IN THE MATTER OF	:	BEFORE THE
RONALD A. WILDMAN	:	HOWARD COUNTY
	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 07-011C

::

DECISION AND ORDER

On September 24 and December 3, 2007, and January 22, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Ronald B. Wildman ("the Petitioner") for a conditional use to construct Age-Restricted, Adult Housing, General in an R-20 (Residential: Single) zoning district pursuant to Section 131.N.1 of the Howard County Zoning Regulations.

The Petitioners certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Thomas Meachum, Esquire, represented the Petitioner. Katherine Taylor, Esquire, represented opponents Rosemary, Leo, and Mark McPherson and Thomas Conner. David Dows and Jacob Hikmat testified on behalf of the Petitioner. Leo McPherson, Mark McPherson, Rosemary McPherson, Thomas Connor, John Clapsaddle, Nancy Kennedy, Donald Knott, Ron Elute, John Neighoff, and Elizabeth Mangione testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

Branch Road, a county-designated scenic road. The parcels adjoining the Property's western and northwestern lot lines front on Bonnie Branch Road are part of the same stream valley wall. Opponents' Exhibit 3 includes photographs of two such adjacent parcels fronting on Bonnie Branch Road (the Stegman and Tillman/Clapsaddle properties). The photographs depict the hillside/valley wall as it rises up these parcels and the western and northwestern sections of the Property. From Wharff Lane, which lies at the foot of the hillside's southern face, the Property also rises in elevation to the high point, as is shown in Petitioner's photographic Exhibit I (Nos. 12-17).

5. Portions of these hillsides are regulated steep slopes, which the Howard County Subdivision and Land Development Regulations define as "[a] slope that averages 25 percent or greater over 10 vertical feet." Section 16.108(b)(55). These regulated steep slopes are denoted on Petitioner's Exhibit G, which also denotes several areas of 15-24.99 percent slopes.

6. As shown on Petitioner's Exhibits G, J, and I the site is wooded, except for a clearing around the exiting dwelling. Grading on 70 percent of the site will eliminate the forested area along the northeast and upper eastern lots lines. Two areas of forested regulated slopes will remain uncleared and ungraded and placed in forest conservation easements: a wooded area on the west side that slopes down to the adjoining parcels fronting on Bonnie Branch Road, and a roughly triangular wooded area in the Property's southeast corner that slopes down to the rear of Parcel 575 and Parcel 262, which front on Wharff Lane.

7. A stormwater management facility is depicted near the northwest corner of the Property.

8. Vicinal properties. All adjacent parcels are also zoned R-20. The western and northwestern adjoining hillside parcels are each improved with single-family detached dwellings fronting on Bonnie Branch Road. The largely wooded Parcels 770 and 124 to the north are

1. The subject property, 4835 Wharff Lane, is located in the 1st Election District on the north side of Wharff Lane, about 1,800 feet northwest of Ilchester Road (the "Property"). It is referenced on Tax Map 31, Grid 10, as Parcels 634 and 635.

2. Two parcels comprise the 9.8-gross acre, 8.51-net acre, irregularly shaped Property.[1] Parcel 635 (4825 Wharff Lane), the western section, is wooded and unimproved (except, apparently, for a section of Parcel 634's driveway). The largely wooded Parcel 634 to the east is improved with a two-story, brick and frame single-family detached dwelling situated on the partially cleared hilltop. A long curving driveway climbs the hillside to end at the hilltop dwelling.

3. Topographically, the Property's western, northwestern, northern, and southern sections form a three-sided hill. From the west, the hill climbs about 70 feet to the highest elevation in the eastern section, where the existing dwelling is sited. This high ground is shown in Applicant's Exhibit I (No. 16). From this moderately flat ridge top, the Property and Wharff Road modestly incline to Ilchester Road, as shown in Applicant's photographic Exhibit I (Nos. 5 & 6) and Opponents' Exhibit 3 (No.1).

4. The Property is located in a part of the northeastern County whose terrain is shaped by a series of terraces, or high ground, and valleys created by a web of tributary streams and drainage areas that eventually flow into the Patapsco River to the north and east.[2] The Property's hillsides are part of an old stream valley wall formed in main part by Bonnie Branch, one of the tributary streams flowing into the Patapsco River. Bonnie Branch runs along the northwest side of Bonnie

[1] The Petitioner apparently derives this acreage based on F 07-115 (the "Wortman property"), a resubdivision of Parcels 634, 315, and 148. In BA Case No. 601-D, I denied an appeal challenging DPZ's decision to approve the resubdivision. That denial is on appeal to the Board of Appeals.

[2] My understanding of this area derives from my observation of the site and knowledge of the area. I first became familiar with the area topography just prior to my site visit while observing a nearby property on Bonnie Branch Road in relation to BA Case No. 607-D, in which I denied the subject property owner's appeal of a Department of Planning and Zoning decision to deny the property owner's requested waivers to construct a driveway on steep slopes.

improved with single-family detached dwellings with long driveways accessing Beechwood Road to the north. To the east are the more recent residential developments of Beechwood Heights and Ilchester Landing, whose single-family dwellings front, respectively, on Woodshire Garth and Ilchester Point Court.

9. Except for a small section shown on the plan as providing frontage on Wharff Lane, Parcel 635's front and southern lot line is adjoined by Parcels 575 and 262, whose single-family detached dwellings front on the north side of Wharff Lane. Parcel 634 is shown fronting on Wharff Lane. Across Wharff Lane to the southwest are Parcels 261, 326, and 315, which are each improved with single-family detached dwellings fronting on Wharff Lane. Being part of the same southern hillside as the Property, these properties slope down to a small stream feeding into Bonnie Branch.

10. Wharff Lane has about 20 feet of paving within a 50-foot wide right-of-way ("ROW"). Owing to the Lane's narrowness, only a small section close to Ilchester Road has achieved this ROW. This small section is curbed and guttered, but beyond it, Wharff Lane is an open section road (no curbs). Wharff Lane does not intersect Bonnie Branch Road, but rather terminates just northwest of the Property's driveway and the driveways for Parcels 326 and 315. The posted speed limit is 30 miles per hour. The estimated sight distance from the general area of the proposed driveway entrance is about 400 feet to the southeast and 230 feet to the northwest. There is no traffic volume data available for Wharff Lane.

11. The proposed development will be served by public water and sewer.

12. The General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as a "Residential Area" The General Plan's Transportation Map depicts Wharff Lane as a Local Road.

13. Pursuant to Section 131.N.1.a , the Petitioner is seeking conditional use approval for an age-restricted adult housing development consisting of 34 dwellings, 16 detached units and 18 attached. The Conditional Use Plan dated June 2007 depicts 16 two-story, two-car garage detached dwellings situated on the outside of a somewhat circular 26-foot wide private road ("Private Road B"). Proposed for the interior of Road B are 18 two-story, two-car garage attached dwellings. Nine dwellings in two rear-to-rear groups--one "four-pack" and one "five-pack"--would each front on Road B. A five-foot pathway is proposed to crisscross the four proposed townhouse groupings. A 1,000-square foot community building and a recreation area are proposed on the north side of Road B's intersection with Private Road A. A stormwater management facility will be located in the northwest portion of the site. The west, northwest, and southeast perimeter of the site is designated as a forest conservation area. A Type C Landscape Buffer is proposed along the north and east perimeters.

14. A 26-foot wide driveway, "Private Road A," will provide ingress and egress. It is situated in the same general location as the existing driveway. From Wharff Lane, Road A would climb about 42 feet in elevation to the site's center in a switchback pattern.

15. Four parking spaces are depicted in the front of the community building, for a total of 140 spaces, based on four spaces per each dwelling unit (two garage spaces and two driveway spaces).

16. The Conditional Use Plan states that 43 percent of the Property will be open space (4.31 acres).

17. A Supplement to the Petition, which is intended to provide additional information as to the specific criteria for the proposed conditional use pursuant to Section 131.N.1.a, states the following :

A. The landscape character of the site does blend with adjacent residential properties.
B. [M]uch of the existing forest on the site will be retained.
C. Residences along the Property's perimeter will be faced with brick and vinyl material.
D. Buffering will be provided through existing forest and enhanced landscaping
E. Setbacks. Single-family attached dwellings will be more than 75 feet from adjacent lots and single-family dwellings will be more than 40 feet from adjacent lots. Garages will be at least 20 feet from the roadway.
F. Detached dwellings will be 15 feet apart and the attached dwelling units, rear to rear will be 40 feet apart.
G. The dwelling will be no higher than 34 feet.
H. The steep slopes "somewhat limit the open space for paths, seating areas and recreational areas...." "The open space is definitely protective of natural features.
I. A condominium association will implement and maintain the open space, common areas, and related improvements.
J. The development will incorporate universal design features, and a list of those features, with floor plans, is enclosed with this Petition.
K. The single-family units will be 15 feet apart, side to side, and the attached dwelling will be 40 feet apart rear to rear and 15 feet between the two groupings.
L. Four units will be moderate income.

18. The petition includes a list entitled "Active Adult Features," which includes no-step front access with level thresholds, deeper, wider stairs with 36" minimum width hallways, and extra wide entries.

19. Elevations and floor plans are submitted with the petition.[3] The single-family detached dwelling elevation, presumably the "Glencove" unit depicts an entrance with a one-step "porch" and then a second step up to the entry door. Shown on the main level floor plan are a two-car garage, living room, dining room, kitchen, dinette, and 15' by 20' family room with a cathedral ceiling, an owner's bedroom with a "tray" ceiling, and a study. The upper level floor plan depicts a loft space, second bath, hobby room, and a second bedroom. Shown on the lower floor plan are an unfinished or optional finished basement with walls depicting the potential for 3-5 additional rooms, including a bathroom.

[3] The elevations are not linked by name to the floor plans. It appears that the detached dwelling elevation coincides with the three "Glencove" floor plans.

20. The covered entrance to the single-family attached dwellings, as depicted on the elevation, is reached by three steps. Shown on the "Bayshore" unit's main level floor plan are a two-car garage, living room, kitchen, powder room, owner's bedroom, owner's bath, a 16.8' by 17' family room, and an optional sunroom. The upper level floor plan depicts two bedrooms, a loft space, and a bathroom. The lower level plan depicts an optional home office, an optional recreational room, optional bath, optional wet bar, and optional recreational room extension. The "Riverwalk" model main floor plan depicts a two-car garage, a family/dining room, kitchen laundry, a master bedroom and bath, a second bedroom and bath, and a kitchen. The upper level floor plan shows two bedrooms, a loft space, a study, a reading nook, and an unfinished optional bedroom.

21. The Petitioner introduced into the record the exhibits as follows.

A). Plans or elevation for age-restricted housing showing townhouses 36-40 feet in length in groups of five units.
B). An age-restricted conditional use plan dated February 21, 2006, for 8960 Frederick Road (Stirn & Miller Properties) in an R-SC (Residential: Single Cluster) depicting townhouses in 7-unit groupings.
C). Architectural elevations depicting the Villas of Dunloggin (BA Case No. 05-048C).
D). Architectural elevations of the Villas of Athlone (BA Case No. 04-049-C).
E). A marked-up copy of Opponents' Exhibit 5 indicating proposed landscaping and sightlines.
F). A marked-up copy of Opponents' Exhibit 4, further depicting proposed landscaping and sightlines.
G). A Forest Conservation Plan for a previous development on the property/ies, field surveyed.
H). Twenty-one photographs of the Property and area properties/dwellings.
I). Two aerial photographs of the Property and vicinal properties.
J). Four photographs of adjoining properties and individual dwellings from the Property's eastern edge.
K). Pages 30 and 33 of the Howard County Landscape Manual concerning landscaping stormwater management area landscaping.
L). Pages 5-8 and 9 of the Howard County Design Manual, Vol. 1. Ch. 5, Stormwater Management.

22. The Protestants introduced into evidence the exhibits as follows.

1) A 1970 master road list for the First District identifying Wharff Lane as Road No. 344, and with a 30-foot ROW, paving 18 feet wide, with the total length of the road being 2,1150 feet (.4 miles).
2) A letter from Ronald Wildman to "Neighbor" dated January 25, 2007, informing the person of a pre-submission meeting for an active adult community of 40 units.
3) Presentation Materials for John W. Clapsaddle, dated December 3, 2007, including photographs of vicinal properties and reduced copies of the Conditional Use Plan graphically highlighted to depict various data/information.
4) A copy of the Conditional Use Plan modified by Mr. Clapsaddle to highlight adjacent dwellings, including photographs of these dwellings, and three photographs of Snowden Overlook, which is stated to be comparable in size and configuration to the proposed attached dwellings.
5) A "Section Through Proposed Development" prepared by Mr. Clapsaddle showing the proximity and visual impact of the proposed use on Lot 10, Ilchester Court.

23. Mr. Hikmat testified to being a civil engineer with 20 years experience. He stated that the proposed use would meet or exceed all bulk requirements and met all Section 131.N.1.a requirements. He also testified that age-restriction covenants would be met at the Site Development Plan stage ("SDP")because "sometimes it changes." He stated that the Petitioner decided not to provide amenities in the open space to limit disturbance. During cross-examination, he stated that 1.5 acres, or 15% of the Property were regulatory steep slopes, and that the area to be disturbed for grading and site development are shown in white and light green on the Conditional Use Plan.

24. Mr. Dow testified that there were no amenities proposed for the recreation area shown next to the community building, but it had potential for some open space use, which could be met at the Site Development Plan ('SDP") stage. He also stated the proposed use would not have a negative effect on the subdivision potential of neighboring properties. Additionally, it was his opinion that the proposed use would provide more buffering (Type C) than is typical of a single-family development.

25. It was also Mr. Dows' testimony that the Department of Planning and Zoning's ('DPZ") Technical Staff Report ("TSR") was not relevant to my decision because the language employed therein lacks what may be summarized as "technical clarity." In his opinion, the proposed use was in harmony with the General Plan because the attached dwellings are located within the project center, causing the boundary development to harmonize with adjacent properties. He also opined the proposed use would not interfere with the subdivision potential of neighboring properties.

26. During cross-examination, Mr. Dows stated that about 70 percent of the site would have to be graded for the development and that there are regulated steep slopes on both sides of the property. He opined the proposed driveway was in the best place for the development to gain access. In response to questioning, he stated the rear yards of the single-family dwellings would have some degree of slope based on their outer circle location. The grading plan would also lower the houses on the east side by one story.

27. Leo McPherson testified that his house lies about 80 feet from Wharff Lane and that some houses were closer, maybe 30 feet. He stated Wharff Lane has a 30-foot ROW based on a 1970 master road list, which he received from a Howard County employee whom he had asked about the lane's ROW (Opponent's Exhibit 1).

28. Mark McPherson testified the Property was heavily wooded and that proposed use would ruin the character of the road and the use and enjoyment of his family's property.

29. Rosemary McPherson testified that persons sometimes park on Wharff Lane during holidays. When cars come down the Property's steep road during inclement weather at the same time as she, she always stops out of concern for her safety. She recalled one accident where a car backing down the Property's driveway ended up about 20 feet below Wharff Lane. She stated

that when it snows, access out of Wharff Lane to Ilchester Road is difficult due to ice and melting snow from the higher elevations. When the road is plowed, the pushed-aside snow turns Wharff Lane into narrow, single lane. She also testified that it would be difficult to get an emergency vehicle down to the new driveway in inclement weather.

30. John Clapsaddle, who resides at 4751 Bonnie Branch Road, which adjoins the Property's northwest/west side lot line, testified to being a licensed professional engineer with 25 years of experience in land development and working for an area engineering firm on several Howard County projects. Referring to Opponents' Exhibit 3, which he prepared based on the Petitioner's Conditional Use Plan and the Landscape and Grading Plan. he explained that the purple area shown on Item I, "Intensity of Use" demonstrates a 7-acre development footprint (net density), which results in a density of 4.9 dwelling units per acre ("DUA"). He contrasted this with the density of the surrounding area, which is 2 DUA based on a 20,000-square foot minimum lot size.

31. He explained Item 2 as depicting a 1.9-acre area shown in blue and indicating steep slopes, which when subtracted from the 9.86 gross acreage, would yield a maximum of 31 units, not 34 as the Conditional Use Plan shows. The two groups of attached dwelling units shown in green on Item 3, "Attached Unit Length" demonstrate that they are 150 feet in length, which exceeds the 120-foot maximum length. Referring to Item 4, "Open Space Check," he stated the purple area represents the post-grading open space area provided, which is only 2.4 acres, or 24 percent, not the required 35 percent. It was also his testimony that Item 5 "Accessibility," is based on the grading plan admitted with the application and demonstrates that the proposed use does not provide accessible routes between parking area, sidewalks, dwelling units, and common areas as required under Section 131.N.1.a(13) and the less than five percent grade imposed by

American Disability Act Guidelines. Finally, he stated that Item 6, "Perimeter Landscape Screening," refers to Exhibit 4.

32. Referring to Opponents' Exhibit 4, a series of photographs of vicinal properties, Mr. Clapsaddle testified it demonstrates the low density of adjacent properties in contrast to the more intense development proposed, which would be more like Snowden Overlook, a photograph of which is also shown on the exhibit.

33. According to Mr. Clapsaddle, Opponents' Exhibit 5, "Section Through Proposed Development" demonstrates the visibility of the interior attached dwellings from the eastern adjacent residences. During cross-examination, he stated that woody vegetation replanting would not be allowed near the stormwater management device.

34. In response to questioning, Mr. Clapsaddle testified to possessing extensive Howard County experience, having worked on several residential developments for Howard County developers, including projects along Ilchester Road. He is the senior engineer and director of engineering for the firm and provides the seal for his firm, reviewing plans for correctness and meeting codes.

35. Mr. Thomas Conner testified to residing directly across from the Property and directly across the Property's existing driveway. He described the Property and area as heavily forested. He attested to having 22 years experience years as a certified residential appraiser. He was concerned that any widening of Wharff Lane would cause him to lose trees and the small easement on his side of Wharff Lane. He also stated to having recently had his property surveyed and staked and that at one point it is only one foot away from the paving (apparently). It was his professional opinion that the proposed use would likely affect the value of his property and degrade the community. It would also affect the marketability of surrounding properties, based

on his professional opinion that older neighborhoods depreciate more when high density uses are constructed there.

36. In his rebuttal testimony, which primarily addressed Mr. Clapsaddle's testimony and Opponents' Exhibit 3, Mr. Hikmat testified that the net acreage and open space calculations were correct. He also stated that the Opponent's evidence concerning accessibility was based on a grading plan intended only to show the limits of disturbance and that the SDP would comply with all accessibility requirements. He further testified that the plan addressed Mr. Connor's concerns about runoff raised at the pre-submission meeting by shifting drainage and that the mitigation measures would not make runoff problems worse, and in some respects, would improve the overall drainage problems.

37. Mr. Dows in rebuttal testified that the density of the proposed use is compatible with the surrounding area because the County Council made a legislative determination that a maximum of 4 units per net acres is compatible if the use complies with the age-restricted conditional use criteria.

38. Rebutting Mr. Clapsaddle's testimony and evidence concerning the two townhouse groupings units exceeding the 120-foot maximum length (Opponents' Exhibit 3), Mr. Dows referred to Applicant's Exhibits A, B, C, and D, conditional use plans and elevations for previously approved general age-restricted conditional uses. According to Mr. Dows, these exhibits show that it is the "norm" for age-restricted townhouse units to exceed 120 feet and sometimes reach 200 feet, including those with which he has been involved. He also opined that DPZ approved of such lengths in the past because there were no technical staff report comments on the matter. He further stated the townhouse plans and elevations included in the petition

would mitigate any impact. He added that the single-family units are 30 feet wide and 70 feet deep.

39. He disagreed with Mr. Clapsaddle's evidence and testimony that landscaping was not permitted in or near the stormwater management system, referring to Applicant's Exhibit K, pages 30 and 33 of the Landscape Manual, which requires stormwater management perimeters to be landscaped and recommends certain types of landscaping with stormwater basins.

40. Rebutting Mr. Clapsaddle's testimony and evidence about the visibility of the dwellings from the second stories of adjoining properties along the east lot line, Mr. Dows explained through Petitioner's Exhibits F, G, and J that the perimeter landscape buffering could be "ganged" to block the views of the development.

41. Rebutting Opposition testimony that the property and immediate area was heavily or completely forested, he referred to Petitioner's Exhibit G, H, and I, which in his view demonstrate that the much of the Property's high ground was open. Referring to the aerial photographs, he stated that much of Wharff Lane to the east is not wooded but open. He also referred to a Forest Stand Delineation (Petitioner's Exhibit G) to demonstrate that only part of the Property is forested within the meaning of the Subdivision and Land Development Regulations, to explain the area to be graded was mostly open area, not regulated forest, and that the regulated forested steep slopes would be left alone. He also stated the new driveway, after grading, would be less steep than the existing driveway.

When questioned about the landscape and grading plan including in the petition, he stated that he could not precisely calculate what areas were regulated steep slopes (25% over ten feet) because the plan showed all 25% slopes, not just regulated steep slopes. It was his further

testimony upon questioning that the designated open space was protective of natural features because it encompassed all critical areas.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

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

A. Harmony with the General Plan. The Howard County General Plan designates the area in which the Property is located as a "Residential Area." Age-restricted adult housing developments are commonly found in residential areas and are presumptively compatible with residential land uses. Nevertheless, while the General Plan advocates the development of housing for the active senior market, it also recognizes this market is typically seeking to "sell their large family home and yard and to purchase a smaller, easier to maintain home with a first-floor bedroom." (General Plan, pg. 82). The Plan recommends that "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." (Id., italics added).

Clearly, the General Plan contemplates that age-restricted adult housing will involve smaller-than-typical housing units to accommodate the needs of the elderly. Moreover, it clearly contemplates that detached homes should be single story. While the Zoning Regulations do not expressly restrict detached homes to one story, it is clear the Regulations contemplate a distinct type of dwelling *designed for* and restricted to occupancy by households having at least one member who is 55 years of age or older.

The proposed 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. The elevation and floor plans for the "Glencove" detached units do not provide square footage for each floor and the total square footage. However, it was Mr. Dows' rebuttal testimony that they were 30 feet wide and 70 feet deep, or 4,200 gross square feet for the two-story units plus additional square footage for the basement (including the garage area).

It is apparent that an approximately 4,500 to 5,000-square foot age-restricted dwelling is not in harmony with the concept of age-restricted adult housing contemplated by the General Plan, as they are designed not for the typical active adult seeking smaller quarters, but for larger households that happen to have one member who is age 55 or older. As found above, the floor plans for the Glencove unit evidence a dwelling designed for a different population, one seeking larger quarters, including a 15' by 20' family room with a cathedral ceiling *and* a living room, a dining room *and* a dinette, two or three additional bedrooms on the second floor *and* potential additional bedrooms in the basement.

Nor are the proposed attached dwellings in harmony with concept of age-restricted adult housing contemplated by the General Plan. By Mr. Dows' rebuttal testimony, these units have a 25' by 60' footprint (including garage space). The two-story townhouse units would therefore be 3,000-gross square feet in size plus additional basement square footage. The attached dwellings, too, are designed not for the typical active adult seeking smaller quarters, but for larger households that happen to have one member who is age 55 or older. The Bayshore unit floor plans depict a 16.8' by 17' family room *and* a living room on the first floor, two upstairs bedrooms and a loft space, and in the basement, an optional home office, optional recreational room, optional bath, and optional wet bar. The Riverwalk model floor plans depict a master

bedroom *and* a second bedroom and bath on the first floor, and upstairs, two bedrooms, a loft space, a study, a reading nook, and in the basement an unfinished optional bedroom.

By the dwellings' floor plans and the potential number of bedrooms, the inherent intensity of the proposed single-family dwelling 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 age-restricted housing 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.

B. Adverse Effects. Section 131.B.2 requires me to determine if the proposed conditional use at the particular location would have atypical or non-inherent adverse effects on vicinal properties. 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 me is not whether the proposed age-restricted adult housing development 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 be generally elsewhere within the R-20 district.

For the reasons stated below, I find that the Petitioner has not met his burden in presenting sufficient evidence establishing that this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with an age-restricted adult housing development in the R-20 district.

1. Physical Conditions. The proposed development will consist of 34 units (the maximum density allowed based on the Conditional Use Plan's stated net acreage) designed to

accommodate more occupants than the typical age-restricted adult dwelling. Because the units are more akin to a large family home, the proposed use's impact with regard to noise, traffic and odors will likely be greater than those ordinarily associated with an age-restricted adult housing project. Consequently, I find that the Petitioners 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 development in an R-20 zoning district, as required by Section 131.B.2.a.

2. Structures and Landscaping. The proposed dwelling units will be located in the eastern section of the Property, which is the section closest to neighboring residences. The Petitioner contends the placement of 34-foot high single-family detached dwellings closest to the perimeter and Type C perimeter landscaping along the eastern and north side lot lines will create a development that will not hinder the use or development of the adjacent land more at the subject site that it would generally elsewhere in the zone. I disagree.

The Conditional Use Plan depicts 16, 30-foot wide single-family detached dwellings arranged in arranged in a circle 15 feet apart, with 6 units in a row closest to the eastern adjacent properties. This arrangement will at create, in effect, a uniform visual "wall" stretching some 325± feet unattenuated by any staggering or visual arrangement to breakup the effects of this massing. Intensifying this wall effect is the proximity of the interior attached dwellings, which when visually juxtaposed with the detached dwellings, will add to the visual massing of the development from the eastern adjoining properties.[5] While the Petitioners have proposed a Type

[5] In BA Case No. 07-020C, which concerned a multiplex age-restricted conditional use, I required the Petitioner to relocate the detached garages depicted to the front or sides of the dwelling units, having concluded the visual impact of proposed massing was not of a scale appropriate to and compatible with surrounding single-family residential dwellings

C landscaped buffer and substantial grading to mitigate the impact of this massing, I am not persuaded that it will it will do so.

Although the Opposition and the Petitioner focused their testimony on the visibility of the dwellings from the second-story windows of the eastern neighboring residences, the neighbors also reside on the first floors and clearly make active use of their rear yards. Some enjoy the view from rear decks, which would wholly change in character based on the visual massing of the proposed use. I am unconvinced that the proposed landscaping will mitigate this massing in a manner that will make the use compatible with surrounding residential dwellings. I therefore conclude that the Petitioner has not demonstrated that the location, nature, and height of structures, and the nature and extent of landscaping on the site are such that the use will hinder or discourage the use of the adjacent land and structures more at the subject site that it would generally elsewhere in the zone, as required by Section 131.B.2.b of the Zoning Regulations.

D. Parking for the dwellings appears to be adequate. The requisite handicapped spaces must be addressed at the site development plan stage (none is shown on the plan). No loading area or common refuse area is proposed. It appears that the location of the small parking area near the community building and the location of Private Driveway A would have an insignificant effect of adjacent properties.

E. Safe Access. Although sight distance does not appear to be an issue, I am unpersuaded that there is safe access to the site owing to the Property's unique location. Except for a section at the Ilchester Road, Wharff Lane is a narrow roadway, a 20-foot wide, open section road (with minimal shoulders), and it offers only one means of access to the Property. Mrs. McPherson testified that when it snows only one lane is available because snowplows shove road snow to the other lane, making it difficult for vehicles to negotiate the road and for two vehicles to pass.

In my tenure as Hearing Examiner, the age-restricted conditional uses I have approved have been located along roadways easily capable of handling emergency vehicles and providing emergency access. This is borne out by Petitioner's Exhibit B, a conditional use plan for an age-restricted housing development along Frederick Road (which predates my tenure). Furthermore, in my review and comparison of the prior Hearing Examiner's decisions and orders approving general age-restricted single-family conditional uses, it is evident that the proposed access to this proposed development is singular. I therefore conclude that this proposed conditional use has uncommon problems associated with this particular locale. See *People's Counsel v. Mangione*, 85 Md.App. 738, 584 A.2d 1318 (1991) (upholding the Zoning Commissioner's and Baltimore County Board of Appeal's denial of a special exception (conditional use) based in part on testimony about its interior residential location, comparatively narrow feeder roads, and limited access and finding the proposal would have an unusual adverse impact as compared with other residential zone locations, and that it would be inconsistent with the purposes, spirit, and intent of the zoning scheme). See also *Moseman v. County Council of Prince George's County*, 99 Md.App. 258, 636 A.2d 499 (1994) (upholding the Zoning Hearing Examiner and District Council's denial of a rubble fill special exception where the district council found unique problems associated with the proposed use, including narrow, inadequate road access).

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

> When I use a word, Humpty Dumpty said, in a rather scornful tone,
> it means just what I choose it to mean, neither more nor less.
> The question is, said Alice, whether you *can* make words mean so many different things.
> The question is, said Humpty Dumpty, which is to be master - that's all.
>
> Lewis Carroll, Through the Looking Glass

The 2000 General Plan recommended amending the Zoning Regulations to supplement the congregate and apartment housing choices available to seniors in the County by providing

other types of senior housing, including attached and detached single-story, single-family homes. (Pages 82-83). The general age-restricted adult housing conditional use is, in part, the County Council's legislative implementation of this recommendation.

In March 7, 2005, the County Council amended the criteria for this conditional use, adding, in part, Sections 131.N.1.a(4) and 131.N.1.a(5)(g).[6] Section 131.N.1.a(4) requires a site's landscape character to blend in with adjacent residential properties. Section 131.1.a.(5)(g) limits the length of single-family attached units to 120 feet, which the Hearing Examiner may increase up to 200 feet in the R-20 zone based on architectural design that mitigates the visual impact of the increased length. This standard reflects the County's increasing attention to the design of infill development.

1. The proposed use will consist of single-family detached and attached dwelling units, as required by Section 131.N.1.a.(1)(b).

2. The development propose 34 units, exceeding the 20-unit minimum, in accordance with Section 131.N.1.a.(2).

3. The 34-unit development will be constructed on an approximately 9.8-gross acre, 8.51-net acre site, in compliance with Section 131.N.1.a.(3).

4. Site design. As noted above, Section 131.N.1.a.(4)(a) requires the site's landscape character to blend with adjacent residential properties, which may achieved in part through grading and landscaping that retains and enhances elements that allow the site to blend with the existing neighborhood. According to the Petitioner's evidence and testimony, the proposed Type C landscape buffer, grading, and the placement of the single-family dwellings nearest to adjoining properties would cause the development to blend with adjacent properties. The

[6] The original text of these criteria was part of the 2005 continuation of the Comprehensive Zoning Process (a.k.a. "Comp Lite"). Due to litigation, the criteria did not become effective until July 28, 2006.

Petitioner also presented evidence that the retention of the forested regulatory steep slopes in the requisite open space area would allow the site to blend in with the existing neighborhood and be less visible. Additionally, the nearest dwellings would be set back more than the 40-foot minimum requirement.

Opponent's Exhibit 5 specifically challenges this testimony through evidence intended to show the proposed dwelling's visibility from neighbors' second-story windows. In rebuttal, the Petitioner introduced Exhibits E and H, which are intended to demonstrate a more limit impact from the same second story windows once the proposed landscaping has matured.

In my view, the dominant landscape character that needs to blend in with the existing neighborhood is not the view from a second-story window but the overall visual impact of the massing of the 34 units. As discussed above and below, with respect to Section 131.N.1.a(5)(g), the proposed use creates an overall scale, massing, and visual discord that does not harmonize with the surrounding residential area. While the landscape buffer will mitigate this impact to a limited degree when the trees and vegetation mature, the many visual images of the site placed before me in evidence convince me that it will not to so to the degree required by this section.

The proposed detached single-family dwellings shall be no higher than 34 feet. Single family detached housing is placed on the perimeter of the building envelope and these appear to have materials similar to neighboring dwellings, in accordance with Section 131.N.1.a(4)(b)(i).

In my view, inadequate buffering in the form of a Type C landscape buffer is proposed along the north and east lot lines. The petition does not comply with Section 131.N.1.a(4)(b)(ii).

5. The petition complies with the bulk requirements of Section 131.N.1.a(5). Section 131.N.1.a(5)(g) limits groups of single-family attached units to 120 feet. The Hearing Authority may approve a greater length, up to a maximum of 200 feet in an R-20, based on architectural

design that mitigates the visual impact of the increased length. Although the petition included elevations and floor plans for the attached units, the length of the attached units was not provided and there was no direct testimony or evidence that any such group exceeded 120 feet. It was only through Mr. Clapsaddle's oppositional testimony and evidence (Opponents' Exhibit 3, Attached Unit Length) that the 150-foot length of two townhouse groups came into evidence.

During rebuttal, Mr. Dows testified it was the norm for attached units to be longer than 120 feet and referred us to several plans and elevations showing attached units whose length exceed 120 feet. He also stated that planning staff implicitly approved of such lengths because they did not comment on them.

I find this argument disingenuous. Exhibit C depicts architectural elevations for an age-restricted housing petition in BA Case No. 04-049C, which predates the enactment of the 120-foot length criteria. The decision does not consider the how the architectural design of the longer units attenuates the visual impact of their length. Exhibits B and D, which depict an age-restricted conditional use plan and architectural elevations for units also stated to be similar to those proposed in this case, were part of an age-restricted housing petition presented in BA Case No. 05-048C, which was decided on April 27, 2006, some months before the 120-foot length standard became effective. Regardless of when the standard became effective, the decision in this case does not consider the attached units' length in relation to their design.

I therefore conclude, based on the evidence before me, that the Petitioner has not met his burden of demonstrating any architectural design mitigating the visual impact of the two 150-foot long attached unit groupings. In my view, this lack of showing bolsters my conclusion above concerning the project site's failure to blend in with the existing neighborhood owing to

the overall visual impact of the massing of 34 units. The petition does not comply with Section 131.N.1.a(5)(g).

6. Section 131.N.1.a(6) requires at least 35 percent of the gross site area to be open space or open space in accordance with the Subdivision and Land Development Regulations and the petition states 43 percent is provided. It further requires the open space or open space area to provide amenities such as pathway, seating areas and recreation areas for the residents, and to be protective of natural features.

The Conditional Use Plan depicts a small area adjoining the community building as the recreation area. No further information is provided. Mr. Hikmat testified that the Petitioner decided not to provide amenities in the open space to limit disturbance. When questioned, Mr. Dows stated there were no amenities proposed for the area, but it had potential for some open space use (horseshoes), which could be met at the Site Development Plan ('SDP") stage.

In my tenure, and based on my review of such projects, and as evinced by Petitioner's Exhibit B, the open space amenities envisioned for the residents of age-restricted housing includes a variety of walking trails or paths through the open space areas and multiple seating areas. Such amenities are clearly a defining characteristic of the use. That none are proposed, or will not be provided until the SDP stage is again, in my view, evidence that the petition is unacceptable as a age-restricted housing conditional use, being qualitatively unlike those approved because it fails to adequately demonstrate compliance with the use's distinctive standards at the conditional use petition proceeding. The plan does not comply with the open space amenities requirement.

This section also requires the open space to be protective of nature features. The testimony and evidence presented are intended to demonstrate compliance with this requirement

by the placement of "critical areas"—forest conservation areas and regulated steep slopes—in the open space area. To this extent, the open space area depicted on the plan complies with this aspect of Section 131.N.1.a(6).

7. No accessory uses are proposed. Section 131.N.1.a(7) does not apply.

8. The proposed community building will be 1,000-square feet in size, in compliance with Section 131.N.1.a(8).

9. No loading space or central trash area is proposed. Section 131.N.1.a.(9) does not apply.

10. Because the development is not being developed in phases, Section 131.N.1.a.(10) is inapplicable.

11. Section 131.N.1.a.(11) requires the petitioner to establish how the age restrictions will be implemented and maintained over time. It was Mr. Hikmat's testimony that the age-restriction covenants would be met at the SDP stage because it '"sometimes it changes." Again, in my view, the Petitioner's failure to demonstrate compliance with the conditional use criteria at this proceeding supports the necessary conclusion that the proposed use is unacceptable as an age-restricted use. The petition does not comply with Section 131.N.1.a(11).

12. The project complies with the Section 131.N.1.a(12) criteria concerning the management and maintenance of common areas and open space.

13. The petition and Conditional Use Plan state the development will incorporate universal design features. These features are intended to provide, in part, ease of access.

The petition's "Active Adult Features," list includes no-step front access with level thresholds. However, the elevation and floor plan for the detached dwelling unit depict an entrance with a one-step "porch" and then a second step up to the entry door. While the single-

family attached dwellings appear to have a covered entrance, which does comport with universal access guidelines, this entrance is reached only after climbing three steps. The material submitted does not indicate how the design will provide accessible routes between parking areas, sidewalks, dwelling units and common areas. I therefore conclude the project does not comply with Section 131.N.1.a(13).

14. The Conditional Use Plan states that four moderate income units will be provided, in accordance with Section 131.N.1.a(14).

III. Opposition Testimony

In addition to the specific testimony set forth in the findings above, those in opposition to this case expressed general concerns about declining property values, project density, traffic safety, grading, and potential environmental impacts.

The testimony presented, though, amounted only to unsupported opinions and general conclusions. Maryland courts instruct that the 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). Because the Opposition's general testimony in this case was unsupported by any evidence that the anticipated harmful effects are likely to occur, I must afford it little weight. Moreover, I do not believe it was the intention of the legislature to confer upon me the responsibility to also interpret and apply the myriad subdivision and land development regulations applicable to every project. That is the role and expertise of DPZ.

Lastly, in light of the contested nature of the proceeding in this case, it seems appropriate here to comment generally on the evidentiary and testimonial exchanges between the Petitioner

and those in opposition about project density, the grading of regulatory steep slopes, the removal of wooded areas, and whether the Conditional Use Plan complies precisely with acreage and other quantitative requirements.

I note first an extended exchange between the parties about whether the subject property was "hilly." What's a hill, the Petitioner's witness pondered when cross-examined about the sloping nature of the property, the steep slopes to be graded, and the effect of the grading plan. A second exchange turned on whether the subject property was wooded or forested and to what degree. Throughout the proceeding, the Petitioner claimed entitlement to a density of four DUA, which those in opposition claimed was too dense for the area. And in a protracted soliloquy, the Petitioner's witness engaged in a point-by-point argument with the TSR's use of the terms "regarded," "steep slopes," "significant slopes," and "steeply sloped" areas as these terms related to the recommendation to deny the petition.

In Edgar Allen Poe's story "The Purloined Letter," the Police Prefect tells the proto-detective character M. Dupin how he searched every place in an apartment looking for the letter the minister had taken, trying to think like the minister by taking the tables and the bed apart to see if anything was hidden inside the posts or the legs. M. Dupin pulls out the letter, revealing that what had been hidden was in the open – the letter was all the time on a desk in the hallway, albeit in another envelope.

In this case, my decision to deny the petition does not rest, in the last instance, on an exhaustive analysis of the differing claims about density, the nature of certain slopes, or whether the Property is heavily forested or only partly wooded. It is decided on what was hidden in the open—that is, the petition and Conditional Use Plan do not comport with the specific criteria for general age-restricted housing. But then sometimes you can't see the forest for the trees.

ORDER

Based upon the foregoing, it is this **25th day of February 2008,** by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Ronald A. Wildman for conditional use approval for an Age-Restricted Adult Housing, General conditional use with a maximum of 34 dwellings in an R-20 (Residential: Single) zoning district is hereby **DENIED**.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER

Michele L. LeFaivre

Michele L. LeFaivre

Date Mailed: 3/7/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.