

# FAX COVER SHEET

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UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2525

September Term, 2007

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THU NGUYEN, ET AL.

v.

HOWARD COUNTY, MARYLAND

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Eyler, James R.,  
Zarnoch,  
Rodowsky, Lawrence F.  
(Ret., specially assigned),

JJ.

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Opinion by Eyler, James R., J.

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Filed: December 23, 2008

13C070068348

Thu Nguyen, et al.,<sup>1</sup> appellants, appeal from a decision of the Circuit Court for Howard County, which affirmed a decision by the Howard County Board of Appeals (“the Board”), appellee, reversing an earlier decision by a Board hearing examiner and granting a petition for a conditional use to build 50 age-restricted houses in an area designated as “Rural Residential.” At the beginning of the hearing before the Board, the applicants, additional appellees, amended their petition for a conditional use. Appellants contend that the amendments were substantive and the Board erred when it failed to remand the amended petition to the Department of Planning and Zoning (“DPZ”) for further review and recommendations. Appellants also contend that the evidence is insufficient to support the Board’s grant of a conditional use. We shall affirm.

### **Factual Background**

On November 16, 2005, Robert B. Williams, Joanna K. Benedict, Barbara B. Cusack, and William I. Slade, Jr., (“applicants”), submitted to the DPZ a petition for a conditional use with a plan and other supporting information. The proposed conditional use was for a clustered development of 50 age-restricted, single-family, detached houses, plus community amenities, in an area designated by the 2000 Howard County General Plan (“the General Plan”) as “Rural Residential.”

Upon review, the DPZ prepared a technical staff report dated February 22, 2006.

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<sup>1</sup> We will not recite the names of all of the appellants because they number seventy-four. The names of the appellants are contained in the record.

The DPZ recommended that the request for conditional use be granted, subject to five conditions. The conditions provided, in pertinent part, that the applicants present (1) “more detailed building plans and floorplans to prove that the dwelling units qualify as Age-restricted Adult Housing on the basis of building design; that the dwellings will have a specifically limited number of bedrooms to meet the Health Department concerns; and that the space within the dwellings will not be easily convertible to additional bedrooms,” (2) “more details on how the age-restrictions will be maintained and enforced,” (3) “floor plans or other material demonstrating that the proposed dwellings will be appropriate for the age-restricted population,” and (4) “further explanation about how five of the proposed dwelling units of the same general size indicated on the plan will be provided as Moderate Income Housing Units.” The applicants did not present the requested information to the DPZ staff or hearing examiner.

On March 6, 2006, the hearing examiner conducted an evidentiary hearing, and on April 20, 2006, issued a decision and order, denying the petition for conditional use.

Howard County Zoning Regulations (“Zoning Regulations”), § 131 governs conditional uses. Section 131.B contains “general standards for approval” and § 131.N.1 contains specific criteria applicable to age-restricted adult housing uses. Section 131.B.1 requires that the conditional use be in harmony with the General Plan, and § 131.B.1.a provides that, in making that determination, the hearing authority shall consider the “nature and intensity of the 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.” In that regard, the hearing examiner concluded:

The proposed 6,000 square foot, two story detached dwelling units are not in harmony with the concept of age-restricted adult housing contemplated by the General Plan or Zoning Regulations. Such a large unit with an expansive second floor is well beyond the size of any age-restricted adult dwelling that I have reviewed in the past four years. What’s more, the [applicants] could not specify the number of bedrooms or the use to which the large second floor space might be put. It is apparent from the evidence that these homes are not designed for the typical active senior seeking smaller quarters, but for larger households that happen to have one member who is age 55 or older. As such, the inherent intensity of the use and its impact on vicinal properties will likely be far greater than that intended by the County Council when it enacted the General Plan and conditional use regulations.

Accordingly, I find that the nature and intensity of operation are such that the use will not be in harmony with the land uses and policies indicated in the General Plan for the district pursuant to Section 131.B.1.a.

Section 131.B.2 of the Zoning Regulations provides that the conditional use “will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses.” Section 131.B.2.a provides that the hearing authority shall consider whether the impact of adverse effects “will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.” Section 131.B.2.b provides that the hearing authority shall consider whether “the nature and height of structures . . . and the nature and extent of the landscaping on the site . . . will not hinder or discourage the development and use of adjacent land and structures more at the subject

site than it would generally in the zone or applicable other zones.”

In that regard, the hearing examiner concluded:

For the reasons stated below, I find that the [applicants] have not 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 an age-restricted adult housing development in the RR district:

1. Physical Conditions. The proposed development will consist of 50 units (the maximum density allowed) that are 6,000 square feet in floor area. As such, the units are larger and designed to accommodate more occupants than the typical age-restricted adult dwelling. Because the units are more akin to a large family home, its impact with regard to noise, traffic and odors will likely be greater than those ordinarily associated with an age-restricted adult housing project. The [applicants] failed to provide a traffic study or other evidence of the potential impact of the use of the homes; indeed, they did not even indicate how many bedrooms would be located in each unit. Consequently, I find that the [applicants] have failed to present sufficient evidence as to whether the use will generate excessive noise, dust, fumes odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with an age-restricted adult housing facility in an RR zoning district, as required by Section 131.B.2.a.

2. Structure and Landscaping. The proposed dwelling units will be located in the eastern portion of the Property, which is the portion closest to the neighboring residential lots. The 80' wide and 30' tall units are larger in size and massing than any other age-restricted adult housing unit that I have reviewed in the past four years. Moreover, the units along the eastern side will be arranged in a line of 13 units 20 feet or less part, creating a visual “wall” that will stretch some 1,300 feet. This wall effect will be visible to the vicinal residential properties to the east. While the [applicants] have proposed a landscaped buffer area, they have failed to specify what type or degree of landscaping will be provided. Without a more

sufficient buffer area or specific landscape screening, the appearance of the proposed dwellings will likely have a greater adverse effect on the vicinal homes than would a typical age-restricted adult development. Consequently, the [applicants] have failed to show 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 use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than [sic] it would generally elsewhere in the zone, as required by Section 131.B.2.b. of the Zoning Regulations.

Section 131.N.1.i of the Zoning Regulations provides that the proposed use

shall be designed to provide a transition or adequate buffering near the periphery of the site, either with open space areas and landscaping, or by designing the buildings near the periphery to be compatible in scale and character with residential development in the vicinity as demonstrated by architectural elevations or renderings submitted with the petition.

The hearing examiner concluded that the applicants “failed to show that the project is designed to provide adequate buffering along the perimeter of the site . . . .”

The applicants appealed to the Board. The Board, conducting a de novo review pursuant to § 2.209 of the Board’s Rules of Procedure, Howard County Code, held evidentiary hearings on July 11, July 25, August 22, September 21, and October 11, 2006. As a preliminary matter, on July 11, 2006, the applicants submitted an amended petition and plan. Over appellants’ objection, the Board ruled that the amendments to the petition were not substantive and continued with the hearing. By decision and order dated February 1, 2007, the Board approved the conditional use. The Board applied the general and specific criteria applicable to conditional uses, as specified in § 131 of the Zoning

Regulations and concluded that the use met the criteria.

Appellants filed a petition for judicial review in the circuit court. The circuit court affirmed the Board's decision, explaining that the Board's "decision is supported by competent, material and substantial evidence in the record as a whole and contains no errors of law. It was within the [b]oard's discretion after following the procedures it did to approve the conditional use sought." Appellants noted a timely appeal. We will set forth additional pertinent facts below.

### Discussion

This appeal present two issues.<sup>2</sup> First, appellants contend that the Board erred in ruling that the amendments to the petition were not substantive, and second, that the

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<sup>2</sup> Appellants phrased the questions as follows:

- I. Did the circuit court err as a matter of law [in finding] that changes to the conditional use petition and plat on the first night of hearings before the board were not substantive?
- II. Did the circuit court err in finding that appellant had not proven that the proposed conditional use would have adverse effects where appellee presented no evidence of the effects of traffic, a proposed common septic system, or of a lighting plan, nor evidence of harmony?
- III. Did the circuit court err in finding that substantial evidence supported the board's decision?

Because questions II and III overlap, we consolidated the three questions into two questions. Moreover, we perform the same function as that of the circuit court and review the Board's decision.

evidence is legally insufficient to support the Board's grant of the conditional use. We shall address each of these contentions in turn.

In assessing these contentions, our task is not to “substitute [our] judgment for the expertise of those persons who constitute the administrative agency.” Bulluck v. Pelham Wood Apts., 283 Md. 505, 513 (1978) (quoting Bernstein v. Real Estate Comm., 221 Md. 221, 230 (1959)). Rather, our task is to determine “whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions.” Md. Comm. on Human Relations v. Mayor & City Council of Baltimore, 86 Md. App. 167, 173 (1991). Accordingly, we will reverse the board's decision only if the board's decision was arbitrary and capricious. Citrano v. North, 123 Md. App. 234, 238 (1998). It is important to note that

[e]ven with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts. Furthermore, the expertise of the agency in its own field should be respected.

Bd. of Physician Quality Assurance v. Banks, 354 Md. 59, 69 (1999) (quotations, citations, and footnotes omitted).

#### *I. Were the Amendments Substantive?*

At the beginning of the proceedings before the Board, the applicants presented an amended conditional use petition and plan. Howard County Code, Rules of Procedure of

the Board of Appeals, § 2.202(b) provides, in part:

**Amendments to the Petition.** If any amendments to the petition are made before or during a hearing, the Board, either before or during the hearing, may continue the hearing, or may suspend or postpone the hearing and remand the amended petition to the Department of Planning and Zoning and the Planning Board for further recommendations.

Section 2.202(c) provides:

**Substantive Amendments to the Petition.** If any substantive amendments to the petition are made before or during the hearing, the Board, either before or during the hearing, shall suspend or postpone the hearing and remand the amended petition to the Department of Planning and Zoning and the Planning Board for further recommendations.

The Board ruled that the amendments were not substantive and continued the hearing. Appellants argue that the Board erred in its ruling, and was required to suspend the hearing and remand the matter to DPZ.

The amended petition contained four amendments. First, the amended petition included specific distances for the setbacks. Second, the amended petition contained a number of illustrative diagrams, including a schematic landscape plan showing the type of landscaping for the areas of heavy landscaping, a cross-sectional view depicting the view from the interior of the development, and an illustration of the proposed units' sizes. Third, the amended petition replaced areas of non-maintained forest conservation with areas of heavy landscaping maintained by the condominium association. Fourth, the amended petition widened the buffer on the property's eastern border to a width

consistent with the width of the buffer on the property's western border, moving several of the proposed units farther away from existing residences.

We owe considerable deference to the Board in its interpretation and application of its own rules of procedure. The Board is far better equipped than this Court to determine whether changes to a proposed conditional use are substantive. The amendments aided the Board's evaluation of the petition, illustrating and clarifying the applicants' proposal. The proposed use did not change. Neither did the issues. Moreover, the amendments were presented on July 11, 2006, and the hearings did not end until October 11, 2006. Appellants had ample time to digest the changes and present any evidence they wished to present. Indeed, they do not argue otherwise.

Appellants' reliance on Halle v. Crofton Civic Association, is unavailing. 339 Md. 131 (1995). In Halle, the applicant applied for a special exception and variance. Id. at 135. The application was denied by a hearing examiner, and the applicant appealed to the Arundel County Board of Appeals. Id. The board heard the matter de novo. Id. On judicial review, the protestants argued that the board improperly permitted an amendment, relating to access to the proposed use. Id. The Court of Appeals held that, on de novo review, the board could receive new or additional evidence. Id. at 145. The decision in Halle is consistent with the Board's Rules of Procedure and consistent with the Board's determination that the amendments were nonsubstantive. As earlier indicated, the case before us presents no issue relating to sufficiency of notice.

## II. *Does Substantial Evidence Support the Board's Ruling?*

Under the Howard County Zoning Regulations, the Board may permit conditional uses, provided that two requirements are met. First, the conditional use must comply with the Regulations' "general standards required for approval." Second, the conditional use must fall into one of the categories listed in § 131.N.

### A. General Standards

The general standards required for approval provide that the conditional use must (1) be in harmony with the General Plan, and (2) not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. Howard County Zoning Regulations § 131.B.

#### 1. In Harmony

All conditional uses must be in harmony with the applicable land uses and the policies in the General Plan for the district in which the use is proposed. Id. § 131.B.1. Absent an ordinance requiring mandatory strict compliance with a general plan, a use is in harmony with a general plan when it is generally compatible with the purpose and intent of the plan. Trail v. Terrapin Run, LLC, 174 Md. App. 43, 55-57 (2007), *affirmed by Trail v. Terrapin Run, LLC*, 403 Md. 523 (2008). Indeed, the conditional use does not have to adhere strictly to the plan. Id. A conditional use is compatible with the purpose and intent of the plan as long as the conditional use is not "so inimical or injurious to the announced objectives and goals of the . . . plan so as not to be able to co-exist with the

plan's recommendations." Richmarr Holly Hills, Inc. v. Am. PCS, L.P., 117 Md. App. 607, 656 (1997).

The following is the portion of the General Plan that is relevant to this case:

The County will need to support the ability of seniors who desire to "age in place" in their own homes or in their own communities. Aging in place can mean different choices at different stages: perhaps initially in an existing home and later in a smaller home or in another type of housing with more support services. The County will need to consider programs to help people stay in their homes and to promote services and housing options for seniors who need help with personal or medical care.

\* \* \*

Many active seniors desire to sell their large family home and yard to purchase a smaller, easier-to-maintain home with a first floor bedroom. This active senior market is the largest segment of the senior housing market, . . . but it is not well accommodated in Howard County. Many residents have expressed concern about having to move out of the County to find this type of housing. The County needs to encourage both renovation and construction of housing for active seniors. However, in light of competition for the declining residential land supply, it is likely that much of the demand for active senior housing will have to be accommodated by renovation of existing homes. Ranch and split-level homes on smaller lots are good candidates, as are two-story homes that can add a first floor bedroom through remodeling or an addition.

In terms of new construction, senior housing products are evolving rapidly and County zoning regulations do not fully reflect current market distinctions. The regulations for "housing for the elderly" were written with congregate independent and assisted living in mind, but are currently being looked to as a means of addressing the active senior

segment of the housing market. Refinement of these regulations is needed to ensure that zoning requirements fit the specific type of housing being built. For example, elderly housing requires a common dining area and permits higher densities, on the outdated premise that all elderly need meal assistance, are less active and will have a limited impact on neighborhood traffic. 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. Such active senior housing developments would be age-restricted and include less extensive shared community facilities than currently required for elderly housing.

In addition, the County needs to reconsider senior housing developments that are currently allowed in the Rural West. The Rural Conservation (RC) and Rural Residential (RR) zoning districts allow housing for the elderly and group assisted housing by special exception. However, the West has fewer services available and does not have transit service that could provide access to services. The regulations related to this special exception use need to be reviewed and revised while keeping in mind the County's overall goals of providing housing opportunity for special populations, including the elderly, in all parts of the County and of assisting those active seniors who wish to age in place within their own communities.

Howard County's housing is expensive, which poses difficulties for seniors on limited incomes. Although several independent living communities for low and moderate income seniors have been built using Federal, State and County financing, the amount of affordable housing built is not keeping pace with the growth of the senior population. Accessory apartments and small group homes allow some affordable housing to be created. Programs to help renovate more affordable existing homes may be an effective way to meet affordable housing needs for seniors and the disabled.

Under the Howard County Zoning Regulations, the Board must consider “[t]he nature and intensity of the 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” to determine whether the applicant’s proposed conditional use is in harmony with the General Plan. Howard County Zoning Regulations § 131.B.1.a. The nature and intensity of the proposed use in this case is in harmony with the General Plan because the use is residential, is located in a rural residential district, and contains age restrictions. The size of the site in relation to the use also is in harmony with the General Plan because the proposal is low density and is located in a rural residential district. Finally, the site has sufficient access because it has access to a local road that has access to a major arterial road in Maryland. Thus, substantial evidence supports the Board’s finding that the applicants’ proposed conditional use is in harmony with the General Plan.

Appellants argue that the proposed conditional use is not in harmony with the General Plan’s recognition that seniors are seeking to “sell their large family home and yard and to purchase a smaller, easier-to-maintain home with a first floor bedroom.” The proposed conditional use provides the option for smaller homes because the proposed conditional use prohibits buyers from building homes larger than 6,000 square feet. The proposed conditional use provides for easier to maintain homes because the condominium association will be responsible for maintaining the community buildings, swimming pools, roadways, open space, landscaping, and the community water and sewer systems.

The residents are responsible for maintaining their homes. Furthermore, the proposed conditional use provides for first-floor bedrooms because all of the houses will have a master bedroom on the first floor. Thus, substantial evidence supports the Board's finding that the proposed conditional use is in harmony with the General Plan's recognition that seniors want "easier to maintain home[s] with a first-floor bedroom."

Appellant next argues that the proposed conditional use is not in harmony with the General Plan's recommendation that "[i]n 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." First, this statement is not a policy. This statement is a recommendation that the County has not adopted. Second, the recommendation does not require all housing options to be single story, single family homes. Rather, the housing options for seniors merely must include single story, single family homes. The proposed conditional use is in harmony with this recommendation because it allows seniors to build detached single story, single family homes.

Appellants also argue that the proposed conditional use is not in harmony with the General Plan's finding that "[t]he County needs to reconsider senior housing developments that are currently allowed in the Rural West . . . the West has fewer services available and does not have transit service that could provide access to services." Similarly, appellants argue that the proposed conditional use is not in harmony with the

General Plan's recognition that seniors need to "age in place." Appellants reason that the conditional use is located in an area that has "transit and road difficulties . . . ."

Appellants ignore the General Plan's explicit recognition that "[a]ging in place can mean different choices at different stages . . . ." In this case, the conditional use is meant to allow "active" seniors as young as 55 to "age in place." Certainly, active seniors as young as 55 do not lead the type of sedentary lifestyle that would require quiet roads and comprehensive public transportation. Furthermore, although the proposed conditional use technically is located in the Rural West, it still is in close proximity to the types of services that age-restricted residents require because it is minutes from Clarksville, Columbia, and Ellicott City. In any event, the proposed conditional use is not so inimical or injurious to the General Plan's announced objective and goal of allowing seniors to age in place so as not to be able to co-exist with the Plan's finding that the county must reconsider senior housing in the western half of the county. See Richmarr Holly Hills, Inc., 117 Md. App. at 656.

Finally, appellants argue that the proposed conditional use is not in harmony with the General Plan's policy of providing affordable housing. The proposed use is in harmony with this policy because evidence presented at the hearing established that 10% of the proposed conditional use is moderate income housing. See *infra* Part II.B.4.

## 2. Effect on Vicinal Properties

The Board must determine whether the proposed use adversely will affect

neighboring properties above and beyond the ordinary effects associated with such uses.

Howard County Zoning Regulations § 131.B.2; Shultz v. Pritts, 291 Md. 1, 22-23 (1981).

Indeed, the issue “is not whether a . . . conditional use is compatible with permitted uses that is relevant . . . .” Mossburg v. Montgomery County, 107 Md. App. 1, 8 (1995).

Rather, the issue is whether the use will have a greater adverse effect than normal in this particular location. *See* Schultz, 291 Md. at 11. The Regulations provide four factors that the board must consider when evaluating whether the conditional use will have a greater adverse effect than normal. Howard County Zoning Regulations § 131.B.2.a-d.

First, the Board must consider whether the impact of adverse effects, such as noise, dust, fumes, odors, lighting, vibrations, hazards, or other physical conditions, will be greater than normal. Id. § 131.B.2.a. In this case, the 50-unit development is a private adult-only community with no additional services. The proposed conditional use does not include unusual activities or lighting. The community center will be small and centrally located. Likewise, the swimming pool and tennis court will be separated and buffered from vicinal residential properties. Consequently, we hold that substantial evidence supports the Board’s finding that the adverse effects of the proposal will not be greater than normal.

Second, the Board must consider whether the location, nature and height of structures, walls and fences, and the nature and extent of landscaping will hinder or discourage the use or development of adjacent land and structures more than usual. Id. §

131.B.2.b. The proposal in this case complies with the height regulations for the use category, exceeds all minimum setback requirements, and has wide heavily landscaped buffer areas. Thus, we hold that substantial evidence supports the Board's finding that the location, nature and height of the structures, walls and fences, and the nature and extent of the landscaping will not hinder or discourage the use or development of adjacent land.

Third, the Board must consider whether the parking areas are of an adequate size, such that they will not adversely impact adjacent properties. Id. § 131.B.2.c. The proposal in this case provided for 200 total parking spaces for the 50 single family home development, and a 23-space parking lot in front of the community center. The parking spaces at each individual dwelling will be located in the garages or driveways of the units. The driveways are located on roadways that are inside of the development, such that they are screened by landscaping and buffered by distance. The parking lot for the community center will be separated and not visible from the surrounding community. Thus, substantial evidence supports the Board's finding that the parking areas are adequately sized.

Fourth, the Board must consider whether the ingress and egress routes will provide safe access. Id. § 131.B.2.d. The access road to the proposed development, 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. Thus, we hold that substantial evidence supports the Board's finding that the ingress and egress will provide safe access.

Appellants argue that the applicants did not present sufficient evidence to prove that the proposed common septic system would not have adverse effects on the vicinal properties. Nothing in the Zoning Regulations requires an applicant to prove that a proposed conditional use's septic system will not have adverse effects on the vicinal properties. We observe, and this observation is relevant to issues in addition to this one, that the proposed use is a nonextraordinary residential use, one with which the Board certainly had considerable experience.

Appellants argue that the Board improperly required them to prove that the proposed conditional use adversely will affect vicinal properties. Appellants, acknowledging that they may have the burden of proof, based on Mossburg, 107 Md. App. 1, and Shultz, 291 Md. 1, claim that the applicants failed to present sufficient evidence to cause the burden to shift to appellants.

The applicants were not required to present a comparative geographic impact analysis. People's Counsel for Baltimore County v. Loyola College in Maryland, 406 Md. 54, 106 (2008). The question is whether there was evidence of actual incompatibility of the proposed use with existing uses at the location in question. Id. Regardless of who had the burden of proof, the applicants submitted substantial evidence meeting that test, and appellants offered no evidence to the contrary. Thus, the Board was within its fact

finding power, based on the evidence, regardless of whether the burden of persuasion remained on the applicants. In context, it is clear that the Board's statement was to that effect, *i.e.*, the proposed use exhibited no adverse effects, as defined in the law, and appellants offered nothing to the contrary.

### B. *Section 131.N*

Appellants argue that the conditional use falls into Howard County Zoning Regulations §§ 103.A.5 and 131.N.1's criteria for age-restricted adult housing, and that the applicants failed to satisfy the criteria of §§ 103.A.5, and 131.N.1.i, m, and n.

#### 1. Section 103.A.5

This provision defines "age-restricted adult housing" as "[a] development that contains independent dwelling units with full kitchens that is designed for and restricted to occupancy by households having at least one member who is 55 years of age or older." Howard County Zoning Regulations § 103.A.5. Appellants argue that the proposed conditional use does not constitute a dwelling "designed for . . . occupancy by households having at least one member who is 55 years of age or older."

The applicants' exhibits one and three list the features that will be included in each home, including no-step access to the front entrance, a wide front door with exterior lighting, wide interior passageway doors, wide closet doors, complete living areas that include a master bedroom and bath on the first floor, lever handles on interior and exterior

doors, blocking for grab bars in bathroom walls near the toilet and shower, and a standard automatic garage door opener. Additionally, residents have the option of including the following features in their homes: reinforced walls to support the installation of a chair lift, landing areas allowing 90 degree turns on all stairways, an elevator between floors, ramps from the interior of the garage to the home, ramps from the interior of the home to the patio, a bath tub with an enlarged seat area, flexible extendable shower heads, an alert panel in each room to assist with summoning emergency assistance, a low threshold shower enclosure, wheelchair accessible sinks, grab bars in bathroom areas, and ADA height compliant toilets. In addition to the applicants' exhibits one and three, a witness for the applicants summarized this information in his testimony at the Board hearing.

Under the Zoning Regulations, the size and type of the house is irrelevant because the Regulations do not require a particular type of house for age-restricted housing. Consistently, the applicants' engineer testified that he was unaware of any age restricted housing projects in Howard County that are limited to single story homes. Moreover, the Zoning Regulations merely require dwellings designed for occupancy by at least one individual who is 55 years of age or older. We hold that substantial evidence supports the Board's decision that the conditional use was designed for occupancy by individuals over the age of 55, regardless of the size of the house.

## 2. Section 131.N.1.i

Under § 131.N.1.i, an applicant must design an adequate buffer at the periphery of

the proposed site. Id. § 131.N.1.i. The applicant can accomplish this in one of two ways. Id. First, the applicant may provide open space and landscaping. Id. Alternatively, the applicant may design buildings near the periphery that are compatible with the existing residential development. Id. The applicants in this case used both methods. The applicants included a forest conservation area and heavy landscaping as a buffer near the periphery of the site. Additionally, the Board found that the buildings near the periphery of the site are compatible with the existing residential development because the proposed dwellings will be comparable in scale and character with the existing buildings in the community. Thus, substantial evidence supports the Board's finding that the applicant complied with § 131.N.1.i.

### 3. Section 131.N.1.m

Under § 131.N.1.m, an applicant must provide floor plans or other materials demonstrating the proposal's appropriateness for an age-restricted population. Id. § 131.N.1.m. In this case, the applicants' proposal contained materials demonstrating the proposal's appropriateness for an age-restricted population because the applicants' exhibits one and three described the features that make the conditional use accessible and adaptable for residents with disabilities, limited mobility, or age related functional limitations. Thus, substantial evidence supports the Board's finding that the applicants complied with § 131.N.1.m.

### 4. Section 131.N.1.n

Under § 131.N.1.n, at least 10% of the dwelling units must be moderate income housing units. Id. § 131.N.1.n. Appellants argue that possibly only 5% of the dwellings will be moderate income housing because the board stated that “five, or 10%, of the units will be moderate-income housing units . . . .” Appellants take the Board’s statement out of context, however. When read in context with the rest of the transcript, it is clear that the Board found that 10% of the dwellings will be moderate income housing.

Specifically, Jacob Hikmat, a professional civil engineer offered the following testimony at the hearing:

[APPLICANT’S ATTORNEY]: How will moderate income housing requirement be met?

JACOB HIKMAT: It’s going to be met in the course [sic] with Howard County zoning requirements. It could be met, you know, as required by the County. We don’t have a choice of how to do it. We have to provide 10% moderate income housing.

\* \* \*

[OPPOSITION’S ATTORNEY]: I think the other recommendation was that the petitioner provide further explanation about how five of the proposed dwelling units will be provided as moderate income housing units. Have you supplied anything else on that one Mr. Hikmat?

JACOB HIKMAT: We provided in the petition and in the drawing that we would meet the zoning requirements and the zoning requirements does [sic] change from time to time but it’s going to be provided on-site or if an alternative is provided by the zoning, so yes we did.

[BOARD OF APPEALS CHAIRMAN]: So the answer is yes

you did or yes you will?

JACOB HIKMAT: Yes, yes we did. I mean it's required to have ten percent and we addressed it by we will it to do [sic] whatever the zoning allows us to do.

Upon review of the record—specifically focusing on the aforementioned testimony—it becomes clear that the Board did not find that 5% of the units will be moderate income housing. Rather, the Board clearly found that 10% of the units will be moderate income housing units. The Board's use of the number five referred to the amount of units that constitute 10% of the 50 total units.

**JUDGMENT AFFIRMED.  
COSTS TO BE PAID BY  
APPELLANTS.**