

IN THE MATTER OF : BEFORE THE
ROCK BURN, LLC : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
 : HEARING EXAMINER
 : BA Case No. 11-026C

.....
DECISION AND ORDER

On February 23, 2012, 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 Rock Burn, LLC, (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.

Sang Oh, Esq., represented the Petitioner. Jacob Hikmat and Joseph Link testified in support of the petition. Robert Garner, Monica Alston, Nicolas Eads, Michael Merritt, John Mathias, and Bonnie Dickson testified in opposition to the petition. The Protestants were not represented by counsel.

The Petitioner introduced into evidence the following exhibits.

1. Amended Conditional Use Plan, February 2012
2. Institute of Transportation Engineers, Trip Generation Manual, Trip Generation Rates for Senior Adult Housing, Detached
3. Approved Age-restricted Communities Within Four Miles of the Subject Property

4. Examples of Other Single-Family Attached Communities Adjacent to Single-Family Detached
5. Example of an Age-Restricted Home Similar to That Envisioned for the Enclave at Park Forest
6. Examples of Mitigating Visual Impact of Building Length through Architectural Design and Site Placement
7. Examples of Age-Restricted Communities Having Buildings in Excess of 120-foot Length

A Preliminary Matter

At the outset of the February 23, 2012 hearing, the Petitioner introduced into evidence an amended conditional use plan dated February 2012 (Petitioner's Exhibit 1). The amendments include a relocated community building, affiliated parking, and street lighting, two relocated dwellings, and increased landscaping along the property's east side. The amendments also correct errors in the plan notes.

The Hearing Examiner determined the amendments could be introduced into evidence pursuant to Hearing Examiner Rule 9.5 because they are intended to respond to certain comments in the technical staff report (TSR) and are mitigative, not substantive. Accordingly, the term "Amended Plan" referenced in this Decision and Order refers to the February 2012 plan introduced into evidence as Petitioner's Exhibit 1.

FINDINGS OF FACT

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

1. Property Identification. The subject properties are located on the north side of Montgomery Road, about 100 feet west of Parkview Court. The subject properties are officially identified as Tax Map 31, Grid 5, part of Parcels 52, 53 & 54 and are also known as 6311, 6329

and 6343 Montgomery Road (the Property). The Property is 18.3 acres in area.

2. Property Description. The three parcels comprising the 18.3-acre Property are long and narrow. They front on Montgomery Road and run at least 1,600 feet in length to the rear property line. Each parcel is improved with a single-family detached dwelling located near and with access to Montgomery Road. According to the Amended Plan, the Petitioner intends to divide the three parcels across the east/west axis to create Future Lots 1-3, which will front on Montgomery Road. The rear section of the Property will become the 11.94-acre site of the proposed age-restricted adult housing conditional use (the Site).

According to the Amended Plan, the rear portion of the Site is encumbered with wetlands and this environmentally area is heavily wooded. The Site has stands of trees in the southwest portion, the front central portion and along the east side.

3. Vicinal Properties. All adjacent parcels are also zoned R-20. The eastern Parcel 325 along Montgomery Road is improved with a single-family detached dwelling. The remainder of the Property's eastern boundary is bordered by the Rockburn Manor subdivision and Open Space Lot 1. Lots 2-11 are about 14,000-16,000 square feet in size and each lot is improved with a single-family detached dwelling. Lot 12 abuts the northeast portion of the Property. The dwellings on Lots 5 and 6 lie about 120 feet from the closest proposed unit on the Site.

East of the Rockburn Manor subdivision are several parcels, most of which are improved with a single-family detached dwelling. Some 1,300 feet east of the site along Montgomery

Road is a 21-unit age-restricted adult housing community on Koffel Court approved through Board of Appeals Case No. 00-037E and Site Development Plan No. 02-051.

To the west is the Rockburn Run subdivision, whose lots are each improved with a single-family detached dwelling. Lots 10-16 adjoin the southern portion of the Property and Open Space Lot 9 adjoins the northern portion.

To the north is Parcel 23, the site of the Rockburn Branch Park, which is owned by the Howard County Department of Parks and Recreation. The closest age-restricted dwelling would be sited about 500 feet from park ball fields.

To the south, across Montgomery Road, the parcels are mostly developed with single-family detach dwellings.

4. Roads. Montgomery Road has two travel lanes and a variable paving width within a variable width right-of-way (ROW). According to Department of Public Works Data, the traffic volume on Montgomery Road west of US 1 is 12,943 average daily trips as of February 2007.

5. Water and Sewer. The proposed development will be served by public water and sewer.

6. 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 Montgomery Lane as a local road.

7. The Conditional Use Proposal. Pursuant to Section 131.N.1.a , the Petitioner is seeking conditional use approval for an age-restricted adult housing development consisting of

46 two-story, 28' x 60' dwelling units with two-car garages, to be known as the "Enclave at Park Forest." The Amended Plan depicts 34 single-family attached and 12 semi-attached units arranged in groups of two to five units along the inside and outside perimeter of an internal circular road. Ten percent of the dwellings (five dwelling units) would be moderate-income housing units.

According to the Amended Plan, on the outside of the internal circular road the following is proposed: five groups of semi-detached units (10 dwellings) on the south side (adjacent to the three individual lots to be created along Montgomery Road), two groups of semi-detached dwellings (four dwellings) and one group of five attached dwellings on the west side, and three attached dwellings on the north side. The fronts of these nineteen dwellings would face the internal road.

In the interior of the internal road, the Petitioner is proposing one four-unit attached group and one three-unit attached group (seven dwellings) in the southern interior and one five-unit attached group on the east and west interiors (ten dwellings). One four-unit attached group and one three-unit attached group (seven dwellings) are proposed in the northern interior. Fifty-three percent (6.32 acres) of the Site shall be open space, according to Note E on the Amended Plan.

The Amended Plan also depicts the following amenities: a 920-square foot community building to the east of the three dwellings on the north exterior side of the internal circular road, a proposed stormwater management/recreational area with three picnic tables in the

interior of the internal road and a walking trail in the northern portion of the Site. The picnic tables and walking trail are proposed as open space amenities.

Two parking spaces per unit are required and the Petitioner is proposing four spaces per unit, two within each garage and two in each driveway (184 spaces). Five spaces will be provided on the east side of the community center (189 total).

Note 2.E. on the Amended Plan states that 53 percent of the Site will be open space (6.32 acres).

Note 5 on the Amended Plan states building heights will not exceed 34 feet.

Note 8 on the Amended Plan states "[t]his project is proposed to be a condominium regime. It may be converted to fee simple lots if deemed appropriate by the developer."

8. Jacob Hikmat, project engineer, testified to having prior experience with age-restricted conditional uses. Concerning the proposed open space, he testified that the design of the project will buffer the use from adjoining properties to the east because there is a 40-foot setback, a 26-foot road, and 20-foot driveways (about 90 feet) between the attached dwellings units and the common property lines, as well as a Type D landscape buffer. The western edge will also be designated open space and will meet the requisite 40-foot setback from the adjoining residences and the 30-foot setback from the Open Space Lot.

9. In Mr. Hikmat's opinion, the proposed 46 units will have no adverse impact. Age-restricted housing has a benign impact.

10. According to Mr. Hikmat's testimony, the units would be about 28 feet in height, although the maximum permitted height is 34 feet. The Amended Plan proposes 184 total

parking spaces and the Zoning Regulations require 92. Additionally, the 26-foot road is wider than required and can accommodate additional parking. The use therefore will not generate overflow parking onto Monterey Road, in his opinion.

11. Discussing traffic impact, Mr. Hikmat testified that age-restricted attached residences generate less peak-hour traffic than single-family detached residences. The access will be provided through Monterey Road, a closed section newer road, which has safe access to Montgomery Road. Asked by the Hearing Examiner to explain the basis for his traffic impact testimony, Mr. Hikmat referred to Petitioner's Exhibit 2, an excerpt from the Institute of Transportation Engineers, Trip Generation Manual, Trip Generation Rates for Senior Adult Housing, Detached. The data tracks trip generation rates based on actual studies. According to this information, senior adult detached housing is a low-volume trip generator, less than would be produced by general detached dwelling. Attached senior adult housing generates even less traffic, according to Mr. Hikmat. On cross-examination by Monica Alston, Mr. Hikmat testified that an attached age-restricted unit averages four trips a day.

12. According to Mr. Hikmat, the Petitioner is currently proposing to develop the project as a condominium regime, but may convert the residential uses to fee-simple lots if the current financial/lending climate made it necessary. In response to questions from the Hearing Examiner about use of the western rear lots in relation to required setbacks should the community be converted to fee simple lots, Mr. Hikmat testified that the landscaping would not comprise the entire 40-foot portion of the setback. Responding to the Hearing Examiner's further questioning about providing notice to the residents that they could not encroach onto

the landscape/open space area or remove vegetation, Mr. Hikmat responded that the area would be included in the semi-common areas subject to Home Owners Association control. Additionally, the desired area for a landscape buffer is 20 feet. During cross-examination by Mr. Garner about whether there was sufficient area between the western units and the buffer for outdoor living in the rear, Mr. Hikmat stated there would be no rear structures, patios or decks because they are also subject to the setback. On redirect, he noted the exception to the setbacks for decks authorized by Zoning Regulations Section 128.A.1.d, which allows a deck in the R-20 district to encroach 10 feet into a front or rear setback, a setback from a project boundary, a setback from a different zoning district, or a required distance between buildings.

13. In response to questioning from the Hearing Examiner, Mr. Hikmat stated that anything outside the condominium units would be open space, including the internal area in the center of the inside units. Because this area features picnic tables, which might prove bothersome to nearby residents, Mr. Hikmat testified that a gazebo could be erected behind the community building.

14. Concerning stormwater management, Mr. Hikmat testified that the proposed use may improve the runoff onto two eastern adjoining properties because the road would capture it and direct the flow to the north.

15. According to Mr. Hikmat, the Amended Plan proposes landscape buffers that meet or exceed landscape manual requirements. The Petitioner will also maintain the existing landscaping to the extent possible.

16. On being questioned by the Hearing Examiner about the presence of the tee-

shaped portion of Monterey Road where it meets the Site, Mr. Hikmat replied that the county would have required the Rockburn Manor subdivision developer to provide it in order to allow a continuation of the road to provide access to the back section of the three parcels comprising the Property, as it was likely to be developed.

17. Joseph Link testified to being the vice-president for residential development of H & H Rock, the developer. He testified that the developer held two pre-submission meetings with the community, who expressed the desired for quality units. No units would meet the 34-foot height limit. The age-restricted housing is needed according to the county and would fill a market niche. The marketing term for the proposed units is "villa," which is wider (28-32 feet) to accommodate a master bedroom, two garages, and a bathroom. Unlike the typical townhouse unit, a villa is a luxury unit with multiple amenities that features an important market niche. During cross-examination by Michael Merritt about the project's design, Mr. Link testified that the design team looked specifically at its relation to his property. Hence, the 140-foot group is more than 90 feet from his property and the unit fronts face Mr. Merritt's property.

18. Referring to Petitioner's Exhibit 3A-F, six photographs of approved age-restricted attached units within four miles of the Property, Mr. Link testified that these images typify such units, which may have one or two stories or an upper loft or lower ceiling height and a basement. These photographs depict Fairway Overlook developed by H&H Rock(Exhibit 3.A); Ellicott Mills Exhibit (Exhibit 3.B&C); Village Crest (Exhibit 3.D&E), and; Rockburn Manor on Koffel Court (Exhibit 3.F), which lies about .5 miles away. Mr. Garner cross-examined Mr. Link,

as to whether the developments depicted in Exhibit 3 were conditional uses. The Villas of Village Crest was developed as a Planned Office and Research Development under the POR zoning district, according to Mr. Link, so it was not subject to the conditional use category criteria. The other examples were conditional uses.

19. Discussing Petitioner's Exhibit 4, which details an example of an age-restricted dwelling similar to the units of the proposed conditional use, Mr. Link explained that the exhibit mirrors the footprint of the units proposed for the Property.

20. In reference to Petitioner's Exhibit 5A-F, Mr. Link testified that the six photographs and aerial maps demonstrate the compatibility of age-restricted attached communities adjacent to single-family detached dwellings.

21. Discussing Zoning Regulations Section 131.1.A.(5).(g), Mr. Link continued his testimony in relation to the Petitioner's request to increase the maximum 120-foot length of attached units to 140 feet for three unit groups. The visual impact of this building length would be mitigated by staggered setbacks, changes in elevation through roofline and façade treatments, similar muted exterior colors and changes in materials. Petitioner's Exhibit 6 is intended to provide examples of how such design features would be utilized in the proposed community. The examples include the communities of Fairway Overlook, Ellicott Mills, Village Crest, and Rockburn Walk.

22. Petitioner's Exhibit 7A-C depicts three examples of nearby of age-restricted communities with buildings in excess of 120 feet, including Ellicott Mills, Villas at Village Crest and Rockburn Park. Rockburn Park, on nearby Koffel Court, has a 145-foot grouping. He opined

that the design of the age-restricted unit results in a wider footprint owing to the need to provide a first floor bedroom on the first floor.

23. The Hearing Examiner questioned Mr. Link about the approval dates of the three age-restricted attached unit conditional uses depicted in Petitioner's Exhibit 7A-C, explaining that the County Council did not impose the 120-foot length limitation on attached units until 2006 and a provision allowing greater lengths subject to certain criteria. Mr. Link replied that he did not know the Board of Appeals Case numbers or the approval dates of the three examples in Petitioner's Exhibit 7A-C. However, at the Design Advisory Panel meeting, as explained in the TSR, a panel member suggested that two units in the two interior 140-foot groups be relocated.

During Protestants' cross-examination of Messrs. Link and Hikmat as to which of the age-restricted community examples in the Petitioner's exhibits were entered via a single-family detached dwelling community, Mr. Link explained that Fairway Overlook is accessed from Deborah Jean Road off Montgomery Road. The approximately .3 mile road is improved by single-family detached dwellings and is the only means of access. Ellicott Mills is accessed from Grove Angle Road, off Waterloo Road. All the dwellings along Grove Angle Road are single-family detached dwellings.

24. Mr. Garner testified to there being no attached dwelling units west of Montgomery Road and Marshalee Drive to the second access from Marshalee Drive and questioned why the proposed use should be allowed. Mr. Hikmat responded that most age-restricted attached communities are located in R-20 districts subject to the criteria of the conditional use category criteria. He also testified that the tee-turnaround was established to

provide access to a single-family detached project that fell through. During cross-examination, Mr. Garner testified that attached units would decrease property values. On redirect, Mr. Hikmat testified that the general rule is that age-restricted attached communities are located in communities of single-family detached dwellings.

25. Monica Alston testified to being opposed to the proposed use because it does not enhance Howard County and the community's quality of life. It would have a negative impact between two single-family detached dwelling communities of like length. It would be nicer to have single-family homes. During cross-examination, Ms. Alston expressed her support of age-restricted communities but not between two single-family detached dwelling communities.

26. Nicholas Eads testified that the proposed units may not be marketable in light of what he contended was an oversupply of age-restricted units and the current economic climate.

27. Michael Merritt testified that he would like to seek two groups of semi-detached units nearest his property.

28. On recall, Mr. Link testified to not knowing the distance from Mr. Merritt's dwelling to the 140-foot grouping. Referring to Petitioner's Exhibit 5C and F (Village Crest), he opined that the distance between a single-family detached dwelling and a 140-foot unit grouping would have to include a 75-foot buffer. However, the community is zoned POR, so it was not approved through the conditional use process. In the Ellicott Mills community, there are multiple 140-foot plus unit groupings backing onto single-family detached dwellings. During

this exchange the Petitioner, through counsel, that one of the units in the grouping about which Mr. Merritt was concerned could be relocated next to the community building.

29. John Mathias testified to being concerned about loss of property values and public safety. He is especially concerned about the Site having only one means of access. He moved to this home understanding that the adjoining property would be developed with single-family homes.

30. Bonnie Dickson testified that the county should not approve the project because the number of older residents will increase in ten years and the traffic impact may change.

CONCLUSIONS OF LAW

I. Background Issues.

A. The Proposed Condominium Regime

Note 8 on the Amended Plan states "[t]his project is proposed to be a condominium regime. It may be converted to fee simple lots if deemed appropriate by the developer." Mr. Hikmat testified that the Petitioner may convert the residential uses to fee-simple lots if the current financial/lending climate made it necessary to do so.

The Hearing Examiner expressed concern that such a modification could potentially result in a material change to the Amended Plan. Through counsel, the Petitioner agreed that such a modification would substantially alter the Amended Plan. For this reason, the Hearing Examiner is approving the conditional use subject to the condition that a change in ownership from a condominium regime to fee-simple lots shall be considered a substantive, material change to the approved use, requiring the Petitioner to submit a new conditional use plan.

B. Use of Open Space Areas along the Western and Southern Site Boundaries

Age-restricted adult housing development conditional uses must demonstrate enhanced site design through landscaping, the character of which must be such as to ensure the use will blend with adjacent properties. Moreover, for the Enclave at Park Forest, as least 35 percent of the gross site area shall be open space or open area in accordance with the Subdivision and Land Development Regulations and any open area or space should include certain amenities for residents. The Amended Plan denotes landscape buffers and open space areas within the applicable structures and use setbacks along the western and south existing or proposes property lines.

During the proceeding, the issue arose as to what residential use (with potential atypical adverse impacts) might be made of the open space/landscape buffer areas within the applicable setbacks. The Hearing Examiner therefore queried Mr. Hikmat as to whether the Petitioner would allow residents to erect deck or open/enclosed porches in the pertinent structure/use/open space/landscape buffer areas, expressing concern that such uses may negate the requisite landscape design and visual impact mitigation standards. Mr. Hikmat initially stated that the Zoning Regulations would not permit decks within the setback because they are structures; on redirect he clarified that Zoning Regulations Section 128.A.1.d does indeed allow decks or open/enclosed porches to encroach 10 feet into a front or rear setback as a matter of right.

On review, the Hearing Examiner agrees that such structures are permitted in the open space areas pursuant to Section 128.A.1.d. Because the use as proposed is a condominium

regime, no separate Open Space Lot is proposed; consequently, the Subdivision Regulations' restriction on the use of Open Space Lots does not apply. Furthermore, the Zoning Regulations require only 35 percent of the Site to be open space, and the Petitioner is proposing a 6.32-acre open space area (53 percent), so the western and southern open space areas could be eliminated, if necessary, to accommodate a deck or patio.

Nonetheless, to protect the landscape character of the proposed use and the vegetation in the landscape buffer behind the units along the western and southern Site boundaries, the Hearing Examiner is requiring that the western and southern landscape buffers be at least 20 feet in depth, and remain undisturbed. To deter encroachment into the landscape buffers, the condominium bylaws/covenants and condominium plat shall clearly reference the landscape buffers that are to remain undisturbed. The Petitioner shall also clearly include a written and graphic description that this landscape buffer shall be undisturbed in all advertised sale of the individual units on the western and southern boundaries of the Site. Any sale of these affected units shall include a covenant restricting encroachment into the landscape buffer to that permitted by the Zoning Regulations Section 128.A.1.d and clearly stating that the covenant shall be enforced by the condominium association against "successors and assigns" in the event of a breach or by county code enforcement procedures.

C. The 140-Foot Unit Grouping in the Interior and Eastern Portion of the Site

Section 130.N.1.a.(4) requires the landscape character of an age-restricted adult housing development to blend with adjacent residential properties. Section 130.N.1.a.(5)(g) limits the length of attached units to 120 feet and authorizes the Hearing Authority to approve a greater

length, up to 200 feet, in the R-20 district if the Petitioner demonstrates the proposed architectural design will mitigate the visual impact of the increased length. In this case, Petitioner's witnesses testified that the distance between the 140-foot, five-unit attached grouping on the eastern, interior portion of the Site, together with the proposed architectural design and a Type D landscape buffer, render the project compliant with these two standards. Protestant Merritt contended the 140-foot grouping would have an atypical adverse impact because its length would make it visible no matter what mitigation efforts the Petitioner used.

The Hearing Examiner is not persuaded that the Petitioner's evidence fully supports its claims. The Petitioner presented no cross-sections or profiles to validate that the proposed landscape character and visual impact would comport with the two design mandates, and despite the Type D landscape buffer, the landscaping depicted on the plan is too generic to conclude it will achieve its intended objectives. Importantly, the architectural design exhibits offered by the Petitioner as positive examples of building length mitigation approved by the Hearing Authority predate the visual impact mitigation standard, which did not apply until 2006.¹ Rockburn Walk, a 21-unit single-family attached dwelling condominium community was approved in 2001 through Board of Appeals Case No. 00-037E. Fairway Overlook, a 25-unit single-family attached dwelling condominium community was approved in 2002 through Board of Appeals Case No. 00-055E, and Hearthstone of Ellicott Mills II, an approximately 60-unit

¹ 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. This amendment was added due to design concerns about the building lengths of approved age-restricted conditional use petitions. In 2008, the County Council imposed additional standards on age-restricted housing, per Zoning Regulations Section 131.M.1.a.(16), which subjects the conditional use plan and the architectural design of the age-restricted buildings to Design Advisory Panel review. Fairway Overlook and Ellicott Mills were originally approved in accordance with what was then Section 131.N.30, Housing for the Elderly.

single-family attached dwelling condominium community, was approved in 2005.² In the same vein, the Villas at Village Crest was developed under the POR district as a matter of right, and the POR regulations do not impose the same site/architectural design requirements as the conditional use category.³

In response to the Hearing Examiners apprehension that in light of the quality of evidence presented, the 140-foot five-unit eastern unit grouping may have an atypical adverse impact, Petitioner agreed to relocate the fifth unit to the three dwelling grouping next to the community building. Consequently, the remaining units across from Mr. Merritt can be arranged as two semi-detached groupings, which in the Hearing Examiner's view, would result in an acceptable design, as the two semi-attached groupings would be about the same width as many area single-family detached dwellings, and comport with all design standards.

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

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

A. Harmony with the General Plan.

² In Board of Appeals Case No. BA 07-010, the Hearing Examiner granted the Petitioner's petition to modify the conditions of approval imposed by Board of Appeals Case No. 00-055, to permit an additional ten units, decrease the unit size from 2,700 square feet of living space to 1,680 square feet, and increase the community building from 1,000 to 1,200 square feet. In 2007, the Hearing Examiner granted the Petitioner's request to extend by two years two years the time to obtain all building permits to establish the conditional use approved in Board of Appeals Decision and Order No. 05-006C, as Modified by Board of Appeals Decision and Order No. BA 07-010C.

³ Section 115.E. imposes the additional requirements for age-restricted adult housing.

1. Design for Older Adults

The development shall incorporate universal design features from the Department of Planning and Zoning guidelines which identify required, recommended and optional features. Plan submittals shall include descriptions of the design features of the proposed dwellings to demonstrate their appropriateness for the age-restricted population. The material submitted shall indicate how universal design features will be used to make individual dwellings adaptable to persons with mobility or functional limitations and how the design will provide accessible routes between parking areas, sidewalks, dwelling units and common areas.

Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

a. 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; and

b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

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. The General Plan advocates the development of housing for the active senior market, recognizing that 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 homes 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." Clearly, the General Plan contemplates age-restricted adult housing. To implement this policy, the County Council adopted the age-restricted adult housing conditional use, providing for a variety of dwelling types, including attached and semi-attached units.

In this case, the proposed development will consist of 46 two-story, 28' x 60' age-restricted dwelling units with two-car garages. Because the intensity of use is much greater than vicinal residential properties, the Petitioner is proposing several measures to enhance the landscape character of the project and harmonize the visual impact of the units with surrounding residential uses. These include staggered setbacks, changes in elevation through roofline and façade treatments, similar muted exterior colors and changes in materials. While not approved by the Hearing Authority, the architectural designs appear to be appropriate for the longer building lengths.

Additionally, Petitioner revised the original plan to relocate two units in the 140-foot groupings and has agreed as a condition of approval to relocate one of the units in the eastern five-unit group to the northern group next to the community building. Petitioner has also designed the proposed use to maximize the distance between the eastern units and adjoining residences. In addition, a Type D landscape buffer is proposed along the eastern property line. The proposed use will also feature open space along the perimeter.

As of the date of this hearing, the Hearing Authority has approved three R-20 zoned age-restricted adult housing complexes with attached units off Montgomery Road within a short distance of the Site. These are Rockburn Walk on Koffel Court, Fairway Overlook on Pebble Creek Drive (off Deborah Jean Drive), and Hearthstone of Ellicott Mills II (off Grove Angle Road), which are depicted in multiple Petitioner exhibits. All were found to be in harmony with the General Plan.

Protestants contend that an age-restricted community with attached and semi-detached units is disharmonious with the General Plan, and thus, the character of the community. However, they presented no contravening evidence to support this claim.

Accordingly, the Hearing Examiner concludes that the nature and intensity of the proposed use is such that the use will be harmonious with the land uses and policies indicated in the General Plan for the district, pursuant to Section 131.B.1.a.⁴

B. Adverse Effects

Section 131.B.2 requires the Hearing Authority 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 met its 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.

⁴ Section 131.1.b is inapplicable because no other use is proposed.

a. Physical Conditions. 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 be elsewhere in the zone or applicable other zones.

The use will not generate atypical dust, fumes, odors, or noise. No outdoor lighting other than typical residential light is proposed, except for a light pole by the community building. Consequently, the Hearing Examiner concludes that the use will not 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.

b. Structures and Landscaping. 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.

Petitioner amended the conditional use plan to incorporate DPZ's proposed amendments and the Design Advisory Panel's recommendation to reduce the length of two attached unit groupings. Petitioner has also agreed to relocate a unit in the 5-unit grouping eastern interior grouping depicted in the Amended Plan. All dwelling units, as well as the community center, will meet or exceed all setback requirements. The dwelling units would be about 28 feet in height.

Petitioner enhanced the eastern landscape buffer from Type C+ to Type D on DPZ's recommendation. Petitioner is also proposing Type C+ landscaping buffers along the western and southern sections of the Site where the dwellings will be located. There is no contravening evidence that this arrangement would 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. Although Protestants claimed this arrangement would have an atypical effect because the community would be located between two single-family detached dwelling subdivisions, the claim lacks merit without substantiation of the alleged atypical impact.

The Hearing Examiner therefore concludes that the Petitioner has 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 than it would generally elsewhere in the zone, as required by Section 131.B.2.b of the Zoning Regulations.

c. Parking and Loading. 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.

Two parking spaces per unit (92) are required and four per unit are proposed (184), as well as five visitor spaces next to the community building, in accordance with 131.B.2.c of the Zoning Regulations.

d. Access. 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.

The proposed conditional use will utilize the existing access point off Monterey Road, a subdivision road previously approved and providing safe access. Protestants argued that the use of Monterey Road as the sole means of access through a single-family detached dwelling community to Montgomery Road is an atypical impact. However, as Petitioner's witnesses affirmed, the Hearing Examiner approved two age-restricted adult housing communities in the area and approved through the conditional use process, and both are accessed through single-

family detached communities. Fairway Overlook on Pebble Creek Drive accesses Montgomery Road via Deborah Jean Road, a long local street of more two dozen single-family detached dwellings. Hearthstone of Ellicott Mills II, accesses Montgomery Road from Grove Angle Road, another long local street with more than two dozen single-family detached dwellings. The proposed use accords with 131.B.2.d of the Zoning Regulations.

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

a. Age-Restricted Adult Housing, General

A conditional use may be granted in the RC, RR, R-ED, R-20, R-12, R-SC, R-SA-8, or R-A-15 District, for age-restricted adult housing, provided that:

(1) Single-family detached, semi-detached, multi-plex, attached and apartment dwelling units shall be permitted, except that (a) Only detached, semi-detached and multi-plex units are permitted in the RC and RR Districts; and (b) Only detached, semi-detached, multi-plex and single-family attached units are permitted in developments with less than 50 dwelling units in the R-ED, R-20 and R-12 Districts.

(2) The development shall have a minimum of 20 dwelling units.

(3) The maximum density shall be as follows:

Zoning District	Number of Dwelling Units in Development	Maximum Units Per Net Acre
RC and RR	20 or more	1
R-ED and R-20	20-49	4
	50 or more	5
R-12	20-49	5
	50 or more	6
R-SC	20-49	7
	50 or more	8
R-SA-8	20 or more	12
R-A-15	20 or more	25

(4) Site Design: The landscape character of the site must blend with adjacent residential properties. To achieve this:

(a) Grading and landscaping shall retain and enhance elements that allow the site to blend with the existing neighborhood.

(b) The project shall be compatible with residential development in the vicinity by providing either:

(i) An architectural transition, with buildings near the perimeter that are similar in scale, materials and architectural details to neighboring dwellings as demonstrated by architectural elevations or renderings submitted with the petition; or

(ii) Additional buffering along the perimeter of the site, through retention of existing forest or landscaping, enhanced landscaping, berms or increased setbacks.

(c) For projects with less than 50 dwelling units in the RC, RR, R-ED, R-20 and R-12 Districts, setbacks from existing public streets shall be the same as the setback required for residential uses on adjacent properties.

Forty-six detached or attached units are proposed, in accordance with Section 131.N.a.(1) & (2). The Site's net area of 11.54 acres permits up to 46 units and 46 are proposed, in compliance with Section 131.N.1.a.(3).

For the reasons outlined heretofore, the Hearing Examiner concludes the project will be compatible with and blend with vicinal residential development. The units closest to vicinal residential development will be semi-detached units whose massing and design will be similar in scale, materials and architectural details to neighboring dwellings. Unit groupings exceeding 120 feet will be sited on the road interior and next to an Open Space Lot. A Type D landscape buffer is proposed along the eastern perimeter. Type C+ landscape buffers are proposed along the western and southern portions of the Site where semi-attached dwellings. The proposed use comports with Section 131.N.1.a.(4)(a) & (b).

The setback from detached dwellings for semi-attached dwellings is 40 feet. The setback from an Open Space Lot is 30 feet. The proposed conditional use comports with Section 131.N.1.a.(4)(c).

(5) Bulk Requirements

(a) Maximum Height:

(i) Apartments 40 feet

Except in R-SA-8 and R-A-15 55 feet

(ii) Other Principal Structures 34 feet

(iii) Accessory Structures 15 feet

(b) Minimum Structure and Use Setback:

(i) From Public Street Right-of-way 40 feet

- (ii) From residential lots in RC, RR, R-ED, R-20, R-12 or R-SC Districts:
 - Apartments 100 feet
 - Single-family attached 75 feet
 - Single-family detached, semi-detached, and multi-plex 40 feet
- (iii) From open space, multi-family or non-residential uses in RC, RR, R-ED, R-20, R-12 or R-SC..... 30 feet
- (iv) From zoning districts other than RC, RR, R-ED, R-20, R-12 or R-SC 20 feet
- (c) Minimum structure setback from interior roadway or driveway for units with garages 20 feet
- (d) Minimum structure setback from lot lines for single-family detached or multi-plex units
 - (i) Side 10 feet
 - Except zero lot line dwellings 0 feet
 - A minimum of 10 feet must be provided between structures
 - (ii) Rear 20 feet
- (e) Minimum distance between single-family detached and/or attached dwellings:
 - (i) For units oriented face-to-face 30 feet
 - (ii) For units oriented side-to-side 15 feet
 - (iii) For units oriented face-to-side or rear-to-side 20 feet
 - (iv) For units oriented rear-to-rear 40 feet
 - (v) For units oriented face-to-rear 100 feet
- (f) Minimum distance between apartment buildings or between apartment buildings and single-family dwellings:
 - (i) For units oriented face-to-face 30 feet
 - (ii) For units oriented side-to-side 15 feet
 - (iii) For units oriented face-to-side or rear-to-side 30 feet
 - (iv) For units oriented rear-to-rear 60 feet
 - (v) For units oriented face-to-rear 100 feet
- (g) Apartment buildings and groups of single-family attached units may not exceed 120 feet in length. However, the Hearing Authority may approve a greater length, up to a maximum of 300 feet in R-SA-8 and R-A-15, or 200 feet in other districts, based on architectural design that mitigates the visual impact of the increased length.

The setback from detached dwellings for semi-attached dwellings is 40 feet. The setback from an Open Space Lot is 30 feet. The proposed side setback is 15 feet. The proposed conditional use comports with Section 131.N.1.a.(5). For the reasons set forth above, and as

conditioned, the proposed conditional use comports with Section 131.N.1.a.(5)(g). The proposed architectural design will mitigate the increased lengths.

(6) At least 50 percent of the gross site area in the RC, RR and R-ED Districts, at least 35 percent in the R-20, R-12, and R-SC Districts, and at least 25 percent in R-SA-8 and R-A-15 Districts, shall be open space or open area in accordance with the Subdivision and Land Development Regulations. The open space or open area shall provide amenities such as pathways, seating areas and recreation areas for the residents, and shall be protective of natural features.

Because the Property is zoned R-20, 35 percent of the Site must be open space and the Amended Plan denotes 53 percent (6.32 acres). The Amended Plan depicts a walking trail and several picnic tables and the Petitioner has agreed to erect a gazebo to the north of the community center, within the trail. As a condition of approval, the gazebo shall be accessible to persons with mobility or functional limitations through a no-step design and shall have permanent seating areas, as well as sufficient area for several persons with mobility or functional limitations to accommodate any walking assistance equipment. Subject to these conditions, the proposed conditional use accords with Section 131.N.1.a.(6)(g).

(7) Accessory uses may include social, recreational, educational, housekeeping, security, transportation or personal services, provided that use of these services is limited to on-site residents and their guests.

No accessory uses are proposed.

(8) At least one on-site community building or interior community space shall be provided that contains a minimum of:
(a) 20 square feet of floor area per dwelling unit, for the first 99 units with a minimum area of 500 square feet, and
(b) 10 square feet of floor area per dwelling unit for each additional unit above 99.

For the 46-unit project, a 920-square foot community building is proposed, in accordance with 131.N.1.a.(8).

(9) Loading and trash storage areas shall be adequately screened from view.

According to the Amended Plan, no loading or trash areas are proposed.

(10) For a development that will be built in phases, open space areas, recreational facilities and other accessory facilities shall be provided in each phase to meet the needs of the residents. The developer shall provide a schedule for the installation of facilities at the time the conditional use is approved.

No phasing is proposed.

(11) The petition shall establish how the age restrictions required under the definition of this use will be implemented and maintained over times. If the development will not be a rental community under single ownership, an entity such as a condominium association or homeowners association shall be established to maintain and enforce the age restrictions in addition to County enforcement of zoning regulations.

The petition includes a document entitled "The Enclave at Park Forest Condominium Declaration," in accordance with Section 131.N.1.a.(11).

(12) All open space, common areas and related improvements shall be managed and maintained by a common entity, either the owner of the development, a condominium association, or a homeowners association.

Amended Plan Note 2.L states that all open space, common areas, and related improvements will be maintained by the condominium association, in accordance with Section 131.N.1.a.(12).

(13) The development shall incorporate universal design features from the Department of Planning and Zoning guidelines that identify required, recommended and optional features. The petition shall include descriptions of the design features of proposed dwellings to demonstrate their appropriateness for the age-restricted population. The material submitted shall indicate how universal design features will be used to make individual dwellings adaptable to persons with mobility or functional limitations and how the design will provide accessible routes between parking areas, sidewalks, dwelling units and common areas.

The petition addresses all universal design features required, in accordance with Section 131.N.1.a.(13).

(14) At least ten percent of the dwelling units in the RC, RR, R-ED, R-20, R-12 and R-SC Districts, and at least 15 percent in the R-SA-8 and R-A-15 Districts, shall be moderate housing units.

Amended Plan Note 2.N states that five moderate housing units shall be provided, in accordance with Section 131.N.1.a.(14).

(15) Housing for the elderly special exceptions uses approved by the Board of Appeals on or prior to July 12, 2001 and constructed under the zoning regulations in effect at that time, may convert the existing dwelling units to age-restricted adult housing uses, with respect to minimum age restrictions only, without being subject to further hearing authority review and approval under current conditional use requirements, provided that the dwelling units are made subject to the new covenants and other legal means of enforcing the age-restricted adult housing minimum age restrictions, and that a copy of the recorded new covenants is submitted to the Department of Planning and Zoning to be filed in the original special exception case file

This section does not apply.

(16) The conditional use plan and the architectural design of the building(s) shall have been reviewed by the Design Advisory Panel, in accordance with Title 16, Subtitle 15 of the Howard County Code, prior to the submission of the conditional use petition to the Department of Planning and Zoning. The Petitioner shall provide documentation with the petition to show compliance with this criterion. [Council Bill 25-2008 (ZRA 91) Effective 8/6/08]

The TSR discusses Design Advisory Panel review of the conditional use plan and architectural design. The Amended Plan reflects certain panel recommendations. The petition complies with Section 131.N.1.a.(16).

ORDER

Based upon the foregoing, it is this **19th day of March, 2012**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Rock Burn, LLC, (Petitioner) for a conditional use to construct Age-restricted, Adult Housing Genera in an R-20 (Residential: Single) zoning district is hereby **GRANTED.**

Provided, however, that:

1. The conditional use shall be conducted in conformance with and shall apply only to the proposed Age-Restricted Adult Housing development as described in the petition and depicted in the February 2012 Amended Conditional Use Plan for "Enclave at Park Forest," and not to any new structures or uses on the Site or any additions thereto.

2. The Petitioner shall relocate one of the five attached units in the 140-foot, five-unit grouping facing the eastern perimeter to the three-unit grouping next to the community center. No portion of the walking trail depicted on the Amended Plan shall be disturbed. If the attached unit cannot be relocated to this area, the number of units shall be reduced to 45.

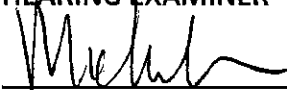
3. The five-unit grouping that is to be reduced to four units shall be reconfigured as two, semi-detached groupings (four dwellings.)

4. A change in ownership from a condominium regime to fee-simple lots shall be considered a substantive, material change, requiring the Petitioner to submit a new conditional use plan.

5. The Petitioner shall erect a gazebo to the north of the community center, within the area of the walking trail depicted on the Amended Plan. The gazebo shall be accessible to persons with mobility or functional limitations through a no-step design and shall have permanent seating areas, as well as sufficient area for several persons with mobility or functional limitations to accommodate any walking assistance equipment.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Michele L. LeFaivre

Date Mailed: _____

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.