
EXHIBIT E

**IN THE MATTER OF
KIMBERLY HOMES
ELLICOTT PROPERTIES, LLC**

**BEFORE THE
HOWARD COUNTY
BOARD OF APPEALS
BA Case No. 02-039C**

Petitioner

.....
.....

DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened on October 21, 2003, November 13, 2003, November 20, 2003, December 9, 2003, December 16, 2003, and January 6, 2004, January 15, 2004, and March 4, 2004 to hear and deliberate the petition of Kimberly Homes Ellicott Properties, LLC, Petitioner, for a conditional use for age-restricted adult housing in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.N. 1 of the Howard County Zoning Regulations (the "Zoning Regulations").

Notice of the hearings was advertised and notice of the hearing was sent to the property owner and the adjoining property owners as required under 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 Reports dated November 8, 2002 and December 11, 2002, the General Plan for Howard County, the General Plan of Highways, and the Petition and plat submitted by the Petitioner were incorporated into the record by reference. This case comes before the Board on an *de novo*

appeal filed by Patrick Crowe, John Lederer, Robert Weaver, Wuyuan Lu, Wenlei Xhang, Walter Kinsey, Teri Kelly, Craig Kastner, from the June 23, 2003 Decision of the Howard County Hearing Examiner.

The Petitioner was represented by David A. Carney, Esquire. The following persons testified on behalf of the Petitioner: Dwight Little, Mickey Cornelius, Scott Wade, Michael Davis and Donald Dunn.

The Opponents to the Petition were represented by Richard B. Talkin. The following individuals testified in opposition to the petition: Robert Weaver, Patrick Crowe, John Lederer, Teri Kelly, Craig Kastner, and William Colleary.

As a preliminary matter, on October 21, 2003, the Petitioner submitted an amended petition and plan to the Board shown as Petitioner's Exhibit's #1 and #9. In accordance with Board Rules of Procedure 2.202 (b&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 Petitioner is the contract purchaser of the subject property, known as 9918 Debra Court, which is located in the 2nd Election District on the north side of Frederick Road about 225 feet west of Jay Drive in Ellicott City, Maryland (the "Property"). The Property is identified on Tax Assessment Map No. 24, Grid 2, Parcels 918 and 812.
2. The Property is a combination of two existing lots forming an L-shaped parcel containing 6.875 acres. The Property has no frontage on Frederick Road but is accessed by

a 240 feet long private driveway that was formerly Debra Court, which has been closed as a public road. The rear of the Property abuts U.S. 40; however, there is no access from Route 40 to the Property.

The Property is currently improved with a single-family dwelling, swimming pool, tennis court and shed, all of which the Petitioner proposes to remove for the proposed development. The topography of the Property slopes generally from west to east. The central portion of the Property is generally open lawn. The remainder of the site contains numerous ornamental, evergreen, and shade trees. All of the perimeters of the Property contain stands of woods. The northern portion of the Property is almost entirely wooded. The conditional use plan indicates approximately 0.466 acres of steep slopes and no flood plain.

3. All vicinal properties are similarly zoned R-20 and include the following:

(a) To the east of the Property are Parcel 73, a 3.2-acre lot, and Parcel 809, a 1.8 acre property, each improved with a single-family detached dwelling.

(b) To the south of the Property are four lots which front on Frederick Road. Three of these lots are located east of the driveway for the Property, and one is located to the west. Each of these lots is improved with a single-family detached dwelling. Across Frederick Road to the south is the Font Hill subdivision of single-family homes.

(c) To the west of the Property are Parcel 700, located on the southwest side of the Property and fronting on Frederick Road; and three of the 17 lots of the Oak Lea subdivision, a development of single-family homes on lots of less than one acre. The homes to the west are about 40-50 feet higher in elevation than the Property.

4. The Petitioner proposes to develop on the Property 30 single-family attached dwelling units to be used as age-restricted adult housing. The homes will be located in the southern portion of the Property and arranged in groups of 7 or 8 units clustered around a central cul-de-sac. The units will be located no closer than 50 feet from the western, southern and eastern property lines. A 1,000 square foot, one-story community center building will be located on the east side of the cul-de-sac at the center of the development. Access to the development will be gained via a 24-foot wide paved drive within a 50-foot wide right-of-way located in the roadbed of the original Debra Court. Each of the homes will be set back at least 20 feet from the private road. The drive will be gated at a point approximately 275 feet north of Frederick Road.

Twenty-seven of the homes will be one-story, two-car garage townhouses ranging in size from 1,300 square feet to 1,550 square feet. Each of these units may have an optional second floor loft of 200 square feet. Three units, to be integrated in the block of homes located in the northern portion of the development, will be designated as moderate income housing units. These units will be 900 square feet, one-story townhouses with no garage or optional second floor loft. Each moderate income housing unit will have two parking spaces located directly in front of it.

All dwelling units will be no more than 34 feet in height. Each unit will incorporate universal design principals for adaptability for accessibility as required by State and federal guidelines for the Fair Housing Act, including large door openings, reinforced walls in bathrooms for the installation of grab bars, and direct access to sidewalks adjacent to the garage or parking pad. Trash storage will be maintained within the garages of the units or at the rear of the moderate income housing units.

Parking for the development, in addition to the two spaces for each home, will consist of 8 parking spaces to be located along the western perimeter of the drive next to the lot designated as #23 on the plan, and 3 spaces located adjacent to the community center.

A walking path will be installed around the perimeter of the Property behind the three southernmost blocks of townhouse units. Sitting areas will be located in the western side of the Property between units #22 and #23 and on the eastern side between units #6 and #7. The Petitioner proposes to provide a Type "C" landscape buffer along the west, south and east perimeters of the Property consisting of a combination of the preservation of existing vegetation supplemental plantings of trees. A three-tiered, stepped retaining wall, with each section 3 feet in height, will be installed along the southeastern, southwestern, and western borders of the Property. Type "B" landscaping will be installed along the interior drive.

The northwest portion of the Property will be preserved as a forest conservation area. The northeast portion will be developed as a storm water management area, comprising about 0.48 acres. Approximately 62% of the Property will be open space.

The development will be restricted to occupancy by households having at least one member who is 55 years of age or older through the provisions of recorded condominium documents to be implemented by a council of unit owners with the assistance of a professional management company.

6. The Property is served by public water and sewer facilities. The 2000 General Plan designates the Property as a "Residential Area." Frederick Road is a minor arterial

with 30 feet of paving within an existing 66-foot wide right-of-way and a posted speed limit of 35 miles per hour.

7. Mickey Cornelius, a traffic engineer, testified that traffic counts taken at the intersections of Frederick Road and Centennial Lane, and Frederick Road and Plum Tree Drive, indicated a Level of Service A for the morning and evening peak hours for traffic. He testified that after examining and doing sight distance analysis to the west and east of the access point at Debra Court and performing an 85% speed study, that there was safe sight distance in excess of 1,000 feet to the east and 500 feet to the west which would permit cars exiting Debra Court to safely integrate into the flow of traffic. Mr. Cornelius indicated that the traffic using age-restricted housing is spread out during the day and will create only a minimal number of turning movements during peak traffic hours. Mr. Cornelius further stated that he did not believe that acceleration and deceleration lanes would be necessary for the proposed development.

8. Donald Dunn testified in support of the petition. Mr. Dunn stated that there is a "real need for affordable senior housing in this county." Mr. Dunn noted that the population rate of seniors in Howard County is 25% of the Howard County population. Mr. Dunn also pointed out that the proposed use will further the goal of the General Plan by ensuring an adequate housing supply for the elderly, disabled and special populations.

9. Michael Davis, President and Chairman on the Commission of Aging, testified as an advocate for senior housing in Howard County. Mr. Davis noted the tremendous growth of the population of seniors in Howard County and the need for housing in Howard County to enable seniors to remain in the county.

10. Robert Weaver, who lives at the residence on Parcel 700 located adjacent to the southwest portion of the Property, testified that the proposed homes will be clustered on a smaller area of the parcel due to environmental constraints, namely, the existence of steep slopes and severe topographical changes on the Property. Mr. Weaver stated that the site was too small and too steep for 30 homes. Mr. Weaver noted that the retaining walls proposed by the Petitioner would be in excess of one-third of a mile in length and located in the setback area of the Property. Mr. Weaver noted that the extensive grading would be required for the proposal and that the development would place the buildings right up against the building restriction line in order to try to get the number of dwelling units shown on the plan. Mr. Weaver testified that the existing mature trees on the perimeters of the Property cannot be saved as shown on the plan because the proposed grading will intrude on the drip line of the trees and destroy their root systems. Mr. Weaver stated the proposed conditional use plan was not in harmony with the Howard County General Plan and concluded that the ordinary adverse effects of the proposed conditional use would be greater at the location in question, because of the unique characteristics of that location's neighborhood, than would be the case if the use were located elsewhere in the R-20 zone. Mr. Weaver presented a detailed comparison of other R-20 properties establishing that the proposed site is atypical of other similarly sized lots in the R-20 zone on which age-restricted adult housing is located. (See Protestant's Exhibit #8). Unlike other age-restricted adult housing projects in the R-20 district, the subject Property is small and steeply sloped and almost entirely surrounded by adjoining residences and by private backyards and set in a maturely landscaped neighborhood. Thus, Mr. Weaver concluded

that one must reasonably infer that the resulting adverse effects will be greater at the subject Property than similarly situated uses in the same zoning district.

11. Patrick Crowe testified that the Petitioner's plan does not contain 12,000 square feet of recreation open space as required by Section 16.121 of the Howard County Subdivision and Land Development Regulations. Mr. Crowe also testified that the slopes on the subject Property are much more extensive than what is shown on the Petitioner's plan. Based upon Mr. Crowe's steep slope calculations for the Property, the Petitioner would only be allowed to build 25 townhouse units and not 30 as the Petitioner proposes.

12. Terry Kastner testified that she was concerned about additional traffic that the proposal would bring to the neighborhood. She also stated that "sticking massive buildings in the middle of a wooded area" is out of character and not compatible with the neighborhood. Craig Kastner testified that his major concern is the "run-off" created from the petitioner's proposal. Mr. Kastner voiced his concern that his property value may depreciate as a result of the Petitioner's proposal.

13. John Lederer, who lives on Parcel 809 adjoining the east boundary of the Property, testified that his home is only 10 feet from the shared property line. Mr. Lederer stated that the setback area next to his home would be materially changed, and all of the existing trees behind his house will be removed and cannot be effectively replaced. He said he would see what amounts to a retaining wall over 9 feet tall, and will look up a large slope to a massive building 250 feet long and 3 stories tall. Mr. Lederer stated that the type C buffer would not provide adequate screening and buffering. Mr. Lederer said that other townhouse communities provide a transition of open space between them and single-family homes. Mr. Lederer testified that the views and privacy from his outdoor deck and

from rooms in his house would be significantly compromised. He stated that the adverse effect is caused by the slope of the subject property and the close proximity and poor design, and that the developer just squeezed as much as he could on this site and had to use one-third of a mile in retaining walls to do that. He stated that the adverse effect here will be greater than elsewhere in the R-20 zone where you wouldn't have these conditions. Lastly, Mr. Lederer expressed his concern that the proposed development would lower the property value of his home.

14. Scott Wade, the developer, testified in rebuttal that the Petitioner used county topographical maps for calculating the area of steep slopes for the subject Property.

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 "Residential Area." More specifically, in Chapter 5, entitled "Community Conservation and Enhancement" beginning on page 168, the General Plan focuses on the development of infill sites. "As undeveloped land becomes scarce, more of the available residential land is located on infill sites. Because many of these infill sites have environmental and other constraints, particular attention must be paid to the regulations that govern their development to ensure that the new development will be an asset to the adjacent neighborhoods."

The General Plan recommends certain policies be followed in order to accomplish Community Conservation and Enhancement of residential neighborhoods, including:

"Policy 5.6: Promote better design of new neighborhoods.

- **Open Space Requirements.** Revise open space and lot size requirements in the Subdivision and Land Development and the Zoning Regulations to reduce the limits of disturbance, retain natural features and the site's essential character, provide more area for new storm-water management requirements and increase the usable area for active recreation.
- **Formal Public Space.** Encourage part of the open space requirement for residential subdivisions to be used to create more formal public

spaces, such as greens, squares, boulevard medians or landmark settings, to create community focal points and to meet traffic calming requirements.

- **Connections Between Neighborhoods.** Promote open space, road and pedestrian connections within and between individual neighborhoods, as well as links to shared community focal points or commercial centers.

Use these connections to impart a sense of community organization and to improve views of natural features or public uses.

- **Traditional Neighborhood Design.** Encourage use of the existing zoning provisions that allow new development based on Traditional Neighborhood Design principles.

- **Single-Family Detached Site Planning.** Revise county development regulations to improve subdivision design, especially for small-lot, single-family detached housing, by using house types that fit existing topography, improving the orientation of adjacent houses and enhancing landscaping.

- **Multifamily Site Planning.** Establish design standards for apartments, condominiums and townhouses to set them within a local network of streets rather than oriented to parking lots. Discourage large, common parking lots in front of units along main streets; disperse parking to small lots at the side and rear of units.

Policy 5.7: Ensure infill development will be compatible with existing neighborhoods.

- **Pre-Submission Community Meeting.** Require developers to hold a pre-submission community meeting for certain types of subdivision and site development projects proposed for infill sites.
- **Relationship to Adjacent Neighborhoods.** Amend the Zoning and the Subdivision and Land Development Regulations to ensure infill development is compatible with adjacent neighborhoods through such measures as landscaping, forest conservation buffers and pedestrian connections. Increase perimeter setbacks for infill subdivisions that differ from adjacent development in use or intensity.
- **Special Exception.** Review and amend, as needed, special exception regulations to ensure that the scale and intensity of the permitted special exception uses are appropriate in residential districts.
- **Design Flexibility.** Consider zoning provisions that promote compatible infill development by providing increased design flexibility in exchange for additional open space or amenities.

In viewing the language of the General Plan, the Board finds that although the location of an age-restricted adult housing development within an area designated as "Residential Area" is generally in conformance with the land uses and policies indicated in the General Plan, this proposed conditional use plan is not in harmony with, and is indeed inimical to, the stated goals and policies of the General Plan in several respects. First, with respect to General Plan Policy 5.6, the Plan clearly encourages the retention of natural features and the site's essential character. The proposed conditional use plan would result in the removal of the perimeter of mature trees and forest stands that are part of the site's

essential character and that would provide a natural buffer to the surrounding properties. The Board agrees with DPZ's assessment that the proposed petition is not in concurrence with Community Conservation and Enhancement Policy No. 5.6 to "Promote better design of new neighborhoods." The Board agrees with DPZ's appraisal that "the intense massing and arrangement of the units on the site, in comparison to adjacent neighborhoods, generally contribute to a lack of visual and aesthetic appeal which could create a sense of community and facilitate the new development in blending with the character of the surrounding community.

Secondly, the petition does not meet the requirement for the buffering of the site from existing adjacent residential development to improve compatibility with the adjacent neighborhoods in order to promote Policy 5.7 to "Ensure infill development will be compatible with existing neighborhoods." A proposal for age-restricted adult housing in which steep slopes and the subject Property's irregular shape force the increased massing and density of the proposal into the southern half of the site is not compatible with the existing neighborhood. This is especially true when, as here, the community is made up of small residential homes. Perhaps if this project were located on a larger parcel, the buildings could be placed generally in the interior of the lot while retaining wooded areas as buffers around much of the perimeter, the incompatibility would be less.

Lastly, the proposed age-restricted adult housing development is not in harmony with the provision of policy 5.7 of the General Plan which states that perimeter setbacks should be increased for infill subdivisions that differ from adjacent development in use or intensity. This policy was not adhered to by the Petitioner. The Petitioner proposes to

place the proposed townhouse units right up against the building restriction line, clearly in contravention to policy 5.7 of the General Plan.

Thus, the establishment of this use would frustrate the achievement of the plan's recommendations with respect to the design of new residential neighborhoods.

Consequently, the Board finds that the nature of the proposed use will not be in harmony with the land uses and policies indicated in the General Plan and does not meet the standards of Section 131.B.1. The conditional use will not be combined with other conditional or other permitted uses, therefore, Section 131.B.1.b does not apply.

B. Adverse Effect. In order to approve the proposed conditional use, Section 131.B.2 of the Zoning Regulations requires the Board to find that the proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with the use. In evaluating the plan under this standard, the Board must consider whether:

(a) The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards, or other physical conditions will be greater at the subject site than it would generally elsewhere in the zone or applicable other zones; and

(b) The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use 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; and

(c) Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties; and

(d) The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

When assessing a proposed conditional use under this criterion, one must begin with the realization that virtually every human activity has the potential for adverse effect. 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 has adverse effects in the R-20 zone. The proper question is whether those adverse effects are greater at the proposed site than they would generally be elsewhere in the R-20 district. Schultz v. Pritts, 291 Md.1, 432 A.2d 1319 (1981); Mossburg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995). Put another way, in order to defeat a conditional use petition, the evidence must 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 with the zone. *Id.*

For the reasons stated below, the Board finds that the preponderance of evidence in the record establishes that this proposed use will have adverse effects on vicinal properties above and beyond those ordinarily associated with an age-restricted adult housing development in the R-20 district.

1. Physical Conditions. The proposed age-restricted adult housing development would not generate inordinate noise, dust, fumes, odors, glare, vibrations, or cause hazards. Principally, the activities associated with the proposed use would be conducted indoors.

The outdoor uses associated with the walking path would be similar to any other age-restricted housing use, in accordance with Section 131.B.2.a

2. Structures and Landscaping. The 30 proposed townhouse units will be located in the southern portion of the Property and arranged in groups of 7 or 8 units clustered around a central cul-de-sac. The development is squeezed into the southern area of the site because of the presence of steep slopes and the irregular shape of the site. This increases the intensity and massing to a portion of the 6.8 acre site. The units as proposed will be located 50 feet from the western, southern and eastern property lines, and in relatively close proximity to many residential homes. Retaining walls in excess of one-third of a mile long will surround a majority of the units. Although the Petitioner has proposed enhanced landscaping along the perimeters of the site, this buffer will not be sufficient to mitigate the greater adverse effects of such an imposing structure. In People's Counsel for Baltimore County v. Mangione, 85 Md. App. 738, 584 A.2d 1318 (1991), the Maryland Court of Special Appeals recognized that the "sheer size" of a building can constitute an uncommon adverse effect if it would "overwhelm and dominate the surrounding community." This is especially true when, as here, the community is primarily made up of small residential homes. The Board concludes that the sheer size and location of the proposed structures and the location and height of the three-tiered retaining walls in excess of one-third of a mile in length will dominate and overwhelm the surrounding residential land and structures, more so than any other age-restricted adult housing facility in the R-20 zone, such that the use will hinder or discourage the development and use of adjacent land and structures in contravention of Section 131.B.2.b of the Zoning Regulations.

3. Parking. The Petitioner proposes 71 parking spaces in the development, including two for each unit and three to be located in front of the community center. Given the residential character of the use, the parking areas will be of adequate size for the particular use. The parking for the units will be located in the garages or on the interior roadway toward the center of the site, where they will be screened by landscaping and buffered by distance. Refuse will be stored in garages or at the rear of the moderate income housing units. 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. Drives. Based upon the testimony provided by Mickey Cornelius, the Board finds that the ingress and egress drive will provide safe access with adequate sight distance, based upon actual conditions, in accordance with Section 131.B.2.a

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

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

2. The 30 units in the proposed development exceed the minimum of 20 units required by Section 131.N.1.b.

3. The 30-unit development will be constructed on a site of approximately 6.4 net acres, and therefore does not exceed the maximum density of 5 units per net acre in an R-20 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). 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 dwelling units will be set back at least 40 feet from Frederick Road and U.S. Route 40 in compliance with Section 131.N.1.d(2)(a). All of the proposed dwelling units will be set back at least 50 feet from adjoining districts in compliance with Section 131.N.1.d(2)(c). Each of the homes with garages will be set back at least 20 feet from the private road in accordance with Section 131.N.1.d(3). The units will be constructed no less than 15 feet apart, as required by Section 131.N.1.d(5).

5. Open space will exceed 60% of the total area of the site, in excess of the 35% open space required by Section 131.N.1.e., however, the petition does not meet the requirement of this section to provide amenities such as pathways, seating areas and recreation areas for the residents that will be protective of natural features. Much of the open space is located within the required setbacks and in forest conservation area. The pathway proposed and one seating area is located within the required setbacks. Due to the density and massing of the proposed units and the extensive retaining wall system required to flatten the middle of the site, the amenities are pushed to the perimeter of the site. This forces the natural removal of the natural features such as the existing mature trees that would have provided a landscaping buffer more consistent with the essential character of the site and the surrounding neighborhood.

6. No accessory uses are proposed for the development, therefore, Section 131.N.1.f does not apply.

7. The proposed 1,000 square foot on-site community building exceeds 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 areas is proposed for the development. Trash will be stored in garages or behind the moderate income housing units. Therefore, Section 131.N.1.h does not apply.

9. A Type 'C' perimeter landscaping will not provide a transition and adequate buffering near the periphery of the site. In addition, the proposed units will not be designed to be compatible in scale and character to the residential developments in the vicinity, as required by Section 131.N.1.i. The development as proposed will remove much of the wooded perimeter of the site in order to construct retaining walls. A Type 'C' landscaping plan will not properly screen the visual impacts created by the Petitioner's proposal to grade out the setback area, remove the existing trees and create a series of retaining walls in the setback area. As such, the Board concludes that a Type 'C' landscaping plan will not provide a transition and adequate buffering near the periphery of the site. Furthermore, the buildings near the periphery are not compatible in size or scale with existing neighborhood houses. "Compatible" means "capable of existing or living together; congruous; congenial." Webster's Collegiate Dictionary, 2002 Ed. The compatibility of the size and scale of a building with vicinal structures depends upon many factors, including the size of the lot, the building's location within the lot, its proximity and positioning with relation to the other structures, and the vantage point of the viewer. In this case the Protestants have shown that the steep slopes and irregular shape and size of the lot forces the proposed 30 units into the southern half of the Property. The development places the majority of the units right up against the building restriction line in order to get the number of dwelling units shown on the plan. The Protestants have shown that the proposed age-restricted adult housing will be larger in actual size and is not

sufficiently setback from other nearby structures, thus increasing its visual impact on the area. The Board agrees with DPZ assessment that "the intense massing and arrangement of the units on the southern portion of the Property contributes to a lack of visual and aesthetic appeal which could create a sense of community and facilitate the new development in blending with the character of the surrounding community. If the proposed density was not as intense and the units were placed within smaller groupings, the site could begin to take on a character more in keeping with the surrounding development, and a smoother transition between developments with a more appropriate community atmosphere for the new development could be provided." As such, the Board finds that a reasonable person could conclude from the evidence presented by the Protestants that the proposed design of the buildings near the periphery are not compatible in scale and character with residential development in the vicinity.

10. The development will not be constructed in phases, 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 petition contains floor plans for the units and 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 sidewalks and/or parking pads adjacent to the garages of each residence, in accordance with Section 131.N.1.m.

14. Three, 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 29th day of October, 2004, by the

Howard County Board of Appeal, **ORDERED:**

That the Petition of Kimberly Homes Ellicott Properties, LLC, Petitioner, for a conditional use for age-restricted adult housing in an R-20 (Residential: Single) Zoning District is hereby, **DENIED.**

ATTEST:

Ann Nicholson
Ann Nicholson, Board Secretary

HOWARD COUNTY BOARD OF APPEALS
Albert Hayes
Albert Hayes, Chairperson

Robert Sharps
Robert Sharps, Vice Chairperson

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

James Pfeiffer
James Pfeiffer

Barry M. Sanders
Barry M. Sanders
Assistant County Solicitor

Dissent
James Patterson

Did Not Participate
*Maurice Simpkins

*Board Member Jacqueline Scott presided at the hearings, however, her term of service with the Board of Appeals expired on April 7, 2004, prior to the issuance of this Decision and Order. Her replacement Maurice Simpkins did not participate in this decision.

RECEIVED

NOV 9 2004

MILES & STOCKBRIDGE
COLUMBIA, MD