing choices now available to seniors, the County should amend the Zoning Regulations to provide other housing options for seniors, including attached and detached single story, single family homes. (General Plan p. 82, 83). Based upon the language of the General Plan, it cannot reasonably be concluded that the Petitioners' proposed age-restricted adult housing development

frustrates or preempts the achievement of any of these goals. The Board finds that it is clear that the County Council's choice of general language was purposeful. Their intent was not to establish the criteria, but to leave to future legislation the rules and standards by which the policies of the General Plan would be accomplished. The clear instruction of this policy is to "amend the Zoning Regulations to provide other housing options for seniors, including attached and detached single story, single-family homes." The County Council has not accepted nor adopted such a regulation limiting age-restricted housing to detached single story or single family homes.

Consequently, the Board finds that the nature and intensity of the proposed conditional use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site, are such that the conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district in which it is located, in compliance with Section 131.B.1.a. The conditional use will not be combined with other conditional or permitted uses; therefore, Section 131.B.1.b. does not apply.

B. Adverse Effects. Section 131.B.2 of the Zoning Regulations requires the Board to determine whether the proposed use at the Property will have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Board is not whether the proposed age-restricted adult housing development has adverse effects in an RR-DEO zone. The proper question is whether those adverse effects are greater at the

proposed site than they would generally be elsewhere within other RR-DEO districts of the County.

Once a petitioner presents sufficient evidence establishing that its proposed use meets the requirement of the statute, even including that it has attached to it some inherent adverse impact, it is then incumbent upon those opposed to the petition to show that the use and proposed location would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone. Mossburg v. Montgomery County, 107 Md. App. 1, 666A.2d 1253 (1995). Because the test is not, as some suggested, whether the adverse effects of this conditional use will be greater than if the Petitioners developed single family detached homes on the Property, the Board cannot consider the testimony offered on this point.

While the Opposition's concerns about the size and the intensity of the Petitioners' proposed use are understandable, the evidence placed before the Board does not sufficiently demonstrate any adverse effects unique or different than those ordinarily associated with an age-restricted adult housing development in the RR-DEO District. Conversely, the Petitioners have met their burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties above and beyond those ordinarily associated with age-restricted adult housing in the RR-DEO district:

1. Physical Conditions. The Petitioners' proposed 50-unit development will consist of typical residential activities associated with an age-restricted adult housing community. These affects will be no different than those associated with any other residential community and, because it will be a private adult-only community and no additional services will be provided on site, it may be less intense. No unusual activities or lighting are proposed.

The community center is centrally located and because of its small size, will be of low intensity use. The swimming pool and tennis courts will also be well separated and buffered from vicinal residential properties. Consequently, the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards and other physical conditions will not be greater at the subject site than it would be generally elsewhere in the RR-DEO zone, in accordance with Section 131.B.2.a.

2. Structures and Landscaping. The proposed 50 single-family detached, age-restricted residential development and associated community building would be of a complying height for the use category and comply with or exceed all minimum setbacks required for the proposed use. The proposed use will have wide buffer areas consisting of forest conservation easements and "Type C" heavy landscape buffer which will separate the proposed use from the existing adjoining residential properties. Consequently, the Board finds that the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the uses will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than they would generally elsewhere in the zone, in compliance with Section 131.B.2.b.

3. Parking and Drives. The Petitioners propose 200 total parking spaces for the 50 single-family detached, age-restricted residential development. The proposed development will also provide a 23-space parking lot in front of the community center. The parking provided will significantly exceed the minimum parking requirements. The community center parking lot will be well separated from all surrounding residential uses and will not be readily visible to the surrounding area due to the dwellings within the proposed development. The other parking spaces at each individual dwelling unit will be located in the garages or

driveways of the units and located on the interior roadways toward the center of the site, where they will be screened by landscaping and buffered by distance. Each dwelling unit will have standard household containers for trash pick-up. Consequently, the parking, drives and refuse areas will be adequate and are properly located and suitably screened from the adjacent properties, as required by Section 131.B.2.c.

4. Safe Access. Greenberry Lane is a local road with two travel lanes and wide paved shoulders within a variable width right-of-way. Visibility from the proposed entrance road is about 500 feet to the south and 300 feet to the north. Consequently, the ingress and egress drive will provide safe access with adequate sight distance, as required by Section 131.B.2.d.

## **II. Specific Criteria for Age-Restricted Adult Housing (Section 131.N.1).**

1. The proposed development will consist only of single-family detached dwellings in compliance with Section 131.N.1.a.

2. The 50 dwelling units in the proposed development exceed the minimum of 20 units required by Section 131.N.1.b.

3. The 50-unit development will be constructed on a site of approximately 50 net acres, and therefore does not exceed the maximum density of 1 dwelling unit per net acre in an RR zone as required by Section 131.N.1.c.

4. Each home in the development will be no more than 34 feet high in compliance with the maximum height requirement of Section 131.N.1.d.(1)(b). The proposed community center complies with the 34-foot height limitation for principal structures contained in Section 131.N.1.d.(1)(b). All of the proposed structures will exceed the minimum setback distances from perimeter of development required by Section 131.N.1.d.(2). Each unit will be setback at least

20 feet from the interior roads or driveway for units with garages, as required by Section 131.N.1.d.(3). The units also will comply with the minimum distances of 20' between buildings as required by Section 131.N.1.d.(5).

5. Sixty-eight percent (68%) of the Property will be open space, in excess of the minimum of 50% in the RR zone as required by Section 131.N.1.e.

6. Recreational accessory uses are proposed for on-site residents and their guests as required by Section 131.N.1.f.

7. The proposed 1,000 square foot on-site community building complies with the minimum requirement for such space based on the ratio of 20 square feet of floor area per dwelling unit for developments of less than 100 dwelling units, as required by Section 131.N.1.g.(1).

8. No loading area and no common trash storage area is proposed for the development. Each dwelling will have individual household-style trash containers. Therefore, Section 131.N.1.h does not apply.

9. The forest conservation areas combined with the Type "C" heavy landscape buffer proposed will provide a transition and adequate buffering near the periphery of the site. In addition, the proposed units will be designed to be compatible in scale and character to the residential developments in the vicinity, as required by Section 131.N.1.i.

In finding so, the Board disagrees with the opposition who contend that the size and density of the proposed development will not be "compatible" in scale and density with the existing development surrounding the Property. Some in opposition argue that the proposed age-restricted adult housing development is not in character with the neighborhood because it introduces a higher density to the area than that which is typical of the existing surrounding

development, or which could be obtained were the Property developed under standard RR-DEO zoning. To be “compatible” under Section 131.N.1.i., however, does not mean that the density and design of the units must be the same. If this were the case, this provision would negate Section 131.N.1.c., which permits age-restricted adult housing to include a higher density of units than is ordinarily permitted in the RR-DEO zone.

It is a cardinal rule of statutory construction that two provisions of the same statutory scheme should be read together and so as not to render any part meaningless or inconsistent. Mayor and Council of Rockville v. Ryllys Enterprises, 372 Md. 514, 814 A.2d 469, 490 (2002). Sections 131.N.1.c. and 131.N.1.i. can be reconciled simply by employing the common usage of the word “compatible.” Webster’s Collegiate Dictionary defines the word as “capable of existing or living together; congruous; congenial.” Consequently, the density and design of the age-restricted adult housing need not be same, or even similar, to that of the surrounding neighborhood, as long as they can co-exist with it. In other words, as long as the design of the conditional use development is not inimical or injurious to the vicinal properties, the use must be found to be compatible. This approach is again consistent with the legal nature of a conditional use, which is presumed to be valid and correct absent any fact or circumstance negating the presumption.

In this case, the Petitioners propose a development of 50 units. The units proposed will be single and double-story and will range in size from 1,800 square feet to 6,000 square feet. All setback and height requirements under the Zoning Regulations will be met or exceeded. The community center will be centrally located on the Property. The landscaping will buffer the development from vicinal properties. Consequently, the Board finds that the Petitioners have

met their burden of showing that the design of the development will be compatible (i.e., will co-exist) in scale and character to the residential developments in the vicinity.

Conversely, the opposition failed to provide sufficient evidence that the design of the development is incompatible with the neighborhood. There are a variety of homes in the vicinity of the subject property, some of which are located on lots of slightly larger than one acre with the majority on lots of a minimum of three acres. The fact that a neighborhood is made up exclusively of single family detached housing does not preclude the possibility that an age-restricted adult housing development can be designed to be compatible with it. Indeed, by designating this type of housing as a conditional use, the legislature has presumed its compatibility, absent a finding of facts to the contrary.

Much of the testimony presented by the Opposition on this point amounted only to unsupported opinions and conclusions. Unsupported conclusions or fears of witnesses, to the effect that a proposed use of property will or will not result in harm, amount to nothing more than vague and general expressions of opinion which are lacking in probative value. Anderson v. Sawyer, 23 Md. App. 612, 329 A.2d 716 (1974).

10. The development will be constructed in one phase, therefore, Section 131.N.1.j does not apply.

11. The individual properties will be subject to condominium covenants restricting occupancy to households having at least one member who is 55 years or older, in compliance with Section 131.N.1.k.

12. All open space, common areas and improvements will be managed and maintained by the condominium association in compliance with Section 131.N.1.l.

13. The conditional use plan contains a description of interior features that incorporate universal design principles to be accessible and adaptable for residents with disabilities and/or with limited mobility and/or other age related functional limitations. Each residence will have access to parking pads adjacent to the garages of each residence, in accordance with Section 131.N.1.m.

14. Five, or 10%, of the units will be moderate-income housing units in accordance with standards and procedures adopted by the County Council, as required by Section 131.N.1.n.

**ORDER**

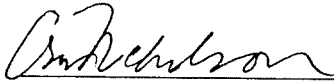
Based upon the foregoing, it is this 1<sup>st</sup> day of February, 2007, by the Howard County Board of Appeals, **ORDERED:**

That the Petition of Robert B. Williams, Joanna K. Benedict, Barbara B. Cusack and William I. Slade, Jr., for a conditional use for age-restricted adult housing in an RR-DEO (Rural Residential- Density Exchange Option Overlay) Zoning District is hereby, **GRANTED**, subject to the following conditions:


(1) That the conditional use will apply only to the uses and structures as described in the petition and as depicted on the amended conditional use plan for "Greenberry" submitted to the Board on July 11, 2006 as Petitioners Exhibit #1, and not to any other activities, uses, structures, or additions on the Property.

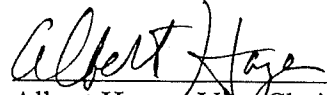
(2) The Petitioners shall comply with all applicable federal, state, and county laws and regulations.

ATTEST:

  
Ann Nicholson, Board Secretary

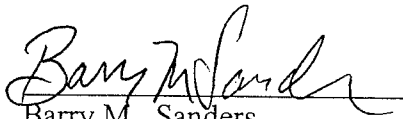
HOWARD COUNTY BOARD OF APPEALS

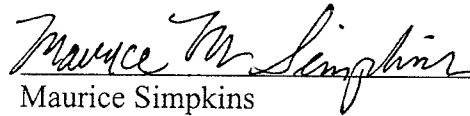
  
Robert Sharps, Chairperson

  
Albert Hayes, Vice Chairperson

PREPARED BY:  
HOWARD COUNTY OFFICE OF LAW  
BARBARA M. COOK  
COUNTY SOLICITOR

  
James Pfefferkorn

  
Barry M. Sanders  
Assistant County Solicitor

  
Maurice Simpkins

\_\_\_\_\_ term expired  
\*James Patterson

\* Board Member James Patterson presided at the hearings, however, his term of service with the Board of Appeals expired on December 31, 2006, prior to the issuance of this Decision and Order.